GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES

ARCHITECTURAL/ENGINEERING SERVICES FOR THE CENTER FOR THERAPEUTIC RECREATION

Solicitation #: DCAM-15-AE-0121

Addendum No. 2
Issued: April 16, 2015

This Addendum Number 02 is issued by e-mail on April 16, 2015. Except as modified hereby, the Request for Proposals ("RFP") remains unmodified.

Item #1

Requests for Information: Below is a list of questions received and the Department's responses.

1. Is there a Construction Budget for the proposed scope of the project? **Response: The current total project budget range is $7 to 20 million; the final budget will shape which concept plan the Department elects to pursue.**
2. Is the intent for the 3rd Party Plan Examiner to be hired by the Architect? **Response: No.**
3. Re Section G – Insurance Requirements of Five Million Dollar ($5,000,000) Errors and Omissions coverage: Can we negotiate the $5 Million to a lesser coverage? Are subconsultants obligated to maintain the same coverage as the prime? **Response: Offerors should assume that $5 million in E&O coverage is required. Such coverage may be attained through a project specific rider. To the extent that such a rider is required, the premium for such additional coverage should be included in the Design Fee.**
4. Please clarify whether or not DCRA Building Permit Fees and civil/site review & permit fees to DDOE, DDOT, DC Water are excluded from the A/E scope/fees? **Response: The Architect will be required to produce the documents to obtain the permits, however, the review fees and cost of the permits are excluded from the Architect's fee.**
5. Who is selecting the Furniture, Fixtures & Equipment (other than mechanical, electrical & plumbing) for the center (i.e. office furniture & equipment, athletic equipment, playground equipment, etc.)? **Response: Pool equipment will be selected by the DPR aquatics staff and office furniture will be selected by a DPR Capital Projects representative. The Architect will be responsible for providing FF&E options for consideration by a DPR Capital Projects representative coordinating the FF&E selection with stakeholders. The Architect will also be responsible for providing FF&E layouts, piece counts, etc. once selections are made.**
6. Please clarify under the Permit Set/Construction Documents deliverables whether or not the A/E team is contracting directly with a Third Party Plans Reviewer. **Response: Please see response to question #2 above.**

7. Please clarify the Submission of the Proposal (Section E – E.1). One original Pricing & Technical Proposal in sealed envelope? **Response: Yes, and this should be conspicuously marked: "Proposal for Architectural/Engineering Services for the Center for Therapeutic Recreation."** Two hard copies of the Pricing proposal in a separate sealed envelope. **Response: Yes, in a separate sealed envelope and clearly designated as Pricing Proposal copies.** Six hard copies of the Technical proposal and two electronic copies of Technical proposal all together in a separate sealed envelope? **Response: Yes, in a separate sealed envelope and clearly designated as Technical Proposal copies.**
8. Are reimbursable out-of-pocket costs to be included in the Pricing? **Response: No. An allowance will be established for reimbursable expenses. Please see the attached form of contract for further explanation.**
9. The Hourly Rates Table on the Pricing Sheet does not include all disciplines that might be involved in Construction Administration (i.e. Civil engineering), should we provide hourly rates for all team members? **Response: If there are additional personnel classifications you believe would be needed to provide construction administration services, please provide additional rates.**
10. Under B.7.2a Construction Administration regarding Architectural site visits being included in "base fee", where do we include this on the pricing sheet? **Response: Please see form of contract for revision to this requirement. All CA services are hourly.**
11. Should the team bring a commissioning agent on board to provide the fundamental and/or enhanced commissioning services for LEED? **Response: Fundamental commissioning is required, however, the Architect cannot hold the contract for enhanced commissioning.**
12. Are there any thoughts for utilizing this center for a disaster recovery shelter? If so, this would imply that emergency power back-up systems would need to be designed for this purpose. **Response: Yes, a natural gas generator is to be incorporated.**
13. At this time, it is understood that an air cooled VRF system is recommended for this facility. The current location of the existing air condenser is adjacent to the existing basement MER. Will there be any restrictions for where the new outdoor HVAC heat rejection equipment can be placed? **Response: There are no specific restrictions, although it will be important to take up as little space as possible to allow for more usable space in the center.**
14. Will there be any phasing required, any areas that need to remain operational during the construction process? **Response: Due to the size of this project, there will be no phasing. The center will not remain operational during the project.**
15. After the concept phase please verify that only one scheme of renovation OR new construction will be developed in the schematic phase through construction documents. **Response: At the end of the concept phase, the Department will determine whether the design for the project will progress as a modernization or as a raze/new construction. The Department does not envision advancing designs for both routes beyond the concept phase.**

Item #2

Form of Contract: Attached to this Addendum is the Form of Contract. THE TERMS OF THE FORM OF CONTRACT SHALL PREVAIL OVER THE RFP. TO THE EXTENT THERE IS AN INCONSISTENCY BETWEEN THE FORM OF CONTRACT ISSUED HEREWITH AND THE RFP, THE FORM OF CONTRACT SHALL GOVERN.

Item #3

The bid date remains unchanged. Proposals are due by **April 21, 2015 at 2:00 pm EDT**. Proposals that are hand-delivered should be delivered to the attention of: Courtney Washington, Contract Specialist, at **Frank D. Reeves Center, 2000 14th Street, NW, 8th floor, Washington, DC 20009**.

- End of Addendum No. 2 -

AGREEMENT FOR
ARCHITECTURAL/ENGINEERING SERVICES

BY AND BETWEEN

DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES

AND

[SELECTED OFFEROR]

CENTER FOR THERAPEUTIC RECREATION

AGREEMENT BETWEEN OWNER AND ARCHITECT FOR ARCHITECTURAL/ENGINEERING SERVICES DCAM-15-CS-0121

THIS AGREEMENT ("Agreement") is made by and between the **DISTRICT OF COLUMBIA GOVERNMENT**, acting by and through its **DEPARTMENT OF GENERAL SERVICES** (the "Owner" or the "Department") and **[OFFEROR]**, being duly organized under the laws of the [Location], and with a place of business at [ADDRESS] (the "Architect").

WITNESSETH:

WHEREAS, the Department issued a solicitation for architectural/engineering services for a turn-key solution for the renovation or new design of the Center for Therapeutic Recreation ("TR Center"), located at 3030 G Street SE, Washington, DC 20019 (the "Project");

WHEREAS, the Architect submitted a proposal dated [DATE] in response to the Department's solicitation;

WHEREAS, the Department wishes to retain the Architect to provide all necessary design and related services for the Project pursuant to the terms and conditions set forth in this Agreement;

WHEREAS, the Architect wishes to provide all of the design and related services necessary for the Project pursuant to the terms and conditions set forth in this Agreement;

WHEREAS, the Department has retained the services of a Program Manager (the "Program Manager") to advise it concerning the Project;

WHEREAS, the Department requires that the Project, including the requisite construction, be Substantially Complete no later than April 15, 2017 (the "Substantial Completion Date");

WHEREAS, the Department intends to engage a builder (the "Construction Manager") to work with the Architect in advancing the design, to provide a guaranteed maximum price ("GMP") to implement the approved design, to assume the Architect's contract and manage the completion of the design after the GMP has been established, and to construct the Project; and

WHEREAS, the Parties entered into a letter contract dated [DATE] (the "Letter Contract") pursuant to which the Architect was authorized to provide preliminary services in furtherance of the Project.

NOW, THEREFORE, the Department and Architect, for the consideration set forth herein, mutually agree as follows.

ARTICLE 1
GENERAL PROVISIONS

Section 1.1 **Relationship of Parties.** The Architect accepts the relationship of trust and confidence established with the Department by this Agreement, and covenants with the Department to furnish the Architect's reasonable skill and judgment and to cooperate with the Program Manager in furthering the interests of the Department. The Architect shall use its best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Department. The Department shall endeavor to promote harmony and cooperation among the Department, Architect, Construction Manager, Program Manager, and other persons or entities employed by the Department for the Project.

Section 1.2 **Project Description.** In general, Architect shall provide multiple design concepts for the renovation of the TR Center, including a minimum of three concept designs for each of two possible design scenarios – one for the renovation of the existing TR Center ("Renovation Design") and one for the construction of a new TR Center ("New Construction Design") (both concept scenarios to also include the surrounding site work). The Architect will create a design that (i) meets handicap accessibility; (ii) provides additional support for special needs individuals; (iii) provides additional spaces to meet desired program needs; (iv) repairs water damage and mitigation to the roof and walls (if renovation); (v) provides a fire suppression system for the entire building; and (vi) upgrades the entire building HVAC system (if renovation). The design developed by the Architect for the Project shall meet the Department's programmatic requirements which are set forth in **Exhibit A** and attain a minimum of LEED Gold certification.

Section 1.3 **Program Manager.** At its discretion, the Department may hire a Program Manager (or "PM") to provide certain program management functions. The Program Manager shall, at all times, be acting solely for the benefit of the Department, not the Architect. **The Program Manager shall not be authorized to modify any of the rights or obligations of the Department or the Architect pursuant to this Agreement, or to issue Change Orders or Change Directives. The Architect hereby acknowledges and agrees that only a duly authorized contracting officer shall have the authority to issue Change Orders or Change Directives on the Department's behalf. As of the date that this Agreement is signed, the Department's duly authorizing contracting officers are Jonathan Kayne and James Marshall.**

Section 1.4 **General Description of Architect's Duties.** It is the intent of the Parties that the Architect will provide all architectural and engineering services necessary for the design and construction of the Project. In furtherance of this understanding, the Architect shall be required to provide all such services in a timely manner so as to permit DPR to begin to occupy the Project at least two weeks prior to the Substantial Completion Date. Without limiting the generality of the foregoing, it is understood and agreed that the Architect will be responsible for all aspects of the design. The Architect's services include, but are not limited to, (i) engineering services in the civil, structural, mechanical and electrical engineering disciplines as well as any appropriate specialty subconsultants; (ii) the design of FF&E; (iii) providing a site survey; (iv)

engaging the services of an industrial hygienist or similar specialist to survey existing structures on the Project Site so as to identify hazardous materials that require abatement; (v) sustainable design initiatives, including a minimum of LEED GOLD certification; (vi) engaging the services of a geotechnical engineer.

Section 1.5 **Phases.** In general, the Architect's work shall be divided into two phases as is more fully described in Articles 2 and 3, including those necessary to develop and submit any deliverables set forth therein. Generally, these duties include (i) development of a set of construction documents that are consistent with the Owner's Program for bidding of the work; and (ii) furthering the design documents for the Project, as required by the Construction Manager, and providing such construction administration services as are requested by the Construction Manager. The services to be provided under Article 2 constitute the design phase services to be performed by the Architect (the "Design Phase Services"). The services to be provided under Article 3 constitute the construction phase services to be provided by the Architect (the "Construction Phase Services").

Section 1.6 **Delivery Method.** The Owner intends to use a Construction Management at Risk delivery method for this Project. The Architect understands and agrees that the Owner intends to engage a Construction Manager after the execution of this Agreement while the Architect is preparing the schematic design for the Project and that such Construction Manager shall participate in the design process by reviewing design drawings, conducting constructability reviews and assisting with cost estimating to ensure that the design developed by the Architect is consistent with the Department's budget and schedule for this Project. Working together, but under separate contracts, the Architect and the Construction Manager will develop a set of construction documents (the "Bid Set"). The Architect acknowledges that it has included sufficient funding within its fees to accommodate the issuance of at least two separate early packages for the Renovation Design, and at least three separate early packages for the New Construction Design, as follows: (i) a demolition/raze package (Renovation Design); (ii) a hazardous materials abatement & demolition package (Renovation Design); (iii) a hazardous materials abatement package (New Construction Design); (iv) a demolition/raze package (New Construction Design); and (v) a foundation to grade package (New Construction Design), as well a single package for the balance of the work. The Department expects that the Construction Manager will put the Bid Set out to bid with trade subcontractors and provide a GMP proposal based on the trade bids received. Value engineering (if required) will occur following the trade bidding. Assuming that the GMP is acceptable, the Owner intends to enter into an agreement with the Construction Manager establishing a GMP for the construction of the Project. Concurrent with the execution of an agreement establishing the GMP (the date of such execution, the "GMP Date"), the Owner will assign this Agreement in its entirety to the Construction Manager and from and after the GMP Date, the Architect's contract shall be with the Construction Manager, and the Construction Manager shall be responsible to complete any further design that may be required and to construct the Project. Such assignment shall occur automatically at the time the GMP is agreed to by the Builder and the Department and without the need for any further document; provided, however, that the Department shall issue a notice to both the Construction Manager and the Architect confirming such assignment. In the event that the Construction Manager fails to complete the Project, this Agreement will revert to the Owner.

Section 1.7 **Schedule.** The Architect shall provide the Design Phase Services in accordance with the schedule set forth in Section 1.7.1. The Architect, the Department and the Construction Manager shall develop a schedule for the Construction Phase Services following the completion of the Permit Set shall be developed.

Section 1.7.1 **Design Phase Schedule.** During the Design Phase, the Architect shall provide those services and deliverables set forth in Article 2 in accordance with the schedule set forth below:

.1 Submission of Concept Designs: June 15, 2015;
.2 Submission of Schematic Design: July 23, 2015;
.3 Submission of Design Development Documents: August 27, 2015;
.4 Submission of Permit Set: October 1, 2015; and
.5 Submission of Construction Documents: October 15, 2015.

Section 1.7.2 **Construction Phase Schedule.** During the Construction Phase, the Architect shall provide those services set forth in Article 3.

Section 1.7.3 **Time is of the Essence.** Time is of the essence in the performance of the Architect's obligations under this Agreement. The Architect acknowledges that the timely completion of the various design phases is essential to the timely bidding of the design documents with trade subcontractors, to the formation and approval of the GMP, and ultimately to the completion of the Project. The Architect further acknowledges that delay in the completion of the design will cause the Department to incur additional costs in the form of acceleration of the construction of the work and expediting of necessary materials and supplies, the costs of which may be difficult to ascertain. Accordingly, in the event that the Architect fails to provide any required deliverable by the deadline set forth in Section 1.7.1 of this Agreement and unless excused by an event of force majeure or the failure of the Department to take any action in a timely manner, the Architect shall pay to the Department the sum of One Thousand Dollars ($1,000) as liquidated damages and not a penalty, for each calendar day that any given deliverable is late in order to compensate the Department for the additional costs it will incur in accelerating the work to meet the required Substantial Completion Date; provided, however, that the Architect shall have a cumulative (i.e., not per deliverable) five (5) calendar day grace period before any such liquidated damages are assessed.

Section 1.8 **Department's Representative.** The Department's representative for this Project shall be:

Jonathan Kayne
Interim Director
Department of General Services
2000 14th Street, NW, 8th Floor
Washington, DC 20009

Although day-to-day communications with the Architect shall be routed through the Program Manager, only the individual specified in this Section 1.8 shall have the authority to alter the terms of this Agreement; provided, however, that James Marshall, Supervisory Contract Specialist, shall have the authority to act on behalf of the Department with respect to matters with value up to $100,000. **Without limiting the generality of the foregoing, it is understood and agreed that the Program Manager shall not have the authority to: (i) increase the Architect's fee or the not-to-exceed amount established herein; (ii) authorize any additional work; or (iii) increase the overall Project budget or the specified design-to-budgets.**

Section 1.8 **Architect's Representative.** The Architect representative for this Project shall be:

[ARCHITECT'S REPRESENTATIVE]

The Architect hereby represents and agrees that the representative specified in this Section 1.8 has the full legal authority to bind the Architect and to agree to changes to the terms of this Agreement.

Section 1.9 **Project Budget.** The Architect has been advised that the Government of the District of Columbia has set aside $[AMOUNT] (such amount, the "Budget") to complete the Project (including hard and soft costs) and that any increases to such Budget must be approved by the Department's Budget Representative. As used herein, the term "Budget Representative" shall mean the Department's Director or its Deputy Director – Capital Construction. Any increase to the Budget shall only be effective if such authorization is signed by the Budget Representative. For the avoidance of doubt and as more fully set forth herein, the Architect further understands and agrees that it will manage its work in accordance with the Design-to-Budget Requirements set forth herein.

Section 1.10 It is understood and agreed that certain of the design services required by this Agreement were performed by the Architect while the Letter Contract was in place, and the terms of the Letter Contract shall merge into and be superseded by this Agreement upon its execution.

Section 1.11 **Land Use Entitlements.** The Parties acknowledge that the design for the Project may require various land use approvals. The Parties anticipate that the approval of the following bodies may be required:

.1 Commission of Fine Arts
.2 Office of Planning

The Architect shall obtain from the bodies listed above the approvals required in order for the Project to proceed. The Architect acknowledges that the aspects of the design for the Project may need to be revised or redesigned in order to obtain such approvals, and the fixed fee set forth herein includes sufficient amounts for such redesign.

Section 1.11 **Permits.** In addition to securing land use approvals, the Parties anticipate that permits will be required from the following bodies:

.1 District of Columbia Department of Consumer and Regulatory Affairs
.2 District of Columbia Department of Environment
.3 District of Columbia Department of Transportation
.4 District of Columbia Water and Sewer Authority

The Architect will be required to manage the process of obtaining the necessary permits for the Project in addition to responding to comments provided by the regulatory agencies on the design documents as contemplated in Section 2.10 of this Agreement.

ARTICLE 2
DESIGN PHASE SERVICES

Section 2.1 The Architect shall provide all services, the professional and otherwise, necessary to develop a design for the Project. Without limiting the generality of the foregoing, the services set forth in this Agreement and all other services reasonably necessary to achieve the goals set forth herein. The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Architect shall review laws, codes, and regulations applicable to the Architect's services. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

Section 2.2. **Key Personnel.**

Section 2.2.1 Attached as **Exhibit B** is a list of the key personnel (the "Key Personnel") and the role played by each that will be assigned by the Architect and its principal consultants to this Project. The Architect understands that the Department selected the Architect based in large part on the key personnel proposed to staff this Project, and as such, the Architect agrees that the Architect will not be permitted to reassign any of the key personnel unless the Department approves the proposed reassignment and the proposed replacement. In the event that any of the key personnel become unavailable to work on this Project for reasons beyond the control of the Architect or its principal consultants (i.e. due to retirement, resignation, etc.), the Architect shall propose a substitute for any such individual and obtain the Department's consent to such substitute.

Section 2.2.2 Certain members of the Architect's Key Personnel shall be subject to liquidated damages for their removal or reassignment by the Architect. Those members of the Architect's Key Personnel subject to the liquidated damages provisions of this Agreement shall be identified in **Exhibit B** as subject to the liquidated damages provisions. In the event there is no delineation in **Exhibit B** of those members of the Architect's Key Personnel subject to the liquidated damages provisions of this Agreement, then all of the Key Personnel shall be subject

to the liquidated damages provisions of this Agreement. In each instance where the Architect removes or reassigns one of the key personnel listed in **Exhibit B** as being subject to liquidated damages (but excluding instances where such personnel become unavailable due to death, disability or separation from the employment of the Architect or any affiliate of the Architect) without the prior written consent of the Department's Designated Representative, the Architect shall pay to the Department the sum of Twenty Five Thousand dollars ($25,000) as liquidated damages and not a penalty, to reimburse the Department for its administrative costs arising from the Architect's failure to provide the Key Personnel. The foregoing liquidated damage amount shall not bar recovery of any other damages, costs or expenses other than the Department's internal administrative costs. In addition, the Department shall have the right, to be exercised in its sole discretion, to remove, replace or to reduce the scope of services of the Architect in the event that a member of the Key Personnel has been removed or replaced by the Architect without the consent of the Department. In the event the Department exercises the right to remove, replace or to reduce the scope of services of the Architect, the Department shall have the right to enforce the terms of this Agreement and to keep-in-place those members of the Architect's team not removed or replaced and the remaining members shall complete the services required under this Agreement in conjunction with the new members of the Architect's team approved by the Department.

Section 2.3 Except with the knowledge and consent of the Department's Designated Representative, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

Section 2.4 The Architect shall manage the Architect's services, consult with the Department, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Department. The Architect shall review the Department's Program and other information furnished by the Department, and shall review laws, codes, and regulations applicable to the Architect's services.

Section 2.5 The Architect shall coordinate its services with those services provided by the Department and the Department's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Department and the Department's consultants. The Architect shall provide prompt written notice to the Department if the Architect becomes aware of any error, omission or inconsistency in such services or information.

Section 2.6 Upon request of the Department, the Architect shall make periodic presentations to explain the design of the Project to representatives of the Department and to others in support of the Department's efforts for the Project. The Architect understands and agrees that this obligation will require the Architect to participate in briefings of the affected neighbors, community organization, community leaders and District government officials as identified by Department. Without limiting the generality of the foregoing, the Architect understands and agrees that it shall be required to meet at least once a month with DPR for the

duration of the Project and that such meetings are likely to be more frequent during key aspects of the design process.

Section 2.7 **Concept Design.** The Architect shall develop a concept design for the Project that is consistent with the Owner's Program.

Section 2.7.1 The Architect shall be required to meet with the Department's Program Manager within one (1) week of its appointment in order to discuss the manner in which this project will proceed and the requirements applicable to the Project. The Architect will also be required to meet with DPR personnel and other stakeholders to better understand the needs and requirements of the Project.

Section 2.7.2 **Programming and Concept.** The first phase of the project will include program development and the preparation of multiple concept designs for both the Renovation Design scenario and the New Construction Design scenario (minimum, three concepts for each scenario). During this phase, the Architect shall complete the following tasks:

a. Conduct meetings with the DPR and DGS representatives to confirm program and verify site requirements on a space-by-space basis.
b. Conduct life safety/building code analysis to verify compliance of design with DCRA's latest adaptation of the IBC code in use at the time the Contract is executed.
c. Conduct LEED Workshops with design team and DGS representatives to identify sustainable design strategies to be included in the design. It is understood that a minimum of LEED – Gold certification is expected.
d. Participate in Value Engineering workshops with DPR and DGS representatives.
e. Prepare and submit Environmental Impact Screening Form (EISF).
f. Survey existing facility (including destructive testing) to confirm locations, types, quantities and abatement specifications of hazardous materials to be abated.
g. Perform geotechnical investigations of the site as well as a topography and boundary survey.
h. Request and receive hydrant flow test.
i. Perform alternative mechanical systems evaluation and recommend selection.
j. Prepare and submit a Phase 1 Archaeological Survey to DC HPRB. Include all permitting and development of civil plans as required to support the work.
k. Confer with the Department's IT representatives/consultants to verify technological requirements for the Project.

Section 2.7.3 **Deliverables.** During this phase, the Architect will be required to prepare and submit to the Department the below-listed deliverables. It is understood that all such deliverables shall be subject to review and approval by the Department, and the Architect shall make any revisions may be required to these documents to address concerns raised by the Department and/or other project stakeholders without additional compensation.

a. Submission of progress plans for building and site at each phase of development
b. Phase 1 archaeological survey
c. Updated property survey (topography and boundary survey), including notations of utilities and all other easements
d. Results of Hazardous material survey and analysis update
e. EISF Submission
f. Historic resources survey
g. Flow Test Results
h. Record of Accepted LEED Strategies
i. Record of Accepted Value Engineering Strategies
j. Traffic and parking survey and zoning analysis
k. Summary of Required Agency Review, Timetables, including but not limited to: Office of Planning (OP), and Commission of Fine Arts (CFA)
l. Results of Geotechnical Investigations
m. Architectural Concept Development for both Renovation Design and New Construction Design
    i. Development of a site plan
    ii. Building floor plan
    iii. Preliminary cost estimates
    iv. Project schedule

Section 2.8 **Schematic Design.** During this phase, the A/E shall be required to develop a schematic design that meets the program requirements set forth in **Exhibit A**. Prior to proceeding with the schematic design phase, the Architect shall seek and obtain from the Department in writing, a budget for the construction costs of the Work (such budget, the "Design-to-Budget"). Such Design-to-Budget shall be established in writing and signed by the Department's Budget Representative. The Architect shall progress the design in a manner consistent with the Design-to-Budget.

Section 2.8.1 Based on the approved concept design (either Renovation Design or New Construction Design) prepared by the Architect as well as written and oral feedback from Department and its Program Manager, the Architect shall develop a schematic design that meets the requirements of the Department's Program, schedule and budget.

The Schematic Design shall contain such detail as is typically required for schematic design under the standard AIA contract. In general, the Architect shall be required to further develop conceptual plans and incorporate design changes; conduct additional community meetings to solicit input and keep constituents informed; and prepare necessary presentation materials (renderings and models) to communicate design and obtain approval of design direction.

Section 2.8.2 In additional to the services described in Section 2.8.1, above, the Architect shall prepare and submit to the Department the following deliverables. All such deliverables shall be subject to review and approval by the Department. The Architect shall be

required to revise these documents to address concerns raised by the Department and/or other project stakeholders.

.1 Digital floor plans (including adjacencies and room locations) and site plan;
.2 Preliminary building elevations and sections;
.3 Plan-to-Program Comparison;
.4 Preliminary LEED Scorecard;
.5 Design Narrative; and
.6 Updated cost estimate and Schedule

Section 2.8.3 At the conclusion of the Schematic Design Phase, the Architect shall seek and obtain from the Department's Budget Representative in writing confirmation of the Design-to-Budget for the Project.

Section 2.9 **Design Development Phase.** During this phase, the Architect will be required to progress the schematic design into design development documents. As soon as the Construction Manager is appointed, the Architect shall work closely with the Construction Manager to develop an agreed upon listing of the number of bid packages that will be required as well as the level of detail that shall be included in each such bid package that will be included in the Bid Set. The Bid Set will serve as the basis of the Construction Manager's GMP. It is anticipated that this process will involve a series of meetings and working sessions with regard to each of the bid packages. No later than thirty (30) days after the Builder is appointed, the Architect shall submit to the Department a memorandum which describes the packages that will be required for the Bid Set and the level of detail for each such package.

Section 2.9.1 The Architect understands that the Department intends to appoint the Construction Manager during the Schematic or Design Development Phase and that the Architect and the Construction Manager shall work in close cooperation with each. During the design development phase, the Architect shall work with the Builder to ensure that the design evolves in a manner that is consistent with the Design-to-Budget, the Department's schedule requirements (i.e. to address the potential impact of long-lead purchasing items included in the design) and constructability. The Architect shall be required to work with the Construction Manager selected for this Project, and at a minimum shall meet with the builder twice a month to discuss the status of the design and key issues.

Section 2.9.2 The Architect shall perform the following services required during this phase:

.1 Select and draft specifications for materials, systems, and equipment.
.2 Develop detailed and dimensioned plans, wall sections, building section, and schedules.
.3 Complete code compliance analysis and drawing.
.4 Confirm space-by-space equipment layouts with representatives from the DPR and DGS.

.5 Present the design to CFA, Office of Planning, and other regulatory agencies as required and conduct follow up meetings as required.
.6 Coordinate furniture, fixtures, and equipment ("FF&E") requirements.
.7 Register the project with USGBC to obtain LEED certification and pay all registration fees.

Section 2.9.3 The Architect shall prepare and submit to the Department the following deliverables. All such deliverables shall be subject to review and approval by the Department. The Architect shall be required to revise these documents to address concerns raised by the Department and/or other project stakeholders.

.1 35% (minimum progress) documents for all technical disciplines, drawings and specifications.
.2 50% design development progress printing.
.3 A reconciliation report that addresses issues raised by the Construction Manager as a result of the 50% progress printing.
.4 CFA submission materials; meetings and presentations to CFA as required.
.5 Updated Project Budget and Schedule.

Section 2.10 <u>Permit Set</u>.

Section 2.10.1 The Architect shall be required to develop a Permit Set. The Permit Set shall represent the further progression of the approved design development documents together with any value engineering strategies approved by the Department and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Permit Set will be construction documents progressed to approximately 75% completion of those required in a traditional Design/Bid/Build delivery method. However, the Permit Set will be code compliant and permit ready, with all major systems sufficiently designed, detailed, specified, coordinated, and developed.

Section 2.10.2 The Architect shall incorporate into the Permit Set the design requirements of governmental authorities having jurisdiction over the Project. In addition, the Architect shall be required to (a) define, clarify, or complete the concepts and information contained in the Permit Set; (b) correct design errors or omissions, ambiguities, and inconsistencies in the Permit Set (whether found prior to or during the course of construction); and (c) correct any failure of the Architect to follow written instructions of the Department during any phase of design services or the construction of the Project provided they are compatible with industry standards.

Section 2.10.3 <u>Deliverables.</u> The Architect shall provide the following deliverables during this phase:

.1 Prepare and submit Permit Set documents
.2 Prepare detailed and coordinated drawings and specifications to be included in the Permit Set.
.3 Prepare application and submit documents for building permit.
.4 Prepare and submit any early-release packages, if needed.

.5 Have all plans certified by a third party plan reviewer approved by DCRA for permit document submission.

.6 Upload all documents to DCRA's permit document review website in accordance with their instructions.

.7 Prepare all traffic control plans required to obtain relevant DDOT permit approvals at all stages of the project.

Section 2.10.4 In addition to preparing the Permit Set, the Architect shall, at no additional cost to the Department or the Construction Manager,

.1 meet with the Construction Manager as and when requested to review the design, its constructability, and consistency with the Design-to-Budget;

.2 work with the Construction Manager in order to implement such value engineering ideas as may be necessary to meet the Design-to-Budget, including revising or preparing any design documents necessary to implement such value engineering;

.3 address issues raised by the Code Official during the permit review process.

Section 2.10.5 The Architect shall be responsible for submitting the necessary documents to the Department of Consumer and Regulatory Affairs in order to obtain a raze permit and the necessary building permits for the Project, as necessary. The Architect's services in this regard shall begin during the design phase and carry through into the construction phase. The Architect has included in its price sufficient amounts to engage permit expediters and such other consultants as may be required to discharge this obligation. Among other things and without limiting the generality of the foregoing statement, the Architect has included sufficient funding to complete an Environmental Impact Screening Form.

Section 2.11 <u>Construction Documents.</u> During this phase, the Architect shall be required to develop a set of construction documents that are based on and a logical development of the approved Permit Set documents and any agreed upon value engineering ideas that were accepted by the Department at the conclusion of the Permit Set phase.

Section 2.11.1 At a minimum and in addition to any services that would typically be provided by an architect during this phase, the Architect shall provide the following services:

.1 Prepare detailed and coordinated drawings and specifications.

.2 Prepare bid packages as required to obtain bids from subcontractors for the GMP.

.3 Respond to questions from bidders during the bidding process and provide such RFI answers and sketches as may reasonably be requested by the Construction Manager during the bidding process.

.4 In the event the trade bids exceed the Design-to-Budget, revise the design documents and or participate in value engineering to return the Project to the Design-to-Budget; and

.5 Respond to and revise the construction documents as may be necessary in order to address any concerns raised by the Code Official.

The Architect shall also be required to prepare and submit at least two (2) sets of drawing updates that update the early packages to reflect changes and/or evolution of the design that occur in later packages.

Section 2.11.2 The Architect shall facilitate the Construction Manager's bidding of the Bid Set with trade subcontractors. These services will include, but are not necessarily limited to:

.1 Assist the Construction Manager with distribution of documents, as needed.
.2 Prepare and issue bidding addenda.
.3 Respond to bidding questions and issue clarification, as needed.
.4 Consider and evaluate requests for substitutions
.5 Assist with bid openings and tabulations as needed.

Section 2.11.3 To the extent that the Construction Manager desires to purchase one or more systems (such as, but not limited to, the building's mechanical system) on a design-build basis and the Department approves such request, the Architect agrees to cooperate with the Construction Manager and its designated design-build subcontractor and shall provide an appropriate credit for the value of the design services that are delegated to the design-build subcontractor. The schedule of values attached as **Exhibit C** provides break-out pricing for the engineering design effort associated with the mechanical systems, and the Architect's fee shall be reduced accordingly in the building's mechanical systems are delivered on a design-build basis.

Section 2.11.4 The Architect shall modify or amend the construction documents and reissue portions of or all to: (a) define, clarify, or complete the concepts and information contained in the Construction Documents; (b) correct design errors or omissions, ambiguities, and inconsistencies in the Construction Documents (whether found prior to or during the course of construction); and (c) correct any failure of the Architect to follow written instructions of the Owner during any phase of design services or the construction of the Project provided they are compatible with industry standards. In addition, the Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project

Section 2.12 **Design to Budget Requirements.** In general, the Architect shall use its best efforts to develop the Construction Documents in a manner consistent with the Design-to-Budget that was established at the conclusion of the Schematic Design Phase. In furtherance of the Architect's design to budget obligations, the Architect hereby agrees that it shall be required to work with the Department and the Construction Manager should the trade bids for the GMP exceed the Design-to-Budget at no additional cost to either the Owner or the Construction Manager. The Architect understands and agrees that any such redesign may need to be completed on an expedited basis or in multiple packages in order to keep the Project on schedule and the Architect shall use its best efforts to meet the Project's schedule requirements in performing such redesign. It is understood and agreed by both Parties to this Agreement that the Architect's redesign obligations under this Section 2.12 shall be the limit of the Architect's

liability for the failure to meet its design to budget obligations.

Section 2.13 **Value Engineering/GMP.** In furtherance of the Architect's design to budget obligation, the Architect understands and agrees that value engineering and other design changes may be required throughout the Design Phase, including during the Construction Documents Phase and at the conclusion thereof as bids are received from trade subcontractors in order to reach a design and a GMP that is consistent with the Owner's Design-to-Budget requirements. The Architect understands and agrees that it shall be required to work with the Owner and the Builder as they negotiate the GMP and that such efforts may involve redesigning portions of the Project or its systems and that the Architect shall not be entitled to any additional compensation as a result of such efforts. The Architect further understands and agrees that the Construction Documents phase shall not be considered complete until and unless a GMP is agreed upon.

ARTICLE 3
CONSTRUCTION PHASE SERVICES

Section 3.1 **Construction Administration.** The Owner and Architect acknowledge that in order to construct the Work, the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review. During the Design Development Phase, the Department, the Architect and the Construction Manager shall meet and develop a plan for the in which Construction Administration Services will be provided (the "Construction Administration Plan"). Among other things, the Construction Administration Plan shall include provisions addressing: (i) where construction administration services will be provided (i.e. on or off site); (ii) the staffing level that will be devoted to construction administration services; (iii) timelines for reviewing shop drawings, submittals, RFIs, etc.; and (iv) the process by which shop drawings, submittals, RFIs, etc. will be handled. Once agreed upon by the three parties, the Architect shall provide construction administration services in accordance with the Construction Administration Plan.

Section 3.2 At a minimum and in addition to any services that would typically be provided by an architect during this phase, the Architect shall perform the following services:

.1 Attend biweekly progress meetings.
.2 Review and process shop drawing submissions, RFI's, etc.
.3 Prepare meeting notes and records of decisions/changes made.
.4 Conduct punchlist inspections.
.5 Review closeout documents for completeness.

Section 3.3 The Architect shall provide the following deliverables during this phase:

.1 Meeting minutes, if requested
.2 ASI's or other clarification documents
.3 Punchlists

.4 Closeout document review comments
.5 As-Built Drawings (if authorized)

ARTICLE 4
COMPENSATION

Section 4.1 **Compensation For Design Phase Services.** The Architect has quoted a fixed fee of The Architect shall be paid a fixed fee of [AMOUNT ($NUMBER)] (the "Concept Design Fee"), a fixed fee of [AMOUNT ($NUMBER)] (the "Renovation Design Fee"), a fixed fee of [AMOUNT ($NUMBER)] (the "New Construction Design Fee"), and a fixed fee of [AMOUNT ($NUMBER)] (the "Site Design Fee"). The Architect shall be paid the total of the Concept Design Fee, the Site Design Fee, and either the Renovation Design Fee or the New Construction Design Fee, depending on which design scenario the Department selects following the completion of the Concept Design Phase (such total amount to be paid to the Architect the "Design Fee") for all services necessary to accomplish the objectives of the Design Phase, as described in Article 2 above. The Design Fee shall be the Architect's sole compensation for the services necessary to achieve the goals of the Design Phase. The Design Fee is allocated among the design phases on **Exhibit C**. Monthly payments shall be made to the Architect on the percentage complete basis.

Section 4.2 **Compensation For Construction Phase Services.** For any Construction Phase Services, as described in Article 3, that the Construction Manager may request that the Architect provide, the Architect and the Construction Manager shall agree on a fee for such services. For any Construction Administration or other services that are provided on an hourly basis, the Architect shall be reimbursed at the hourly rates set forth in **Exhibit C**. Such rates shall be fixed and not subject to further adjustment for the expected period of this Agreement plus a period of one (1) year thereafter. Compensation for such construction administration services performed on an hourly basis shall be computed by multiplying the number of hours directly spent on the Project by the applicable hourly billing rate listed on **Exhibit C**. To the extent the Architect's principals or employees are required to work more than 40 hours a week, the Architect shall be entitled to adjust such rates to reflect the additional cost of overtime only to the extent that the Architect (i) is required by law or agreement to pay its principals or employees a higher hourly rate that would otherwise be the case; and (ii) the Architect does, in fact, pay such principals or employees a higher hourly rate.

Section 4.3 **Compensation For Reimbursable Expenses.** Reimbursable Expenses are in addition to compensation for Design Phase Services and Construction Document and Construction Phase Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project. Such expenses shall be reimbursed without markup of any kind and records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Department at mutually convenient times. An allowance of [AMOUNT] is established for reimbursable expenses. Reimbursable expenses shall include the following:

.1 Transportation and authorized out-of-town travel and subsistence, provided, however, that local transportation costs (i.e. taxis, parking, etc.) shall not be reimbursable;

.2 Fees paid for securing approval of authorities having jurisdiction over the Project;

.3 Reproductions, plots, standard form documents;

.4 Postage, handling and delivery;

.5 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Department; provided, however, that such expenses shall only be reimbursable to the extent that they were caused by the failure of the Department to act within timeframes agreed to by the Parties in advance and in writing;

.6 Additional renderings, models, and mock-ups, requested by the Department;

.7 Any other similar expenditures directly related to the Project and reasonably incurred after first receiving written approval of the Department.

Section 4.4 **Retention.** An amount equal to five percent (5%) of all fees (but not expenses) shall be withheld as retention from all progress payments that are due to the Architect. In addition, the Department agrees to provide an incentive amount equal to 5% of the original Design Fee (but not expenses). The Architect shall only be entitled to receive the 5% retention and 5% incentive if: (i) the Project is Substantially Complete on or before April 15, 2017; and (ii) the total of the hard and soft costs for the Project do not exceed One Hundred Three Percent (103%) of the amount allocated in the Design-to-Budget established at the end of the schematic design phase. The determination as to whether these goals have been achieved shall be measured irrespective of fault, only if both goals are met irrespective of whether the reason these goals were not met was caused by the Architect, the Construction Manager, the Department, the District, the Code Official or any other person or cause. The Architect shall forfeit such retention if the GMP for the construction of the Project exceeds the Design to Budget.

Section 4.5 **Payments.** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid forty five (45) days after the invoice date shall bear interest in accordance with the Quick Payment Act.

Section 4.6 **Payment Disputes.** Disputes or questions regarding a portion of an invoice shall not be cause for withholding payment for the remaining portion of the invoice.

ARTICLE 5
INSURANCE

Section 5.1 **Insurance.** The Architect shall maintain the following insurance for the duration of this Agreement. Any and all premiums or deductibles associated with such coverage shall be paid by the Architect.

Section 5.1.1 Commercial general public liability insurance against liability for bodily injury and death and property damage, such Liability Insurance to be in an amount not less than One Million Dollars ($1,000,000) for liability for bodily injury, death and property damage

arising from any one occurrence and One Million Dollars ($1,000,000) from the aggregate of all occurrences within each policy year. The policy should include completed operations coverage and shall be maintain for three (3) years after substantial completion of the Project is achieved.

Section 5.1.2 Automobile Liability covering owned and rented vehicles operated by the Architect with policy limits of not less than Two Million Dollars ($2,000,000) combined single limit and aggregate for bodily injury and property damage.

Section 5.1.3 The Architect may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

Section 5.1.4 Workers' compensation and Employers Liability coverage providing statutory benefits for all persons employed by the Architect, or its contractors and subcontractors at or in connection with the Project.

Section 5.1.5 Professional Liability covering the Architect's negligent acts, errors and omissions in its performance of professional services with policy limits of not less than Five Million Dollars ($5,000,000) per claim and in the aggregate. The Architect shall maintain the coverage required by this Section 5.1.5 for a period of three (3) years after Substantial Completion of the Project is achieved.

Section 5.1.6 The Architect shall provide to the Department certificates of insurance evidencing compliance with the requirements in this Section 2.3. The certificates will show the Department as an additional insured on all such policies other than the Workers' Compensation and professional liability policies.

ARTICLE 6
OWNERSHIP OF DOCUMENTS

Section 6.1 **Ownership of Documents.** Regardless of whether the Project is completed, any design documents prepared by the Architect and the architectural, engineering or other consultants engaged by the Architect, any copies thereof furnished to the Construction Manager, and all other documents created in association with the Project shall become the sole property of the Department upon full payment of Architect's fees then due under this Agreement, and shall not to be used by the Architect, its subconsultants on other projects, or for additions to this Project outside the scope of the work, without the specific written consent of the Department. However, the Department expressly acknowledges and agrees that the documents to be provided by the Architect under this Agreement will contain design details, features and concepts including some from the Architect's library, which collectively form part of the design for the project, but which separately are and shall remain the sole and exclusive property of the Architect. These details are repetitive in nature, not Project specific, function rather than form-oriented, and were not developed for or identifiable with the Project. Nothing herein shall be

construed as a limitation on the Architect's absolute right to re-use such component design details, features and concepts on other projects, in other contexts or for other clients.

The Department shall be under no obligation to account to the Architect for any profits obtained by the Department as a result of the Project, or the use of such drawings, specifications and other documents in connection with the Project. In the event that the Agreement is terminated prior to completion of the Project or the Architect is unable to complete this Project for any reason, the Department shall have the right to use without the Architect's consent, and the Architect shall deliver to the Department and/or its designee within two (2) calendar days after such termination or inability, all such drawings, specifications and other documents as well as design concepts and details in connection with the Project or necessary for the Department's completion of this Project (including subsequent phases thereof), so long as the Department has paid the Architect all fees then owed to the Architect under this Agreement. The Department's rights hereunder shall extend to its successors and assigns and the Architect's obligation to deliver such drawings, specifications, and documents. Any other use shall be at the Department's sole risk and without liability to the Architect or the Architect's consultants. Unless Department fails hereunder to pay Architect therefor, Department shall be deemed the owner of such drawings, specifications, and other documents and shall have and retain all rights therein. In the event Department is adjudged to have failed hereunder to pay Architect for such drawings, specifications or other documents, ownership thereof, and all rights therein, shall revert to the Architect. This provision shall survive termination of this Agreement.

ARTICLE 7
CHANGES, CLAIMS AND DISPUTES

Section 7.1 Changes.

Section 7.1.1 Changes Authorized. The Department may, without invalidating the Agreement, order changes in the services required under the Agreement, including additions, deletions or modifications to the Architect's scope of work. Any such change must be conveyed by the Department to the Architect via a written change directive or by change order. In the event that the Architect believes that any such additions or modifications entitle the Architect to additional compensation, the Architect shall submit a notification in accordance with Section 7.1.3 of this Agreement. Unless otherwise agreed, additional services that are authorized by the Department and performed by the Architect shall be compensated at the hourly rates set forth in **Exhibit D** hereto. The Architect shall not be entitled to mark-up on any additional services of its own services or the services of subconsultants, it being understood and agreed that the cost of managing, administering and processing any changes to the subconsultants that are generally consistent with the Project's current scope are already covered by the fee quoted herein.

Section 7.1.2 Executed Change Directive Required. Changes to the Agreement may be made only by a written change directive executed by the Department or by written change order executed by both the Architect and the Department.

Section 7.1.3 **Prompt Notice**. In the event the Architect encounters a situation which the Architect believes to be a change to this Agreement, the Architect shall provide the Department prompt written notice of such event and the possible impact such event could have on cost and schedule. All such notices shall be given promptly, considering the then applicable situations, but in no event more than five (5) calendar days after determining that it believes that there is a change to the Agreement. The Architect acknowledges that the failure to provide such notice in a timely manner could limit or eliminate the Department's ability to mitigate such events, and thus, the Architect may not be entitled to an adjustment to the Design Fee in the event it fails to provide prompt notice. The Architect shall include provisions similar to this provision in all of its subcontracts.

Section 7.1.4 **Failure to Agree**. If the Architect claims entitlement to a change in the Agreement, and the Department does not agree that any action or event has occurred to justify any change in time or compensation, or if the Parties fail to agree upon the appropriate amount of the adjustment in time or compensation, the Department will unilaterally make such changes, if any, to the Agreement, as it determines are appropriate pursuant to the Agreement. The Architect shall proceed with the work and the Department's directives, without interruption or delay, and may make a claim as provided in Section 7 of this Agreement. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Agreement and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

Section 7.2 **Claims and Disputes.**

Section 7.2.1 The Department and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of this Article 7 within the period specified by applicable law, but in any case not more than ten (10) years after the date of Substantial Completion of the Work. The Department and Architect waive all claims and causes of action not commenced in accordance with this Section.

Section 7.2.2 To the extent damages are covered by property insurance, the Department and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. The Department or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

Section 7.2.3 The Architect and Department waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

Section 7.3 **Claims & Dispute Resolution.** The Department and Architect shall endeavor to resolve claims, disputes and other matters in question between them through the

ordinary course of business. If resolution is not reached in such manner, the Architect shall make a claim in accordance with this Section.

Section 7.3.1 **Notice of Claim.** If the Architect wishes to assert a claim over a contract dispute, the Architect shall provide written notice of the claim to the Department pursuant to procedures set forth in section 4732 of the Department's procurement rules and section 1004 of the District's Procurement Practices Reform Act of 2010 ("PPRA").

Section 7.3.2 **Contents of Notice of Claim.** The notice of claim shall state the nature of the claim, the events or circumstances giving rise to the claim, the type of relief requested, and the amount of time or additional compensation, or other damages sought. If the amount of time, compensation, or other damages sought is not reasonably ascertainable at the time such notice is provided, the Architect shall so state, explain why, and provide whatever estimates it can reasonably provide. The notice shall state clearly that the Architect intends to assert a claim against the Department.

Section 7.3.3 **Appeal Procedures.** All claims arising under or in connection with the Agreement or its breach, or relating to the Project, whether framed in contract, tort or otherwise, and which are not resolved via the claims process may be resolved by filing an appeal with the District of Columbia Board of Contract Appeals in accordance with Title X of the PPRA. However, if a third party brings any claim against the Department, including, without limitation, claims of infringement of patents, copyrights or other intellectual property rights, the Department may bring an action for defense or indemnification against the Architect in the court in which such claim is being litigated.

ARTICLE 8
TERMINATION OR SUSPENSION

Section 8.1 If the Department fails to make payments to the Architect in accordance with this Agreement, and such failure continues for more than sixty (60) days, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, prior to suspending services, the Architect shall give seven days' written notice to the Department during which the Department shall have the opportunity to cure. In the event of a suspension of services, the Architect shall have no liability to the Department for delay or damage caused the Department because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

Section 8.2 If the Department suspends the Project for more than thirty (30) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses

incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

Section 8.3 If the Department suspends the Project for more than one (1) year for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

Section 8.4 The Department may terminate this Agreement upon not less than seven (7) days' written notice to the Architect for the Department's convenience and without cause.

Section 8.5 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 8.6.

Section 8.6 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated.

Section 8.7 In the event Architect fails to perform any of its obligations hereunder, including the services, in the manner required herby, subject to seven (7) calendar days notice and a right for Architect to cure, Department shall be entitled to terminate this Agreement and upon such termination, Department shall be entitled to recover from Architect or setoff against any sums due Architect, Department's reasonable damages and costs of delay in replacing Architect with a different architect. Department shall be entitled to withhold payment from Architect until such damages may be calculated. If it is ultimately determined by the Parties or a court that Department withheld payments unreasonably, Department shall pay the amount owed to Architect with interest at the annual rate of Wall Street Journal prime plus one percent.

Section 8.8 In the event of termination or suspension, the Architect shall discontinue Work immediately upon written notice from the Department. The Architect shall furnish to the Department reproducible copies of all drawings, sketches, etc. and all specifications, reports, studies, analyses, and other electronic documents in approved format prepared by the Architect and his consultants, to the date of termination, whether or not termination is due to the fault of Architect, but only after Architect has received payment for all services performed in accordance with this Agreement.

ARTICLE 9
MISCELLANEOUS PROVISIONS

Section 9.1 This Agreement shall be governed by the laws of the District of Columbia.

Section 9.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–1997, General Conditions of the Contract for Construction.

Section 9.3 The Department and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns of such other party with respect to all covenants of this Agreement. The Architect shall not assign this Agreement without the written consent of the Department.

Section 9.4 If the Department requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least fourteen (14) days prior to the requested dates of execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

Section 9.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Department or Architect.

Section 9.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

Section 9.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Department's confidential or proprietary information if the Department has previously advised the Architect in writing of the specific information considered by the Department to be confidential or proprietary. The Department shall provide professional credit for the Architect in the Department's promotional materials for the Project.

Section 9.8 In accordance with Section 9.12 below, if the Architect or Department receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

Section 9.9 The Architect agrees to indemnify and hold the Department, the Department's Designated Representative and the Department's officers, agents and employees harmless from and against all claims, liabilities, demands, losses, damages, judgments, costs, or expenses, including reasonable attorneys' fees and expenses recoverable under applicable law arising from the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services pursuant to this Agreement.

Section 9.10 The Architect agrees to indemnify and hold the Department and the Department's Representative harmless from and against any and all claims, liabilities, demands,

losses, damages, costs, or expenses arising from the Architect's failure to perform its obligations pursuant to agreements with third parties, including, but not limited to, subconsultants, made in order to provide the services required of the Architect under this Agreement.

Section 9.11 The Architect shall pay for and defend all such suits or claims arising out of the Work for infringement of any patent rights or copyrights and hold the Department and Department's Representative harmless from loss on account thereof.

Section 9.12 **Confidentiality.** The Architect shall maintain the confidentiality of information specifically designated as confidential by the Department, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Department.

Section 9.13 **Extent of Agreement.** This Agreement represents the entire and integrated agreement between the Department and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Department and Architect.

ARTICLE 10
GOVERNMENTAL PROVISIONS

Section 10.1 **Buy American Act Provision.** The Architect shall not design or specify a proprietary product that does not comply with the provisions of the Buy American Act (41 U.S.C. § 10a). The Trade Agreements Act and the North American Free Trade Agreement ("NAFTA") provide that designated country (as defined in FAR 25.401) and NAFTA country construction materials are exempted from application of the Buy American Act and are therefore acceptable hereunder.

Section 10.2 **False Claims Act.** The Architect shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in D.C. Code § 2-381.02.

Section 10.3 **Retention of Records: Inspections and Audits.**

Section 10.3.1 The Architect shall maintain books, records, documents and other evidence directly pertinent to performance under the Agreement in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Agreement.

Section 10.3.2 The Architect shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Department and the required cost submissions in effect on the date of execution of the Department.

Section 10.3.3 Department, the District of Columbia government, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Architect for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Architect. The Architect shall provide proper facilities for such access and inspection.

Section 10.3.4 The Architect agrees to include the wording of this Section 10.3 in all its subcontracts in excess of Five Thousand Dollars ($5,000.00) that directly relate to Project performance.

Section 10.3.5 Audits conducted pursuant to this Section will be in accordance with generally accepted auditing standards with the results prepared in accordance with generally accepted accounting principles and established procedures and guidelines of the applicable reviewing or audit agency.

Section 10.3.6 The Architect agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Architect, the auditing agency will afford the Architect an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

Section 10.3.7 The Architect shall preserve all records described herein from the effective date of the Agreement completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

Section 10.4 <u>Gratuities and Officers Not to Benefit Provisions.</u>

Section 10.4.1 If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Architect, or any agent or representative of the Architect, to any official, employee or agent of the Department or the District with a view toward securing the Agreement or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the Architect, terminate the right of the Architect to proceed under the Agreement and may pursue such other rights and remedies provided by law and under the Contract.

Section 10.4.2 In the event the Agreement is terminated as provided in Section 10.4.1, the Department shall be entitled:

.1 to pursue the same remedies against the Architect as it could pursue in the event of a breach of the Agreement by the Architect; and

.2 as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Department) which shall be not less than ten times the costs incurred by the Architect in providing any such gratuities to any such Department or employee.

Section 10.4.3 No member of, nor delegate to Congress, Mayor or City Council Member, nor officer nor employee of the District, nor officer nor employee of the Department shall be admitted to any share or part of the Contract or to any benefit that may arise therefrom, and all agreements entered into by the Contracting Officer of the Department in which he or any officer or employee of the Department shall be personally interested as well as all agreements made by the Department in which the Mayor or City Council Member or officer or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department or by any officer thereof; but this provision shall not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or officer or employee of the District is de minimus.

Section 10.5 Ethical Standards For Department's Employees And Former Employees. The Department expects the Architect to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Architect, nor any person associated with the Architect, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Architect shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed under the Agreement. The Architect may not assign to any former Department or District employee or agent who has joined the Architect's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Architect may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Architect shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Architect or vendor.

Section 10.6 Anti-Deficiency Act. The Department's obligations and responsibilities under the terms of the Agreement are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) the D.C. Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act. Neither the Agreement shall constitute an indebtedness of the Department, nor shall it constitute an obligation for which the Department is obligated to levy or pledge any form of taxation, or for which the Department has levied or pledged any form of taxation. **IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE**

OR EXPEND ANY AMOUNT UNDER THE CONTRACT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.

ARTICLE 11
ECONOMIC PROVISIONS

Section 11.1 LSDBE Utilization.

Section 11.1.1 The Architect shall ensure that Local, Small and Disadvantaged Business Enterprises will participate in at least fifty percent (50%) of the Contract Work. Thirty-five percent (35%) of the Contract Work must be awarded to entities that are certified as either Small or Disadvantaged Business Enterprises by the District of Columbia Department of Small and Local Business Development, and twenty percent (20%) of the Contract Work to entities that are certified as Disadvantaged Business Enterprises. The LSDBE certification shall be, in each case, as of the effective date of the subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal.

Section 11.1.2 The Architect has developed an LSDBE Utilization Plan that is attached hereto as **Exhibit E**. The Architect shall comply with the terms of the LSDBE Utilization Plan in making purchases and administering its Subconsultants and Supply Agreements.

Section 11.1.3 Neither the Architect nor any Subconsultant may remove a Subconsultant or tier-Subconsultant if such Subconsultant or tier-Subconsultant is certified as an LSDBE company unless the Department approves of such removal. The Department may condition its approval upon the Architect developing a plan that is, in the Department's sole and absolute judgment, adequate to maintain the level of LSDBE participation on the Project.

Section 11.2 Equal Employment Opportunity and Hiring of District Residents.

Section 11.2.1 The Architect shall comply with applicable laws, regulations regarding equal employment opportunity and affirmative action programs.

Section 11.2.2 The Architect shall ensure that at least fifty-one percent (51%) of the Architect's Team and every subconsultant's and subcontractor's employees hired after the effective date of the Contract, or after such subconsultant or subcontractor enters into a contract with the Architect, to work on the Project shall be residents of the District of Columbia. This percentage shall be applied in the aggregate, and not trade by trade.

Section 11.2.3 Fifty percent (50%) of all apprentices for the Project must be District residents.

Section 11.3 First Source Agreement.

Section 11.3.1 Upon execution of the Contract, the Architect and all its member firms, if any, and each of its Subcontractors shall submit to the Department a list of current employees and apprentices that will be assigned to the Contract, the date they were hired and whether or not they live in the District of Columbia.

Section 11.3.2 The Architect and its constituent entities shall comply with subchapter X of Chapter II of Title 2, and all successor acts thereto, and the rules and regulations promulgated thereunder. The Contractor and all member firms and Subcontractors shall execute a First Source Agreement with the District of Columbia Department of Employment Services ("DOES") prior to beginning Work at the Project site.

Section 11.3.3 The Architect shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

Section 11.3.4 The Architect shall be responsible for: (i) including the provisions of this Section 11.3 in all subcontracts; (ii) collecting the information required in this Section 11.3 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in the reports required to be submitted by the Architect pursuant to Section 11.3.1.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written below.

DEPARTMENT OF GENERAL SERVICES, an agency within the executive branch of the Government of the District of Columbia

By: _____
Name: Jonathan Kayne
Title: Interim Director & Chief Contracting Officer
Date: _____

[SELECTED OFFEROR]

By: _____
Name: _____
Its: _____
Date: _____

Exhibit A

Department's Program

Exhibit B

Key Personnel

Exhibit C

Schedule of Values

Exhibit D

Hourly Rates

Exhibit E

LSDBE Utilization Plan