

ATTACHMENT E

FORM OF CONTRACT (BASIC ORDERING AGREEMENT)

BASIC ORDERING AGREEMENT

**FY14 INDEFINITE DELIVERY/INDEFINITE QUANTITY FOR
GENERAL CONSTRUCTION AND DESIGN-BUILD SERVICES**

CONTRACT NO. DCAM-14-CS-0157

THIS AGREEMENT (“Agreement” Or “Contract”) is made by and between the **DISTRICT OF COLUMBIA GOVERNMENT**, acting by and through its **DEPARTMENT OF GENERAL SERVICES** (the “Department” or “DGS”) and _____ duly organized under the laws of the **DISTRICT OF COLUMBIA**, and with a place of business at _____ (the “Contractor”).

WITNESSETH:

WHEREAS, the Department requires general construction and design-build services for various Projects;

WHEREAS, the Department issued an Invitation for Bid (IFB) to engage a contractor to provide General Construction-Design Build Services.

WHEREAS, the Contractor submitted a proposal in response to the IFB, and the Department wishes to engage the Contractor to provide the requested services.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the sufficiency and adequacy of which is hereby acknowledged, the parties to this Agreement agree as follows:

**ARTICLE 1
NATURE OF AGREEMENT**

Section 1.1 Nature of Agreement. This Agreement is issued pursuant to the Department’s Invitation for Bid (IFB) for IDIQ for General Construction and Design Build Services (Solicitation No. DCAM-14-CS-0157) (the “IFB”) [**Exhibit A**] and the Contractor’s price proposal dated _____ [**Exhibit B**], which is incorporated herein and made a part of this Agreement. The Contractor, by virtue of this Agreement, shall be included on the Department’s list of pre-qualified contractors to be eligible to compete, as set forth in Section 1.2 of this Agreement with other pre-qualified contractors on small construction projects (i.e. those having a construction value between \$250.00 and \$950,000.00) for facilities in DGS’ municipal buildings portfolio that generally includes office buildings, fire and police stations, and other similar facilities. This Agreement does not authorize any specific work or constitute a guarantee that any work will be assigned to the Contractor. All work will be awarded and released through individual project Task Orders as set forth in Section 1.2 of this Agreement.

Section 1.2 Competitive Bidding.

Section 1.2.1 For each project identified and funded by the Department to be bid through contractors that have entered into contracts pursuant to the IFB, the Department will develop a Scope of Work. The Scope of Work will be issued to two (2) or three (3) of the pre-qualified contractors, and in most cases, each of those Contractors will be provided with an opportunity to walk the project with the Department's representatives in order to better understand and clarify the work.

Section 1.2.2 The Department contemplates that the Scope of Work that will be issued to Contractors during the bidding phase may or may not include complete drawings. The parties acknowledge and agree that contractors may be required to complete work on a design-build or design-assist basis.

Section 1.2.3 Each Contractor will be required to submit, within the time allotted by the Department, a lump sum price or such other pricing as may be requested by the Department for the proposed work. Absent specific instructions to the contrary, proposed Task Order pricing should be "all inclusive" and should include sufficient funding to cover all of the Contractor's costs necessary to complete the project, including, but not limited to, profit, home and field office overhead, supervision, labor, materials, equipment, bonds, insurance and such professional services as may be required to complete the design and obtain the necessary permits.

Section 1.2.4 The Department will select the Contractor to be awarded each such project primarily based on price, but the Department reserves the right to consider non-price factors when making such decisions and will also consider differences in scope and/or proposed finishes, equipment and materials.

Section 1.2.5 In the event the Contractor is selected for the project, the Contractor shall enter into a Task for such project within five (5) days of being presented with such Task Order by the Department.

Section 1.3 Task Orders. Any and all work performed under this Agreement or any Task Order issued pursuant here to shall be governed by the terms and conditions set forth in this Agreement. It is contemplated that individual Task Orders shall, in general, contain the following information: (i) a description of the Scope of Work included in such Task Order; (ii) a lump sum price and/or such other terms of compensation for the work included in the Task Order's scope of work; (iii) the Substantial Completion Date for the Task Order's Scope of Work and/or such other schedule requirements for Task Order; (iv) liquidated damages; and (v) any other specific requirements of the Scope of Work. The Task Order shall also set forth a general description and requirements of the project (such description and requirements, the "Project").

Section 1.4 Term of Agreement. This Agreement shall be effective from the date of execution by both parties through one (1) year thereafter (such time period, the "Term") with an option to extend the term of the contract in accordance with Section 1.4.2. Any and all work

assigned to the Contractor pursuant to a Task Order issued pursuant to this Agreement must be completed within the Term of this Agreement.

Section 1.4.1 The Department's liability under this contract is contingent upon the future availability of appropriated monies with which to make payment for the contract purposes. The legal liability on the part of the Department for the payment of any money shall not arise unless and until such appropriation shall have been provided.

Section 1.4.2 Option to Extend the Term of the Agreement - The Department shall have the right to extend the term of this Agreement for four (4) one (1) year option periods; provided that the Department shall give the Contractor preliminary written notice of its intent to exercise the option to extend the term of the Contract thirty (30) days prior to the expiration of the contract. The preliminary notice does not commit the Department to an extension. Contractor may waive the thirty (30) day notice requirement by providing a written waiver to the Contracting Officer prior to the expiration of the Contract.

Section 1.4.3 Option Year Pricing. In the event the Department exercises its option to extend the Agreement to cover an option year, the rates applicable to such Option Year are set forth in Exhibit A subject to negotiation of individual Task Orders to be issued under the Agreement.

Section 1.5 Standard Task Order Provisions. Unless otherwise expressly stated in a Task Order, all of the Provisions of Articles 3 through Article 16 shall be deemed incorporated into the Task Order as if set forth therein.

Section 1.6 Value of Agreement. The Contractor shall be entitled to receive a minimum of Two Hundred Fifty Dollars (\$250.00) pursuant to this Agreement regardless of whether any work is assigned to the Contractor pursuant to any Task Order issued pursuant to this Agreement. In no event, however, shall that the Contractor be entitled to receive more than Nine Hundred and Fifty Thousand Dollars (\$950,000.00) for work performed pursuant to all Task Orders issued pursuant to this Agreement.

Section 1.7 CBE Status. The parties acknowledge that this Agreement is awarded pursuant to the IFB on which only Bidders certified by District of Columbia Department of Small and Local Business Development ("DSLBD") as a Certified Business Enterprise ("CBE") were eligible to bid. The Contractor has represented to the Department that it is a CBE, as determined by DSLBD. The Contractor shall maintain its status as a CBE throughout the Term of this Agreement. Should the Contractor lose its status as a CBE for any reason other than that the expiration of the certification period, the Contractor shall promptly notify the Department. Should the Contractor's certification as a CBE expire, the Contractor shall promptly refile if eligible to do so. If the Contractor is no longer eligible for recertification, the Contractor shall promptly advise the Department of its ineligibility for recertification. The Department may terminate this Agreement, including any Task Order issued pursuant hereto, if the Contractor loses its status as a CBE and is ineligible for recertification.

ARTICLE 2 GENERAL PROVISIONS

Section 2.1 Relationship of Parties. The Contractor accepts the relationship of trust and confidence established with the Department by this Agreement, and covenants with the Department to furnish the Contractor's reasonable skill and judgment and to cooperate with the Program Manager in furthering the interests of the Department. The Contractor shall use its best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Department.

Section 2.2 General Scope of Project. The Department anticipates that the projects assigned through Task Orders pursuant this Agreement will be small construction projects and may include building repairs, upgrades, and tenant-fit out improvements including, but not limited to, patching and plumbing, carpentry, masonry, window replacement, fire alarm repairs, electrical and other miscellaneous repairs as may be necessary at various District of Columbia Municipal buildings. Such work shall be performed on an as directed/as needed basis.

Section 2.3 Completion Date. Subject to the Excusable Delay provisions of this Agreement, the Contractor agrees to substantially complete the Project on or before the date set forth in the individual Task Order for any given project.

Section 2.4 Project Manager. The Department has assigned a Project Manager to oversee the Contractor's work. The name and contact information for the assigned Project Manager is specified in the Project Information section of this Agreement. The Contractor shall take direction from, and coordinate its work with, the assigned Project Manager. The Contractor acknowledges, however, that the Project Manager is not authorized to modify any of the rights or obligations of the Department or the Contractor pursuant to this Contract, or to issue Change Orders or Change Directives.

Section 2.5 Prolog. The Contractor shall utilize the Department's Prolog system to submit any and all documentation required to be provided by the Contractor for the Project, including, but not limited to, (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) proposed Changes; and (v) applications for payment. The Contractor also shall require all major subcontractors and subconsultants to utilize Prolog for the Project.

Section 2.6 Central Office. During the Term of this Agreement, the Contractor shall maintain a central office that is staffed between the hours of 7am - 5pm Monday through Friday. This office will be used to manage work associated with this Agreement. A separate office need not be established, and is acceptable if the Contractor elects to the run this project from its current office. The office shall be equipped with telephone lines, a fax machine, email, and such other equipment and supplies as are necessary to fulfill the work required under the Agreement.

Section 2.7 Working Hours. The Contractor shall be required to coordinate with the assigned Project Manager for each individual project. The work may be performed during normal business hours; however, the Contractor may be required to work after hours or on weekends and holidays as to not adversely impact the work of the District of Columbia employees/and or Contractors. The Contractor shall be required to develop work plans that are coordinated with, and acceptable to, the Project Manager assigned to the Task Order.

ARTICLE 3 PRECONSTRUCTION DELIVERABLES

Section 3.1 Schedule. Upon assignment of a Task Order, the Contractor shall be required to submit to the Department for its approval a schedule for the Project. Such schedule shall include a schedule for submittals and key milestones that is reasonably acceptable to the Project Manager. The Contractor shall not perform any construction activities until the Project Manager has approved a schedule for the Task Order.

Section 3.2 Potential Subcontractors and Suppliers. The Contractor shall furnish to the Project Manager a list of the subcontractors and suppliers that will work on this Project as well as a general description of each such subcontractor's Scope of Work. Within five (5) business days after such list is submitted, the Project Manager shall advise the Contractor if it has any objection to any of the listed subcontractors or suppliers. In the event the Project Manager has a reasonable objection to any such subcontractor or supplier, the parties shall discuss such objection and agree on an appropriate course of action.

Section 3.3 Design Services. Prior to providing its bid for the Task Order, the Contractor had an opportunity to review and ask questions regarding the Scope of Work for the Task Order and to ascertain what design services, if any, were necessary in order to complete the Project and has included in its price the costs of any necessary design services, and the Contractor shall be required to provide, at no additional cost to the Department, such design services as necessary to implement the Project. The Contractor and the Project Manager shall agree upon the exact design services to be required prior to the construction commencing.

Section 3.4 Design Reviews/Submittals. On or before the dates specified in the approved detailed schedule (**See Section 3.1**), the Contractor shall submit the necessary design information (i.e. permit drawings, shop drawings, submittals, sketches, etc.) to the Project Manager for his review and approval. Unless a different timeframe is established in the approved detailed schedule, the Project Manager shall have five (5) business days to review such documents. In the event the Project Manager finds such documents to be unacceptable, the Contractor shall be required to revise and resubmit such documents. The Contractor shall not commence construction activities unless and until such documents have been approved by the Project Manager. Any delays that result from design resubmissions shall be considered Non-Excusable.

ARTICLE 4 CONTRACT SUM

Section 4.1 Lump Sum Price. For the work covered by any given Task Order, the Contractor shall be paid a lump sum price in the amount set forth in the Task Order to fully complete the Project.

Section 4.2 Nature of the Lump Sum Price. The Contractor acknowledges and understands that the Lump Sum Price is based on the Scope of Work included with the Project Task Order. It is understood and agreed that the Lump Sum Price represents the Contractor's offer to fully complete the Project. The parties acknowledge and agree that it is their intent to have the Contractor to construct and deliver a fully functional Project as contemplated in the Scope of Work for the Lump Sum Price and consistent with the Project Schedule. In furtherance of such intent, the Contractor hereby assumes the risks associated with and shall be responsible for (i) any changes in market conditions that affect the cost of labor or materials; (ii) coordination issues between any drawings for the Project; (iii) elements of work not shown on the Scope of Work, but which are reasonably inferable from the Scope of Work; (iv) cost associated with acceleration of the work and expediting of materials necessary to meet the Project Schedule which are the result of anything other than an Excusable Delay; and (v) the risk of subcontractor default.

Section 4.3 Risks Assumed by Contractor. Execution of this Agreement and each Task Order by the Contractor is a representation that the Contractor has thoroughly examined the terms of this Agreement and the Scope of Work and has visited the Project site and has become familiar with local conditions under which the Work is to be performed. The Contractor further represents that it has satisfied itself that it can undertake the work for the stated cost. Among other things, by entering into this Agreement, the Contractor assumes the following risks: (1) the nature of the land and subsoil; (2) the form and nature of the site and surrounding areas; (3) details and levels of existing pipe lines, conduits, sewers, drains, cables or other existing services; (4) the quantities, nature and availability of the materials, tools, equipment and labor necessary for the completion of the Work; (5) the means of access to the site and any accommodation that may be required; (6) uncertainties of weather and physical conditions at the site; and in general to have itself obtained all necessary information as to risk contingencies, climatic, hydrological and natural conditions and other circumstances which may influence or affect his performance of the Work.

Section 4.4 Allowances. To the extent that the Lump Sum Price related to a Task Order includes one or more allowances identified on **Exhibit D** to such Task Order, the Lump Sum Price associated with that Task Order shall be adjusted (either upward or downward) by change order to reflect the actual cost of the work covered by such allowance.

Section 4.5 Tax Exempt Status. The Department expects that the Project will qualify as tax-exempt under the applicable laws, and such tax exemption shall be reflected in the Lump Sum Price.

ARTICLE 5 CONSTRUCTION PHASE

Section 5.1 General. The Construction Phase for the work covered by a Task Order shall commence when the Project Manager issues a Notice to Proceed for Construction.

Section 5.2 Mandatory Subcontract Provisions. To the extent the Contractor intends to subcontract a portion of the work, any subcontract in excess of \$25,000 shall include the following provisions:

Section 5.2.1 that, to the extent of the Work or supply within the agreement's scope, the Subcontractor or supplier is bound to the Contractor for the performance of all obligations which the Contractor owes the Department under the Contract;

Section 5.2.2 that the Subcontractor or supplier is not in privity with the Department and shall not seek compensation directly from the Department on any third-party beneficiary, quantum meruit, or unjust enrichment claim, or otherwise, except as may be permitted by any applicable mechanic's lien law;

Section 5.2.3 that the Department is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit;

Section 5.2.4 that the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Contractor is terminated for default;

Section 5.2.5 that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Contractor to suspend or stop work;

Section 5.2.6 that the Subcontractor or supplier shall maintain records of all Work it is requested or authorized to do on a time and material or cost-plus basis, or with respect to claims that it has asserted on a time and materials or cost-plus basis, during the Project and for a period of time specified in the General Conditions and requiring the Subcontractor or supplier to make those records available for review or audit by the Department during that time;

Section 5.2.7 that the Subcontractor shall obtain and maintain, throughout the Project, workers' compensation insurance in accordance with the laws of the District of Columbia (This provision is not applicable to supply agreements.);

Section 5.2.8 that, if the Department terminates the Contract for convenience, the Contractor may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) days' written notice to the Subcontractor or supplier, and that the Subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in the Termination for Convenience provisions of this Agreement;

Section 5.2.9 that the Department shall have the right to enter into a contract with the Subcontractor or supplier for the same price as its subcontract or supply agreement price less amounts already paid, if the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;

Section 5.2.10 that the Subcontractor or supplier shall not be entitled to payment for defective or non-conforming work, materials or equipment, and shall be obligated promptly to repair or replace non-conforming work, materials or equipment at its own cost;

Section 5.3 Certified Subcontractors. The Contractor shall not substitute or replace any Subcontractor or supplier certified by the District of Columbia Department of Small and Local Business Development without the Department's prior written consent.

Section 5.4 Payment by Joint Check in Certain Instances. If it comes to the Department's attention that a Subcontractor or supplier has not been paid in timely fashion (other than for disputed amounts), and if the Contractor fails to cure the problem within five (5) calendar days after the Department gives it written notice of the failure to pay, the Department may make payments to the Subcontractor or supplier and Contractor by joint check.

Section 5.5 Field Measurements. Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor. Once work is started, Contractor assumes the responsibility and costs for the work and the cost of correcting work previously installed.

Section 5.6 Warranty of the Construction Work. The Contractor warrants to the Department that materials and equipment furnished under this Agreement will be of good quality and new unless otherwise expressly permitted in writing, that for the one (1) year period following the Substantial Completion Date the construction work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the Scope of Work and/or any approved design documents. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. The Contractor and the Department shall conduct a walk-through of the Project eleven (11) months following Substantial Completion to identify any warranty issues.

Section 5.7 Extent of Responsibility and Soils Conditions. The Contractor shall be entitled to an equitable adjustment for differing site or soils conditions only to the extent that: (i) the subsurface conditions on or adjacent to the Project site differ materially from those indicated in the geotechnical reports provide to the Contractor by the Department; or (ii) such conditions could not have been discovered by a competent visual inspection of the site and are of unusual nature and differ materially from those ordinarily encountered and generally recognized as inhering to work of the character provided for in this Agreement.

Section 5.8 Unsafe Materials and Hazardous Materials

Section 5.8.1 The Contractor shall not bring, spill or release onto the site asbestos, PCBs, or any other Hazardous Material that is not customarily used in a facility of the type and similar to the Project, and shall bring to the Department's attention any specification of such Hazardous Materials in the design documents. If the Contractor believes that anything in this Agreement would require that it use or bring onto the site asbestos, PCBs, or any Hazardous Material that is not customarily used in a facility of the type and similar to the Project, it shall immediately inform the Department and seek direction before proceeding.

Section 5.8.2 If Hazardous Materials are discovered on the site, the Contractor shall immediately inform the Project Manager of such discovery. Unless abatement of such Hazardous Materials is expressly included in the Scope of Work or the approved design documents, the Contractor shall be entitled to an equitable adjustment by virtue of such discovery.

Section 5.9 Progress Meetings. The Contractor shall schedule and conduct at a minimum bi-weekly progress meetings at which the Department, the Program Manager and the Contractor and appropriate Subcontractors can discuss the status of the Work.

Section 5.10 Written Reports. The Contractor shall provide written reports to the Program Manager on the progress of the entire Work in accordance at least every other week.

Section 5.11 Key Personnel. To carry out the work associated with a Task Order, the Contractor shall provide at least the key personnel identified in **Exhibit E** of the Task Order, who shall carry out the functions identified in the Exhibit. The Contractor shall not replace any of the key personnel without the Department's prior written approval, which shall not be unreasonably withheld.

Section 5.12 Work by Separate Contractors. Department reserves the right to perform construction or operations related to the Project with Department's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site.

Section 5.13 Site Safety and Clean-Up. The Contractor will be required to: (i) provide a safe and efficient site, with controlled access; (ii) provide wheel washing stations on site so as to prevent the accumulation of dirt and other refuse on the streets surrounding the Project site; (iii) be responsible for site security; and (iv) be responsible for the cost of temporary power used during the construction of the Project, including, but not limited to, the cost of installing such temporary wiring as may be required.

Section 5.14 Close-out. The Contractor shall be required to prepare and submit at close-out a complete set of product manuals, warranties, etc. The Contractor shall also provide the Department with a complete set of its Project files, including, but not limited to, shop drawings.

Section 5.15 Salvaged and Stored Items. The Contractor shall be responsible for salvaging and storing all items as identified by the Department.

Section 5.16 Sediment and Erosion Control. The Contractor shall be responsible for installing sediment and erosion control measures, inclusive of, but not limited to: silt fencing, inlet protection, stabilized construction entrances, and other control measures.

Section 5.17 Cutting and Patching. The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Department or separate contractors by cutting, patching or otherwise altering such construction, or by excavation.

Section 5.18 Correction of Work.

Section 5.18.1 The Department shall be at liberty to object and to require the Contractor to remove forthwith from the Project site and the Work and to promptly replace the Superintendent, any foreman, technical assistant, laborer, agent, representative, or other person used by the Contractor in or about the execution or maintenance of the Work, who in the sole opinion of the Department is misconducting himself, or is incompetent or negligent in the proper performance of his duties, or whose performance in the Work is otherwise considered by the Department to be undesirable or unsatisfactory, and such person shall not be again employed upon the Project without the written permission of the Department or.

Section 5.18.2 Contractor shall promptly correct Work rejected by Department for failing to conform to the requirements of the Scope of Work or any approved design document or applicable law or regulations whether observed before or after the Project's completion and whether or not fabricated, installed or completed, and shall correct any Work found to be not in accordance with the requirements within a period of one (1) year from the date of completion or by terms of an applicable special warranty required by this Agreement.

Section 5.18.3 If during the guarantee or warranty period, any material, equipment or system requires corrective Work because of defects in materials or workmanship, Contractor shall commence corrective Work within forty-eight (48) hours after receiving the notice and work diligently until corrective Work is completed; provided, however, if such notice is received on the day before a weekend or a holiday, Contractor will commence corrective Work on the next business day. If Contractor does not, in accordance with the terms and provisions of the Contract Documents, commence all corrective Work within forty-eight (48) hours or if Contractor commences such Work but does not pursue it in an expeditious manner, Department may either notify the bonding company (if any) to have such Work and/or obligations performed at no additional cost to Department or may perform such Work and/or obligations and charge the costs thereof to Contractor.

Section 5.19 Manufacturers' Warranties.

Section 5.19.1 Contractor warrants that all manufacturers' or other warranties on all labor, materials and equipment furnished by Contractor or a Subcontractor or supplier shall run directly to or will be specifically assigned to Department on demand or upon Project completion without demand. In the event any issue or defect which would be covered by any warranty arises but is not addressed by the grantor of the warranty, the Contractor shall be required to act as the guarantor of the obligations under the warranty and to perform under the terms of the warranty.

Section 5.19.2 Contractor warrants that the installation of all materials and equipment shall be in strict accordance with the manufacturers' requirements or specifications.

Section 5.20 Close-Out and Training. Contractor shall also provide the Department with a complete set of its Project files, including, but not limited to, shop drawings, etc., at close out so as to assist the Department and/or DCPS in operating the building. In addition, if the Project includes work on heating or cooling systems, at the beginning of the first heating and cooling season following turnover of the Project, the Contractor shall be available to assist with, and train the building engineers and staff in the start-up of the building systems for the new weather cycle.

**ARTICLE 6
CLAIMS FOR ADDITIONAL TIME**

Section 6.1 Time is of the essence of this Contract. All Projects must be Substantially Complete by the applicable Substantial Completion Date.

Section 6.2 The Contractor will perform the Work so that it shall achieve Substantial Completion by the Substantial Completion Date. Unless the failure to achieve Substantial Completion by the Substantial Completion Date is a result of an Excusable Delay, as defined in Section 5.3, the delay shall be deemed Non-Excusable and the Contractor shall not be entitled to an extension of time. Without limiting the generality of the foregoing, delays for the following reasons shall be regarded as Non-Excusable and shall not entitle the Contractor to an extension of time:

Section 6.2.1 Delays due to job site labor disputes, work stoppages, or suspensions of work;

Section 6.2.2 Delays due to adverse weather, unless the Contractor establishes that the adverse weather was of a nature and duration in excess of averages established by data from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for the Project locale for the ten (10) years preceding the effective date of the Contract;

Section 6.2.3 Delays due to the failure of the Contractor or Subcontractors or material suppliers at any tier to perform in timely or proper fashion, without regard to concepts of negligence or fault; or

Section 6.2.4 Delays due to Site conditions whether known or unknown as of the effective date of the Contract, foreseeable or unforeseeable at that time, naturally occurring or man-made; provided, however, that delays due to Differing Soils Conditions or Hazardous Materials Remediation shall be deemed an Excusable Delay.

Section 6.3 The Contractor shall be entitled to an adjustment in the Substantial Completion Date due to an Excusable Delay. The term "Excusable Delay" shall mean:

Section 6.3.1 Delays due to adverse weather other than those that are classified as a Non-Excusable delay;

Section 6.3.2 Delays due to acts of God, war, unavoidable casualties, civil unrest, and other similar causes of delay that are beyond the control of the Contractor; provided, however, that in no event shall a Non-Excusable delay or the action of the Contractor, or any of its employees, agents, Subcontractors or material suppliers be deemed an Excusable Delay; or

Section 6.3.3 Delays caused by Differing Soils Conditions or Hazardous Materials Remediation.

In addition to the forgoing, a delay shall be deemed to be an Excusable Delay only to the extent that such delay (i) warrants an extension in the Substantial or Final Completion Date; (ii) has not been caused by the Contractor or any of its employees, agents, Subcontractors or material suppliers; (iii) is of a duration of not less than three (3) days; (iv) is on Project's critical path; and (v) is in addition to any time contingency periods set forth in the critical path.

Section 6.4 If the Contractor wishes to make a claim for an increase in the Contract time, written notice as provided herein shall be given. The Contractor's claim shall include an estimate of the cost and of the probable effect of delay on the progress of the Work. In the case of continuing delay, only one claim is necessary.

ARTICLE 7 PAYMENT PROVISIONS

Section 7.1 **Compensation.** The Contractor shall be paid its compensation in a series of progress payments and a final payment. Progress payments shall be based on a schedule of values that is agreed upon by the Parties as well as the Program Manager's good faith estimate of the level of completion for each component of the schedule of values.

Section 7.2 **Schedule of Values.** The Contractor shall prepare a Schedule of Values that breaks down the Lump Sum Price for the various parts of the Work. The Schedule of Values shall be maintained in such a manner to provide a breakdown of the Lump Sum Price in enough detail to facilitate continued evaluation of applications for payment and progress reports. Large subcontracts shall be broken into several line items where, in the opinion of the Program Manager, such detail is necessary to properly track the progress of the Work. The proposed schedule of values shall also include separate line items for each part of the Work if so required

by the Program Manager, which in general shall be required for mechanical systems, vertical transport systems, windows and structural steel. The Contractor and the Program Manager shall meet as necessary to maintain the schedule of values for the Project in a manner acceptable to the Program Manager. No progress payments shall be made unless the then current Schedule of Values is acceptable to the Program Manager.

Section 7.3 Retention. The Department shall withhold from each progress payment an amount equal to ten percent (10%) of each progress payment. Once Substantial Completion has occurred, the Department will reduce the retention being withheld to an amount that is equal to Two Hundred percent (200%) of the Program Manager's good faith estimate of the remaining Work.

Section 7.4 Documents Required with Application for Payment. Each Application for Payment shall be accompanied by the Contractor's job cost ledgers in a form satisfactory to the Department, the Subcontractors' and Suppliers' Applications for Payment on AIA Documents G702 and G703 or other form acceptable to the Department, and such other supporting documentation as the Department may reasonably request.

Section 7.5 Timely Payment of Subcontractors. Within seven (7) days of receiving any payment from the Department including amounts attributable to Work performed, or materials or equipment supplied, by a Subcontractor or supplier, the Contractor shall either pay the Subcontractor or supplier for its proportionate share of the amount paid to the Contractor for the Subcontractor's or supplier's Work or materials or equipment, or notify the Department and the Subcontractor or supplier, in writing, of the Contractor's intention to withhold all or part of the payment and state the reason for the withholding. All monies paid to the Contractor under the Agreement shall be used first to pay amounts due to Subcontractors or suppliers supplying labor or materials for the Project and only money remaining after such payments are made may be retained by the Contractor. Monies paid by joint check shall be deemed to have been paid fully to the Subcontractor or supplier named as a joint payee, unless the Department agrees otherwise in writing. Any interest paid to Subcontractors or suppliers because the Contractor has failed to pay them in timely fashion shall not entitle the Contractor to a Change Order.

Section 7.6 Lien Waivers. Each Application for Payment shall be accompanied by written waivers of the right to file a mechanic's lien and all other claims.

Section 7.7 Submission. On the twenty-fifth (25th) day of each month the Contractor shall submit to the Department (with a copy to the Program Manager) an Application for Payment, which Application for Payment shall cover the entire month during which the Application for Payment is submitted. All amounts formally submitted via Application for Payment and not disputed by the Department shall be due and payable on the last day of the month following submission or, if that is not a business day, on the following business day.

Section 7.8 Right to Withhold Payments. The Department will notify the Contractor within fifteen (15) days after receiving any Application for Payment of any defect in the Application for Payment or the Contractor's performance which may result in the Department's

declining to pay all or a part of the requested amount. The Department may withhold payment from the Contractor, in whole or part, as appropriate, if:

Section 7.8.1 the Work is defective and such defects have not been remedied; or

Section 7.8.2 the Department has determined that the Contractor's progress has fallen behind the Project Schedule, and the Contractor fails, within ten (10) calendar days of the Department's written demand, to provide the Department with a realistic and acceptable plan to recover the delays; or

Section 7.8.3 the Contractor has failed to pay Subcontractors or suppliers promptly or has made false or inaccurate certifications that payments to Subcontractors or suppliers are due or have been made; or

Section 7.8.4 any mechanic's lien has been filed against the Department, the site or any portion thereof or interest therein, or any improvements on the site, even though the Department has paid all undisputed amounts due to the Contractor, and the Contractor, upon notice, has failed to remove the lien, by bonding it off or otherwise, within ten (10) calendar days; or

Section 7.8.5 the Contractor is otherwise in substantial breach of this Agreement.

Section 7.9 **Payment Not Acceptance.** Payment of any progress payment or final payment shall not constitute acceptance of Work that is defective or otherwise fails to conform to the Contract, or a waiver of any rights or remedies the Department may have with respect to defective or nonconforming Work.

ARTICLE 8 INDEMNIFICATION

Section 8.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Department and the Department's consultants and agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

**ARTICLE 9
CHANGES CLAUSE**

Section 9.1 Changes Authorized. The Department may, without invalidating this Agreement or any Task Order issued pursuant to this Agreement, and without notice to or approval of any surety, order changes in the Work released through any Task Order, including additions, deletions or modifications. Any such change must be conveyed by the Department to the Contractor via written Change Directive or Change Order.

Section 9.2 Executed Change Directive/Change Order Required. Only a written Change Directive or Change Order, executed by the Department, may make changes to the Contract. In particular, but without limitation, a written Change Directive or Change Order executed by the Department is the only means by which changes may be made to the Substantial or Final Completion Date, or the Lump Sum Price.

Section 9.3 Department-Initiated Changes. If the Department wishes to make a change in the Work or to accelerate the Work, it will execute and issue to the Contractor a written Change Directive, either directing the Contractor to proceed at once with the changed Work or directing it to not to proceed, but to inform the Department, in writing, of the amount, if any, by which the Contractor believes that Substantial or Final Completion Date and/or the Lump Sum Price should be adjusted to take the Change Order or Change Directive into account.

Section 9.4 Notice of Change Event. The Contractor must give the Department written notice of any Change Event within ten (10) calendar days of the date on which the Contractor knew, or reasonably should have known, of the Change Event. To the extent available, the notice must state the nature of the Change Event and describe, generally, all changes in the Contract to which the Contractor believes it is entitled. Such notice is an express condition precedent to any claim or request for adjustment to the Substantial or Final Completion Date, or the Lump Sum Price arising from the Change Event and, if the notice is not given within the required time, the Contractor will have waived the right to any adjustment to the Substantial or Final Completion Date or the Lump Sum Price arising from the Change Event.

Section 9.5 Detailed Change Request. Within twenty (20) days after giving notice of a change event, the Contractor shall submit a written change request describing, in reasonable detail, all adjustments it seeks to the Substantial or Final Completion Date or the Lump Sum Price as a result of the Change Event. The change request shall include the same information as described in Section 8.3 with respect to any Contract changes the Contractor seeks due to the Change Event, and the amount of any requested adjustment to the Lump Sum Price shall be limited in accordance with that Subparagraph.

Section 9.6 Markups. For Changes to the Lump Sum Price, the following conditions shall apply:

Section 9.6.1 For increases in the Work which the Contractor is permitted to perform by Contractor's own forces, the Lump Sum Price shall be increased by the sum of: (i) the Direct