

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

**ARCHITECTURAL-ENGINEERING SERVICES
BANCROFT ELEMENTARY SCHOOL**

Solicitation #: DCAM-14-AE-0103

**Addendum No. 4
Issued: March 5, 2014**

This Addendum Number 04 is issued by e-mail on March 5, 2014. Except as modified hereby, the Request for Proposals (“RFP”) remains unmodified.

Item #1

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 #2

The bid date is hereby changed. Proposals are due by **March 11, 2014 at 2:00 pm EST.** Proposals that are hand-delivered should be delivered to the attention of: Shannon Harris, Contract Specialist, at **Frank D. Reeves Center, 2000 14th Street, NW, 8th floor, Washington, DC 20009.**

- End of Addendum No. 4 -

**AGREEMENT FOR
ARCHITECTURAL/ENGINEERING SERVICES**

BY AND BETWEEN

**DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES**

AND

[SELECTED OFFEROR]

BANCROFT ELEMENTARY SCHOOL

**AGREEMENT BETWEEN OWNER AND ARCHITECT FOR
ARCHITECTURAL/ENGINEERING SERVICES
DCAM-14-AE-0103**

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 the modernization of Bancroft Elementary School located at 1755 Newton Street, NW, Washington, DC 20009 (the “Project”); and

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

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; and

WHEREAS, the Department requires that the Project, including the requisite construction, be Substantially Complete no later than July 15, 2016 (the “Substantial Completion Date”); and

WHEREAS, the Department intends to engage a builder (the “Design-Builder”) to work with the Architect in advancing the design, to provide a guaranteed maximum price (“GMP”) for the requisite construct, to assume the Architect’s contract and manage the completion of the design after a GMP has been established, and to construct 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, Design-Builder, Program Manager, and other persons or entities employed by the Department for the Project.

Section 1.2 Project Description. In general, the Project includes the development of a design for the modernization of Bancroft Elementary School as well as the construction of the approved design no later than July 15, 2016. The design developed by the Architect for the Project shall meet the Owner's programmatic requirements which are set forth in **Exhibit A** and attain a minimum of LEED for Schools-Gold certification. It is understood that the facility, as currently configured, consists of five connected buildings totaling approximately 94,000 square feet of space. The parties anticipate that the Project will involve some level of demolition and new construction in order to make the campus a more unified and operationally and administratively functional one. The parties further anticipate that the Architect will be required to develop and provide the necessary design services to accommodate swing space on site that will be required during the construction of the Project. The modernized campus will serve approximately 550 students. As described herein, a Guaranteed-Maximum Price will be based on the Permit Set.

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 Brian J. Hanlon and JW Lanum.**

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 DCPS to occupy the Project at least two weeks prior to the beginning of the 2015/16 academic year and 2016/2017 academic year. 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 include LEED certification; and (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 permit set of construction documents that are code compliant and permit ready, with all major systems sufficiently designed, detailed, specified, coordinated, and developed (the "Permit Set"); and (ii) furthering the Permit Set for the Project as may be required by the Builder and providing such construction administration services as are requested by the Design-Builder. 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 Modified Design/Build delivery method for this Project. The Architect understands and agrees that the Owner intends to engage a Design-Builder after the execution of this Agreement while the Architect is preparing the schematic design for the Project and that such Design-Builder 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 Design-Builder will develop a Permit Set. The Department expects that these documents will be completed by December 1, 2014 and that the Design-Builder will put them out to bid with trade subcontractors in March 2015. Value engineering (if required) and GMP negotiations will occur in April 2015. Assuming that an acceptable GMP is developed, the Owner intends to enter into a guaranteed maximum price with the Design-Builder for the Project. Concurrent with the execution of an agreement regarding the GMP, the Owner will assign this Agreement in its entirety to the Design-Builder and from and after the GMP Date, the Architect's contract shall be with the Design-Builder, and the Design-Builder shall be responsible to complete both the design and the construction of 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 Builder and the Architect confirming such assignment. In the event that the Design-Builder fails to complete the Project, this Agreement will revert to the Owner.

Section 1.7 Schedule. The Architect shall provide the Design Phase Services and Construction Phase Services in accordance with the schedule set forth below. The Architect acknowledges that the Project will proceed on a fast-track schedule. In recognition of the fast-track nature of the Project, the Architect understands it may be required to prepare multiple bid packages, which may include, but is not necessarily limited to (i) a hazardous materials abatement package; (ii) a foundation/excavation package; (iii) a structural package; (iv) a design assist MEP and technology package; (v) a building enclosure package that includes roofing, windows, skylights etc.; (vi) an interior construction package; (vii) an FF&E package, and (viii)

a demolition package, and acknowledges that its pricing includes sufficient funding to meet the milestone schedule outlined in Section 1.5 and to accommodate the division of the work into multiple packages and the coordination issues associated with such a delivery method.

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 Design: June 20, 2014;
- .2 Submission of Schematic Design: September 5, 2014;
- .3 Submission of Design Development Documents: December 1, 2014; and
- .4 Hazardous Materials, Demolition and Foundation to Grade Packages: January 1, 2015; and
- .5 Submission of the Permit Set: February 16, 2015.

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

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

Brian J. Hanlon
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. Without limiting the generality of the foregoing, it is understood and agreed that the Program Manager shall not have the authority to increase the fee or the not-to-exceed amount established herein.

Section 1.9 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 1.9 has the full legal authority to bind the Architect and to agree to changes to the terms of this Agreement.

ARTICLE 2 **DESIGN PHASE SERVICES**

Section 2.1 The Architect shall provide all services, 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 C** is a list of 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 Owner 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 Owner 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 Owner'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 C** as subject to the liquidated damages provisions. In the event there is no delineation in **Exhibit C** 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 C** 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 Owner's Designated Representative, the Architect shall pay to the Owner the sum of Twenty Five Thousand dollars (\$25,000) as liquidated damages and not a penalty, to reimburse the Owner 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 Owner's internal administrative costs. In addition, the Owner 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

Owner. In the event the Owner exercises the right to remove, replace or to reduce the scope of services of the Architect, the Owner 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 Owner.

Section 2.3 Except with the Owner's knowledge and consent, 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 Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner. The Architect shall review the Owner's Program and other information furnished by the Owner, 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 Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

Section 2.6 Upon request of the Owner, the Architect shall make periodic presentations to explain the design of the Project to representatives of the Owner and to others in support of the Owner's efforts for the Project. The Architect understands and agrees that this obligation will require the Architect to participate in briefings of the affected Parent Teacher Association, neighbors, community organization, community leaders and District government officials as identified by Owner. 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 the School Improvement Team 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 School. The Architect will also be required to meet with school personnel and other stakeholders to better understand the needs and requirements of the Project School.

Section 2.7.2 Concept. The first phase of the project will include program development and the preparation of a concept design. During this phase, the Architect shall complete the following tasks:

- a. Conduct meetings with the Chancellor's Office and DGS representatives to confirm instructional program and verify facility 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 which is currently expected to be International Building Code 2006 Version.
- c. Conduct LEED Workshops with design team and DGS representatives to identify sustainable design strategies to be included in revised design.
- d. Participate in Value Engineering workshops with the Chancellor's Office and DGS representatives.
- e. Prepare and submit EISF.
- f. Survey existing facility to confirm locations and types of hazardous materials to be abated.
- g. Perform geotechnical investigations of the site.
- h. Request and receive hydrant flow test.
- i. Perform alternative mechanical systems evaluation and recommend selection.
- j. Confer with audio-visual and acoustic consultants to establish design requirements for the Project.
- k. Confer with the Office'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. Conceptual floor plan and site plan.
- b. Updated property survey, including notations of utilities and all other easements
- c. Hazardous material survey and analysis update
- d. Historic resources survey
- e. Flow Test Results
- f. Record of Accepted LEED Strategies
- g. Record of Accepted Value Engineering Strategies
- h. EISF Submission
- i. Education specifications survey update
- j. Traffic and parking survey and zoning analysis
- k. Geotechnical Survey

- l. Summary of Required Agency Review, Timetables, including but not limited to: Office of Planning (“OP”) and Commission of Fine Arts (“CFA”)
- m. Architectural Concept Development
 - i. Development of final master site plan
 - ii. Building plan
 - iii. Phasing recommendations
 - iv. Preliminary cost estimates
 - v. 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**.

Section 2.8.1 Based on the concept 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 Owner’s Program. Such Schematic Design shall contain such detail as is typically required for schematic design under the standard AIA contract. In general, the A/E shall be required to further develop conceptual plans and incorporate design changes; meet with Project stakeholders regarding the Project 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 addition 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.

- a. Digital floor plans and site plan
- b. Preliminary building elevations and sections
- c. Plan-to-Program Comparison
- d. Design Narrative
- e. Updated Project Budget and Schedule

Section 2.8.3 At the conclusion of the Schematic Design Phase, the Owner shall provide the Architect and the Design-Builder with a budget for the Project (such budget, the “Design to Budget”). The Architect shall use its best efforts to develop the design development documents and all subsequent design documents in a manner that is consistent with the Design to Budget.

Section 2.9 Design Development Phase. During this phase, the Architect will be required to progress the schematic design into set of design development documents. As soon as the Builder is appointed, the Architect shall work closely with the Design-Builder 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 Permit Set. The Permit Set will serve as the basis of the Design-Builder’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 Permit Set and the level of detail for each such package.

Section 2.9.1 The Architect understands that the Owner intends to appoint the Design-Builder during the Schematic Design Phase and that the Architect and the Design-Builder 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, schedule (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 Design-Builder 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:

- a. Select and draft outline specifications for materials, systems, equipment.
- b. Develop detailed and dimensioned plans, wall sections, building section, and schedules.
- c. Complete code compliance analysis and drawing.
- d. Confirm space-by-space equipment layouts with representatives from the Chancellor's Office and DGS.
- e. Conduct follow up meetings with agencies as required.
- f. Coordinate furniture, fixtures, and equipment requirements ("FF&E").
- g. Present the design to CFA, Office of Planning, and other regulatory agencies as required

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.

- a. 35% (minimum progress) documents for all technical disciplines, drawings and specs
- b. 50% design development progress printing.
- c. A reconciliation report that addresses issues raised by the Design-Builder as a result of the 50% progress printing.
- d. CFA submission materials; meetings and presentations to CFA as required
- e. Updated Project Budget and Schedule
- f. Early release packages: (i) hazardous materials abatement package; (ii) demolition package; and (iii) foundation-to-grade package

Section 2.9.4 At the conclusion of the Design Development Phase and based on input from the Architect and the Builder's construction estimates, the Department shall establish a

design to budget for the Construction Document phase of the Project (the “Design to Budget”). Such budget shall be determined by the Department in its sole and absolute discretion; provided, however, to the extent such budget materially deviates from the design to budget established at the end of the Schematic Design phase, the Architect shall be entitled to an appropriate equitable adjustment.

Section 2.10 Permit Set.

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.

With regard to the mechanical, plumbing, elevators, electronic systems and other manufactured products, the parties anticipate that they will be purchased on a design assist basis. For those systems that will be purchased on a design assist basis, the Architect shall be required to: (x) provide a description of the system and its general layout; (y) provide a performance specification that contains detail and performance criteria that are acceptable to the Owner; and (z) review submissions from subcontractors (both while developing the GMP and thereafter) to determine whether they comply with the performance specification. With regard to finishes, the Architect shall prepare a description of the finishes that is acceptable to the Owner and in such a level of detail that it will permit the builder to provide a GMP.

The schedule of values attached as Exhibit E includes credit for certain systems that the Builder may elect to purchase on a design-build basis, and in the event such system(s) are purchased on a design-build basis this Architect’s fee shall be reduced appropriately.

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 Deliverables. The Architect shall provide the following deliverables during this phase:

- a. Prepare and submit Permit Set documents
- b. Prepare detailed and coordinated drawings and specifications to be included in the

Permit Set.

- c. Prepare application and submit documents for building permit.
- d. Prepare and submit early-release excavation, foundations, concrete and steel packages, if needed.

Section 2.10.4 In addition to preparing the Permit Set, the Architect shall, at no additional cost to the Owner or the Design-Builder,

- .1 meet with the Design-Builder as and when requested to review the design, its constructability, and consistency with the GMP;
- .2 work with the Design-Builder in order to implement such value engineering ideas as may be necessary to meet the budget reflected in the GMP, 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 2.10.4 The Architect shall facilitate the Design-Builder's bidding of the Permit Set with trade subcontractors. These services will include, but are not necessarily limited to:

- a. Assist Builder with distribution of documents, as needed.
- b. Prepare and issue bidding addenda.
- c. Respond to bidding questions and issue clarification, as needed.
- d. Consider and evaluate requests for substitutions
- e. Assist with bid openings and tabulations as needed.

Section 2.11 Value Engineering/GMP Formation. In furtherance of the Architect's obligation to design to the Design to Budget, the Architect understands and agrees that value engineering and other design changes may be required during the Design Development Phase, Permit Set 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 budget requirements, as they were specified at the conclusion of the schematic design phase. 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 Permit Set phase shall not be considered complete until and unless a GMP is agreed upon.

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 2.11 shall be the limit of the Architect's liability for the failure to meet its design to budget obligations.

Section 2.12 Swing Space Design. The parties anticipate that the school population will need to be accommodated on the Project site during the construction of the Project and that in order to do so, swing space will be required. The Department has estimated a need for swing space totaling sixteen thousand (16,000) square feet of floor space, consisting of twelve (12) classrooms, one (1) library (which will be the same size as two (2) classrooms) and two (2) bathrooms (the “Swing Space”). The Department would consider a double-stacked swing space plan with a foot print of eight thousand (8,000) square feet if site limitations so require. If requested by the Department, the Architect shall prepare construction documents for the Swing Space and shall be compensated as set forth in Section 4.1.1.

ARTICLE 3

CONSTRUCTION DOCUMENTS AND CONSTRUCTION PHASE SERVICES

Section 3.1 Assignment and Further Design Services. It is contemplated that the Design-Builder will provide a GMP based on the Permit Set and that thereafter, the Architect’s contract will be assigned to the Design-Builder, and the Architect will work directly for the Design-Builder from such time. From and after such assignment, the Architect shall be required to provide such services as may be required in order to advance the Project, including, but not limited to, the preparation of more detailed construction documents and the provision of construction administration services. During the Design Development Phase, the Builder and the Architect shall negotiate a definitive scope for such services and a mutually acceptable fee for such services. Such service and fee shall be subject to the Owner’s approval as part of the GMP approval process. The Architect understands and agrees that the Design-Builder shall be solely responsible for compensating the Architect for such services and that the Department shall not be liable for the cost of such services.

Section 3.2 Construction Documents. It is contemplated that the Architect will advance the Permit Set, as may be required by the Builder, after this Agreement is assigned to the Builder. If so requested by the Builder, the Architect shall, based on the Owner’s approval of the Design Development Documents and on the Owner’s authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, prepare further developed Construction Documents for the Owner’s approval. The parties anticipate that with regard to those systems that are being purchased on a design-build basis the Architect will not be required to develop detailed Construction Documents and that the design-build subcontractor will be required to prepare and seal such documents. However, with regard to such systems, the Architect will be required to: (i) review the subcontractor’s documents to ensure compliance with the performance specifications; and (ii) cooperate with the builder to assist in finalizing the design. For systems or work that are not purchased on a design assist basis, the Construction Documents shall illustrate and describe the further development of the approved Design Development Documents 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.

Section 3.3 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 3.4 Design to Budget Requirements. In general, the Architect shall use its best efforts to develop the Construction Documents in a manner that is consistent with the Design to Budget that was established at the GMP. In furtherance of the Architect's design to budget obligations, the Architect hereby agrees as follows:

- .1 With regard to any bid package that was purchased at the GMP on a design assist basis or with a mini-GMP, the Architect shall work with the Design-Builder and the relevant trade subcontractor to develop a design that can be accommodated by such mini-GMP or other subcontract structure. The Architect understands and agrees that this may require redesign and that any such redesign is included within its base fee.
- .2 With regard to work that will be purchased subsequent to the formation of the GMP, the Architect shall be required to work with the Owner and the Design-Builder should the trade bids for any such package exceed the design to budget figure established at the time the GMP was agreed upon for such package at no additional cost to either the Owner or the Design-Builder.

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 3.4 shall be the limit of the Architect's liability for the failure to meet its design to budget obligations.

Section 3.5 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:

- a. Prepare detailed and coordinated drawings and specifications.
- b. Prepare application and submit documents for building permit.

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 3.6 Construction Administration. The Owner and Architect acknowledge that in order to construct the Work, the Design-Builder 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 Owner, the Architect and the Design-Builder 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 3.7 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:

- a. Attend biweekly progress meetings. Architectural site visits are included in base fee. Hourly not-to-exceed allowance is included for consultant site visits.
- b. Review and process shop drawing submissions, RFI's, etc.
- c. Prepare meeting notes and records of decisions/changes made.
- d. Conduct punchlist inspections.
- e. Review closeout documents for completeness.

Section 3.8 The Architect shall provide the following deliverables during this phase:

- a. Meeting minutes, if requested
- b. ASI's or other clarification documents
- c. Punchlists
- d. Closeout document review comments
- e. As-Built Drawings

ARTICLE 4 **COMPENSATION**

Section 4.1 Compensation For Design Phase Services. The Architect shall be paid a fixed fee of [AMOUNT (\$NUMBER)] (the "Design Fee") for all services necessary to accomplish the objectives of the Design Phase, as described in Article 2 above, other than the design of Swing Space as set forth in Section 2.12 of this Agreement. The Architect has quoted a fee of [AMOUNT (\$NUMBER)] for the design of the Swing Space. If the Department elects to have the Architect design the Swing Space, the Department shall provide notice of such election in the form of a writing duly authorized by the Contracting Officer of the Department. Monthly payments shall be made to the Architect on the percentage complete basis.

Section 4.2 Compensation For Further Developed Construction Document and Construction Phase Services. The parties acknowledge that the Design Fee set forth in Section

4.1 is intended to be the Architect's sole compensation to develop a Permit Set of drawings for the Project that are approved by the Department. It is understood that the Design-Builder may require the Architect to develop more detailed construction documents as well as to provide construction administration services for the Project.

For any further developed Construction Documents and construction administration services, as described in Article 3, that the Design-Builder may request that the Architect provide, the Architect and the Design-Builder 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 B**. 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 B**. 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 Owner 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 Owner; provided, however, that such expenses shall only be reimbursable to the extent that they were caused by the failure of the Owner to act within timeframes agreed to by the parties in advance and in writing;
- .6 Additional renderings, models, and mock-ups, requested by the Owner;
- .7 Any other similar expenditures directly related to the Project and reasonably incurred after first receiving written approval of the Owner.

Section 4.4 Retention & Incentive. 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 Owner agrees to provide an incentive amount equal to 5% of the original Design Fee (but not expenses). This 5% retention and 5% incentive will only be due the Architect if: (i) the Project is Substantially Complete on or before July 15, 2016; and (ii) the final Project cost does not exceed the GMP as initially established. 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 Builder, the Owner, the District, the Code Official or any other person or cause.

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. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost.

Section 5.1.1 Comprehensive General Liability with policy limits of not less than One Million Dollars (\$1,000,000) for each occurrence and in the aggregate for bodily injury and property damage.

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 at statutory limits and Employers Liability with a policy limit of not less than One Million Dollars (\$1,000,000).

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 Owner certificates of insurance evidencing compliance with the requirements in this Section 5. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess 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 and engineering consultants engaged by the Architect, any copies thereof furnished to the Design-Builder, and all other documents created in association with the Project shall become the sole property of the Owner 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 Owner. However, the Owner 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 Owner shall be under no obligation to account to the Architect for any profits obtained by the Owner 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 Owner shall have the right to use without the Architect's consent, and the Architect shall deliver to the Owner 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 Owner's completion of this Project (including subsequent phases thereof), so long as the Owner has paid the Architect all fees then owed to the Architect under this Agreement. The Owner'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 Owner's sole risk and without liability to the Architect or the Architect's consultants. Unless Owner fails hereunder to pay Architect therefor, Owner shall be deemed the owner of such drawings, specifications, and other documents and shall have and retain all rights therein. In the event Owner 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, and without notice to or approval of any surety, 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.

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 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 Owner 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 Owner 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 Owner 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 Owner 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 Owner 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 Owner 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 *Procurement Practices Reform Act of 2010* (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 Owner 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 Owner during which the Owner shall have the opportunity to cure. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner 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 Owner suspends the Project for more than 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 Owner 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 Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

Section 8.5 In the event of termination not due to 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 hereby, subject to seven (7) calendar days notice and a right for Architect to cure, Owner shall be entitled to terminate this Agreement and upon such termination, Owner shall be entitled to recover from Architect or setoff against any sums due Architect, Owner's reasonable damages and costs of delay in replacing Architect with a different architect. Owner 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 Owner

withheld payments unreasonably, Owner 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 Owner. The Architect shall furnish to the Owner 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 to the extent such terms do not conflict with this modified AIA B103 Agreement between Owner and Architect.

Section 9.3 The Owner 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 Owner

Section 9.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 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 Owner 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 Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall

provide professional credit for the Architect in the Owner's promotional materials for the Project.

Section 9.8 In accordance with Section 9.12 below, if the Architect or Owner 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 Owner, the Owner's Representative and the Owner'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 Owner and the Owner'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 Owner and Owner'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 Owner, 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 Owner.

Section 9.13 Extent of Agreement. This Agreement represents the entire and integrated agreement between the Owner 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 Owner 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 Owner and the required cost submissions in effect on the date of execution of the Owner.

Section 10.3.3 Owner, 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 Owner. 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 Gratuities and Owners Not to Benefit Provisions.

Section 10.4.1 If it is found, after notice and hearing, by the Owner 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 Owner 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 Owner 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 Owner 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 Owner) which shall be not less than ten times the costs incurred by the Architect in providing any such gratuities to any such Owner 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 Owner shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom, and all agreements entered into by the Contracting Officer of the Owner in which he or any Officer or employee of the Owner shall be personally interested as well as all agreements made by the Owner in which the Mayor or City Council Member or Owner or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Owner 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 minimis.

Section 10.5 Ethical Standards For Owner's Employees And Former Employees.
The Owner 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 Owner 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 Owner or the District for any Work required, contemplated or performed under the Contract. The Architect may not assign to any former Owner 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 Owner, had material or substantial involvement in the matter. The Architect may request a waiver to permit the assignment of such matters to former Owner 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 Owner'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 Owner, nor shall it constitute an obligation for which the Owner is obligated to levy or pledge any form of taxation, or for which the Owner 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 50% of the Contract services. Thirty-five percent (35%) 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%) 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 D**. 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 a Subconsultant may remove a Subconsultant or tier-Subconsultant if such Subconsultant or tier-Subconsultant is certified as an LSDBE company unless the Owner approves of such removal. The Owner may condition its approval upon the Architect developing a plan that is, in the Owner'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 Owner 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 above.

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

By: _____
Name: Brian J. Hanlon
Title: Director
Date: _____

[SELECTED OFFEROR]

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

DRAFT