

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

**ARCHITECTURAL/ENGINEERING SERVICES
ROOSEVELT HIGH SCHOOL**

Solicitation #:DCAM-13-AE-0062

**Addendum No. 2
Issued: November 20, 2012**

This Addendum Number 02 is issued by e-mail on November 20, 2012. 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

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

1. Our firm is LSDBE certified but would like to partner with a larger firm to pursue this project. Do we have to go into a Joint Venture for our partnership to be valid? Can we instead be the prime, taking 51% or more control and the larger firm, our partner, taking 50% or less control of the development? **Response: In order to receive the CBE preference points, the CBE prime architect must perform 51% or more of the architectural work.**

Item #3

The bid date remains unchanged. Proposals are due by **November 30, 2012 at 2:00 pm EST.** Proposals that are hand-delivered should be delivered to **Frank D. Reeves Center, 2000 14th Street, NW, 8th floor, Washington, DC 20009.**

- End of Addendum No. 2 -

DRAFT AIA[®] Document B103[™] – 2007

Standard Form of Agreement Between Owner and Architect for a Large or Complex Project

AGREEMENT made as of the « » day of «December» in the year « 2012 »

BETWEEN the Architect's client identified as the Owner:

« District of Columbia Government, acting by and through its »
« Department of General Services »
« 2000 14th Street, NW, 8th Floor »
« Washington, DC 20009 »

and the Architect:

« »
« »
« »
« »

for the following Project:

« Roosevelt High School »
« 4301 13th Street, NW »
« Washington, DC 20011 »

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Owner's (i) Request for Proposals for Architect/Engineering Services for Roosevelt High School; and (ii) the Addenda thereto (collectively, the "Initial Information").

§ 1.1.1 The Owner's program for the Project:

« The Owner's Program is attached in narrative form as **Exhibit A.** »

§ 1.1.2 The Project's physical characteristics:

«The Project includes the complete modernization of Roosevelt HS. The existing structure was constructed in 1932 and consists of approximately 331,900 square feet of space. The modernized Roosevelt HS will serve 800-900 daytime students and up to 600 part-time evening students. »

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1 is:

«[INSERT CONSTRUCTION BUDGET]. »

§ 1.1.4 The Owner's anticipated design and construction schedule:

.1 Design phase milestone dates, if any:

« The Concept Design phase will be completed no later than February 15, 2013;
The Owner will engage a Builder on or around April 1, 2013;
The Schematic Design phase will be completed no later than April 30, 2013;
Construction of Swing Space will occur in the summer of 2013;
Design Development Documents will be completed no later than August 15, 2013;
Trade Bids will be solicited by the Builder between August 15, 2013 and September 15, 2013;

Value Engineering & GMP Negotiations will occur between September 15, 2013 and October 15, 2013; and

A Guaranteed Maximum Price will be agreed upon no later than October 31, 2013; »

.2 Commencement of construction:

« Building construction will begin in the fall of 2013 »

.3 Substantial Completion date or milestone dates:

« Substantial Completion must be achieved by July 15, 2015 (the "Substantial Completion Date"). »

.4 Other:

« »

§ 1.1.5 The Owner intends the following procurement or delivery method for the Project:

«Modified Bridging Design/Build. The Architect understands and agrees that the Owner intends to engage a builder for the Project (the "Builder") and that such Builder shall participate in the design process by reviewing design drawings, conducting constructability reviews and assisting with cost estimating. After the Design Development documents have been completed but prior to the completion of Construction Documents, the Owner intends to enter into a guaranteed maximum price with the Builder for the Project (such date, the "GMP Date"). Concurrent with the GMP Date, the Owner will assign this Agreement in its entirety to the Builder and from and after the GMP Date, the Architect's contract shall be with the Builder, and the Builder shall be responsible to complete both the design and the construction of the Project. The Architect hereby consents to such assignment; provided, however, that such assignment shall be in writing and signed by both the Owner and the Architect. In the event that the Builder fails to complete the Project, this Agreement will revert to the Owner. »

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:

« The Owner intends to deliver this Project through a modified bridging design/build delivery method as described above. The Architect understands that multiple bid packages will be required and that the exact number of such packages and their composition will be developed during the Design Development phase in conjunction with the Builder. The Architect's fee is predicated upon there being a reasonable number of bid packages in light of the Project schedule and delivery method which, at a minimum, shall include (i) selective demolition and hazardous materials abatement package; (ii) an MEP and technology package; (iii) a building enclosure package that includes roofing, windows, skylights, etc.; (iv) an interior construction package; and (v) an FF&E package»

§ 1.1.7 Other Project information:

« The Project must obtain a minimum of LEED for Schools Silver certification. »

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:

« Brian Hanlon »
« Director »
« Department of General Services »
« 2400 East Capitol Street, SE »
« Washington, DC 20003 »

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

« The Owner's Program Manager. »

§ 1.1.10 The Owner will retain the following consultants and contractors: None.

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.3:

« »
« »
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§ 1.1.12 The Architect will retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:

§ 1.1.12.1 Consultants retained under Basic Services:

The Architect shall be required to retain, at its own expense, all of the necessary engineering consultants (i.e. geotechnical, civil, structural, mechanical, electrical, etc.) to complete the design of the Project. The Owner and Owner's Designated Representative shall give prior approval to any and all additional consultants retained by the Architect. The Architect shall be responsible for the work of all its Consultants.

.1 Structural Engineer:

« »« »
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.2 MEP Engineer:

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.3 Geotechnical Engineer:

« »« »
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.4 Civil Engineer:

.5 Landscape Architect:

.6 Cost Estimating:

§ 1.1.12.2 Consultants retained under Additional Services:

« »

§ 1.1.13 Other Initial Information on which the Agreement is based:

« The objective of the Project is to complete the design for the fully modernized Roosevelt High School. »

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 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.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 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.

§ 2.5 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.

§ 2.5.1 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.

§ 2.5.2 Automobile Liability covering owned and rented vehicles operated by the Architect with policy limits of not less than « One Million Dollars » (\$ « 1,000,000 ») combined single limit and aggregate for bodily injury and property damage.

§ 2.5.3 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.

§ 2.5.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than « One Million Dollars » (\$ « 1,000,000 »).

§ 2.5.5 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. Such coverage shall be maintained throughout the duration of the Project and for a period of three (3) years following Substantial Completion.

§ 2.5.6 The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.5. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies.

§ 2.6 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.

§ 2.7 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.

§ 2.8 The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any errors, omissions or inconsistencies in such services or information; provided, however, that Architect shall not be entitled to reply on such information if a competent architect or engineer could have identified any inaccuracy,

incompleteness, inconsistency or error in such information. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any errors, omissions or inconsistencies in such services or information.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 PROJECT ADMINISTRATION SERVICES

§ 3.1.1.1 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.

§ 3.1.1.2 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.

§ 3.1.1.3 The Architect and the Owner have agreed upon the schedule of the Architect's services attached hereto as **Exhibit B** for inclusion in the Project schedule. The schedule of the Architect's services shall include design milestone dates, including dates for decisions required of the Owner, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review (2) for the performance of the Owner's consultants, and (3) for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.1.4 The Architect shall periodically update such schedule and provide such updated schedule to the Owner and the Owner's Program Manager. Upon the Owner's reasonable request, the Architect shall submit information to the Owner and participate in developing and revising the Project schedule as it relates to the Architect's services.

§ 3.1.1.5 Once the Owner and the Architect agree to the time limits established by the Project schedule, the Owner and the Architect shall not exceed them, except for reasonable cause.

§ 3.1.1.6 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.

§ 3.1.1.7 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.1.8 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.1.9 The Architect shall utilize the Owner's Prolog system for all contract administration activities including, but not limited to, submittal review, RFI's, ASI's, field reports, and posting drawing files.

§ 3.1.2 EVALUATION OF BUDGET AND COST OF THE WORK

§ 3.1.2.1 At the end of the Conceptual and Schematic Design phases, the Architect and its cost estimating consultant shall prepare estimates of the Cost of the Work based on the 16 Division CSI format. Architect shall confer with the Owner and obtain its budgetary requirements for the Project. The Architect shall review the Owner's budget requirements and advise the Owner as to whether they are sufficient for the Project. This initial estimate may be based on current area, volume or similar conceptual estimating techniques. If the Architect's initial Cost Estimate indicates that the Project cannot be completed for a cost that is consistent with the Owner's budget requirements, the Architect and its cost estimating consultant shall make appropriate recommendations to the Owner to adjust the

Project's size, quality or budget, and the Owner shall cooperate with the Architect and its cost estimating consultant in making such adjustments. At the end of this process the Owner shall establish the budget for the Project (such budget, the "Initial Project Budget"). In the event the Architect is unwilling to proceed with the Project based on the Initial Project Budget, the Architect may withdraw from the engagement without any further recourse by the Owner.

§ 3.1.2.2 Evaluations of the Owner's budget for the Project, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect and its cost estimating consultant represent the Architect and its cost estimating consultant's judgment as design professionals familiar with the construction industry. It is recognized, however, that neither the Architect and its cost estimating consultant nor the Owner has control over the cost of labor, materials or equipment, over the Builder's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect and its cost estimating consultant cannot and do not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Project or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 3.1.2.3 The Initial Project Budget shall include reasonable contingencies for design, bidding and price escalation; and shall be used to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work.

§ 3.1.2.4 If bidding or negotiation has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the construction industry.

§ 3.1.2.5 It is understood that the Owner intends to engage a Builder to construct the Project and that this Agreement shall be assigned to such Builder following the completion of the Design Development phase and the establishment of a guaranteed maximum price for the Project. It is further understood that prior to such assignment, close cooperation of the Architect and the Builder will be required during the design development phase in order to allow the Project to progress in an orderly and efficient manner. The Architect agrees to use its reasonable efforts to ensure that the flow of information between the Contractor and the Architect is conducive to achieving such progress. The Builder shall review such information and its progress and provide information to the Architect regarding cost, schedule and constructability. The Architect shall assist the Builder in the review of cost estimates for the Project, and the Architect and the Builder shall work together to complete the design which will allow the Project to be constructed within the Owner's budget for the Project.

§ 3.1.3 CONCEPT DESIGN PHASE SERVICES

§ 3.1.3.1 The Architect shall provide a preliminary evaluation of the information furnished by the Owner under this Agreement, including the Owner's program and schedule requirements and budget for the Cost of the Work, each in terms of the other. The Architect shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the Owner of any other information or consultant services that may be reasonably needed for the Project.

§ 3.1.3.2 The Architect shall provide a preliminary evaluation of the Owner's site for the Project based on the information provided by the Owner of site conditions, and the Owner's program, schedule and budget for the Cost of the Work.

§ 3.1.3.3 The Architect shall review the Owner's proposed method of contracting for construction services and shall notify the Owner of anticipated impacts that such method may have on the Owner's program, financial and time requirements, and the scope of the Project.

§ 3.1.3.4 The Owner has not engaged the services of a geotechnical engineer to conduct an assessment of the Project site. Promptly after execution of this Agreement by the parties, the Architect shall engage a geotechnical engineer to provide such services as may be required to complete the design. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

§ 3.1.3.5 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 tasks during this phase of services:

- 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 IBC 2006.
- c. Conduct LEED Workshops with design team and DCPS and DGS representatives to identify sustainable design strategies to be included in revised design. It is understood that LEED-Silver certification is expected.
- d. Participate in Value Engineering workshops with the builder, design team, the Chancellor's Office and DGS representatives.
- e. Perform new boundary and topographic survey, to include locating existing utilities and verifying presence of underground storage tank(s).
- f. Complete traffic analysis and air quality analysis and Phase 1 Environmental Assessment.
- g. Prepare and submit EISF.
- h. Survey existing facility to confirm locations and types of hazardous materials to be abated.
- i. Perform new soil borings and soils analysis.
- j. Prepare geotechnical report.
- k. Request and receive hydrant flow test.
- l. Perform alternative mechanical systems evaluation and recommend selection.
- m. Confer with audio-visual and acoustical consultant to establish design requirements for the Project.
- n. Confer with the Department's IT representatives/consultants to very technological requirements for the Project.

§ 3.1.3.6 During this phase, the Architect will be required to prepare and submit to the Owner the following deliverables. All such deliverables shall be subject to review and approval by the Owner.

- a. Conceptual floor plan and site plan.
- b. Boundary / Topographic / Utility Location Survey (including location of all easements).
- c. Geotechnical Report.
- d. Flow Test Results.
- e. Results of Hazardous Materials Survey and Analysis.
- f. Record of Accepted LEED Strategies.
- g. Record of Accepted Value Engineering Strategies.
- h. EISF Submission.
- i. Summary of Required Agency Review, Timetables, including but not limited to: Office of Planning (OP), Commission of Fine Arts (CFA), and the National Capital Planning Commission, as required.
- j. Historic Resources Survey
- k. Educational Specifications Survey Update
- l. Traffic and parking survey and zoning analysis.
- m. Architectural Concept Development
 1. Development of final master site plan
 2. Building plan
 3. Preliminary Cost Estimate
 4. Preliminary Project Schedule

§ 3.1.3.7 At the end of this phase, the Architect shall prepare an estimate of the Cost of the Work contemplated in the conceptual design.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 Based on the Project requirements agreed upon with the Owner during the Schematic Design Phase, the Architect shall prepare and present for the Owner's approval Schematic Design Documents. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches,

or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.1.1 The Architect shall consider environmentally responsible design alternatives, such as material choices, building systems and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.2 At a minimum and in addition to any services that would typically be provided by an architect during this phase, the Architect shall be required to undertake the following tasks during this phase:

- a. Further develop conceptual plans and overall revised building design.
- b. Conduct additional community meetings to solicit input and keep constituents informed.
- c. Prepare necessary presentation materials (renderings and models) to communicate design and obtain approval of design direction.

§ 3.2.3 The Architect shall be required to prepare and submit to the Owner the following deliverables. All such deliverables shall be subject to review and approval by the Owner:

- 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

§ 3.2.4 At the end of the schematic design phase, the Architect shall prepare a cost estimate to determine whether the schematic design is consistent with the Initial Project Budget. In the event the cost review indicates the Project is over budget, the Architect shall, at no additional cost to the Owner, revise the schematic design as may be necessary to bring the Project within the Initial Project Budget.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.3, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include revised written outline specifications that identify major materials and systems and establish in general their quality levels. The Architect shall endeavor to coordinate the mechanical, electrical, plumbing, fire protection, fire alarm, elevators, parking, energy conservation, lighting, telecommunications, audio/visual system, security, streetscaping, and landscaping of the Project in sufficient detail to establish final sizing criteria and capacities, square footage requirements, required chases and risers, clearances, equipment layout, and other related components for the Project.

§ 3.3.2 The Architect understands that the Owner intends to appoint the Builder during the schematic design phase and that the Architect and the Builder shall work in close cooperation with each other as is described generally in Section 3.1.2.5 of this Agreement. 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 Initial Project Budget, schedule (i.e. to address the potential impact of long-lead purchasing items included in the design) and constructability. The parties envision that this will require a level of effort beyond that required in a traditional design-bid-build project delivery method and that, among other things: (i) the finish levels will be defined to a greater level of detail; and (ii) the mechanical, electrical and plumbing and other building systems will be defined to a greater level of detail. 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. During this phase, the Architect shall work closely with the Builder to ensure that the various bid packages contain the level of detail required by the Builder to provide a GMP at the end of the Design Development phase. It is anticipated that this process will involve a series of meetings and working sessions with regard to each of the bid packages.

§ 3.3.3 At the end of the design development phase, the Builder shall undertake an independent cost estimate. If such cost estimate exceeds the Owner's budget requirement, the Architect shall collaborate to revise, value engineer, and refine the documents as necessary to meet the budget prior to receiving approval to proceed to Construction Documents, provided, however, the Owner cooperates with the Architect and the schedule is adjusted as appropriate. As part of the Design Development phase, the Architect shall prepare all documents necessary for supporting submissions to Governmental Authorities. At the end of this process, the Builder shall prepare a budget in the CSI format which allocates the Cost of the Work by trade subcontractor (such budget, the "Design Development Budget"). The Design Development Budget shall be consistent with the Initial Project Budget unless the Owner has authorized an increase in the Project's budget.

§ 3.3.4 At a minimum and in addition to any services described above, the Architect shall provide the following services:

- 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 community. Meet with review 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.

§ 3.3.5 The following deliverables are required during this phase.

- a. 35% (minimum progress) documents for all technical disciplines, drawings and specifications.
- b. 50% design development progress printing.
- c. A reconciliation report that addresses issues raised by the Builder as a result of the 50% progress printing.
- d. CFA submission materials; meeting and presentations to CFA as required.
- e. Updated Project Budget and Schedule.

§ 3.3.6 The A/E shall be required to work with the 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. The A/E shall also prepare a 50% progress printing which shall be distributed to the Department, its Program Manager and the Builder. This 50% progress printing shall serve as the basis for a cost update conducted by the Builder. Special attention shall be given to the coordination of MEP systems with structural systems.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 It is contemplated that the Architect will perform construction document phase services after this Agreement is assigned to the Builder. 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. 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, the Architect shall prepare Construction Documents for the Owner's approval. The parties anticipate that with regard to those systems that are being purchased on a design assist basis the Architect will not be required to develop detailed Construction Documents and that the design assist 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. The Owner and Architect acknowledge that in order to construct the Work the Builder will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4. 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.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 [Intentionally Omitted].

§ 3.4.4 The Architect shall meet with the Builder as and when requested (but not more frequently than twice a month) to review the design, its constructability, and compliance with the Owner's budget. At a minimum, an over-the-shoulder design review shall be conducted when each construction document package is 75% complete.

§ 3.4.5 If the budget for any trade subcontract package in the Design Development Budget is exceeded by the lowest bona fide bid or negotiated proposal by less than ten percent (10%) and if so directed by the Owner, the Architect shall be required to work with the Builder and its subcontractors to develop value engineering solutions that return the trade subcontract to the Design Development budget for that trade subcontract package at no additional cost to the Owner.

§ 3.4.6 If the Owner directs the Architect to revise the construction documents in accordance with Section 3.4.5, the Architect, without additional compensation, shall modify the documents for which the Architect is responsible under this Agreement as necessary to comply with the budget for the Cost of the Work. The modification of such documents shall be the limit of the Architect's responsibility under this Section 3.1.2.

§ 3.4.7 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 for bidding purposes.
- b. Prepare application and submit documents for building permit.
- c. Prepare and submit early-release excavation, foundations, concrete and steel packages, if needed.

§ 3.4.8 The A/E shall provide the following deliverables during this phase:

- a. Drawings and specifications, ready for bidding, hard copy and electronic
- b. A reconciliation report for each package that addresses issues raised by the Builder as a result of the 50% progress printing
- c. At least 2 set of drawing updates that update the early packages to reflect changes and/or evolution of the design that occur in later packages.
- d. The A/E shall be required to address issues raised by the Code Official during the permit review process.
- e. Final estimate of construction cost

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall work with the Owner and the Builder during the Design Development phase to establish a set of drawings and specifications (the "GMP Basis Documents") that will serve as the basis for the Builder's GMP. The Architect understands that such documents will have a greater level of detail and specificity than typically found in Design Development documents under a traditional design-bid-build project delivery method and that they may

include performance specifications that will be used to purchase key trade subcontractors on a design assist basis. In the event the Builder intends to purchase the MEP or other building systems on a design assist basis, the Architect shall be required to: (x) provide a detailed description of the system and its general layout; (y) provide a detailed performance specification that contains detail and performance criteria that are acceptable to the Owner; and (z) review submissions from subcontractors (before while developing the GMP and thereafter) to determine whether they comply with the performance standard). 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 Architect further understands and agrees that value engineering and other design changes may be required during the Design Development phase in order to develop a design that meets the Owner's budget requirements. The Architect understands and agrees that it shall be required to work with the Owner and the Builder in order to develop a design that meets the Owner's budget requirement 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.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 The Architect shall without additional compensation and as part of the design phase services assist the Builder in developing such information as is necessary to bid and negotiate trade subcontracts as part of the GMP development process. To the extent that subcontracts are purchased after the GMP is agreed upon, the Architect shall prepare such bid packages as may be required by the Builder. The Architect's services relative to the bidding process shall include, but not be limited to:

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

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Builder as set forth below and in AIA Document A201™-1997, General Conditions of the Contract for Construction. If the Owner and Builder modify AIA Document A201-1997, those modifications shall be enforceable under this Agreement only to the extent they are consistent with this Agreement or approved in writing by the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. At the end of the design development phase, the Architect shall meet with the Builder and the Owner and, collectively, they shall develop a plan for the manner 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.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Builder's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Builder or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.4 Duties, responsibilities and limitations of authority of the Architect under this Article 3.6 shall not be restricted, modified or extended without written agreement of the Owner and Architect.

§ 3.6.1.5 The Architect shall review properly prepared, timely requests by the Builder for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Architect and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.

§ 3.6.1.6 If deemed appropriate by the Architect and Owner, the Architect shall on the Owner's behalf prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Builder.

§ 3.6.1.7 [Intentionally Omitted]

§ 3.6.1.8 [Intentionally Omitted]

§ 3.6.1.9 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.

§ 3.6.1.10 In addition, 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 (if authorized)

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site and attend construction progress meetings at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect, while under contract to the Owner, shall, after notification of the Owner, have the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Builder, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 [Intentionally Omitted]

§ 3.6.2.4 [Intentionally Omitted]

§ 3.6.2.5 [Intentionally Omitted]

§ 3.6.3 [INTENTIONALLY OMITTED; WAS CERTIFICATES FOR PAYMENT TO CONTRACTOR]

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 As part of the Construction Administration Plan, the Builder and the Architect shall develop a mutually agreeable, written submittal schedule for such package. The Architect shall review and respond to requests for information (RFIs and submittals) on average within seven (7) calendar days for RFIs and fourteen (14) calendar days for submittals, of initial receipt; provided, however, that the Architect agrees that certain documents will require quicker processing and the Architect shall use its reasonable best efforts to accommodate shorter timelines. Builder agrees that certain documents will not be able to be processed in this timeframe and will work with the Architect to accommodate such longer timeframe when possible.

§ 3.6.4.2 In accordance with the Construction Administration Plan, the Architect shall review and approve or take other appropriate action upon the Builder's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Builder's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Builder to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Builder that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Prior to the time this Agreement is assigned to the Builder, the Architect and the Builder shall agree upon on a process and the timeframes governing the manner in which submittals will be handled.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Builder in accordance with the requirements of the Contract Documents.

§ 3.6.5 [INTENTIONALLY OMITTED; WAS CHANGES IN THE WORK]

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall perform Project close-out administration services consisting of:

- (a) recommendation to the Owner and the Builder and the official punch list to the Owner;
- (b) receipt, review (nonlegal, for compliance with the Contract Documents), and transmittal of all other close-out documentation; and
- (c) thorough punch list inspection in customary detail and complete follow-up punch list items to ascertain the status of completion by the Builder of the punch list.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner's Designated Representative to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Builder of Work to be completed or corrected.

§ 3.6.6.3 [Intentionally Omitted]

§ 3.6.6.4 [Intentionally Omitted]

§ 3.6.6.5 The Architect shall meet with the Owner or the Owner's Designated Representative promptly after Substantial Completion to review the need for facility operation services. Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner and the Owner's Designated Representative to review the facility operations and performance and the make appropriate recommendations to the Owner.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Only those Additional Services listed below as "not provided" or "Owner" are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming	Owner	
§ 4.1.2 Multiple preliminary designs	Not provided	
§ 4.1.3 Measured drawings	Not provided	
§ 4.1.4 Existing facilities surveys	Not provided	
§ 4.1.5 Site Evaluation and Planning (B203™-2007)	Architect	
§ 4.1.6 Building information modeling	Architect	
§ 4.1.7 Civil engineering	Architect	
§ 4.1.8 Landscape design	Architect	
§ 4.1.9 Architectural Interior Design (B252™-2007)	Architect	
§ 4.1.10 Value Analysis (B204™-2007)	Architect	
§ 4.1.11 Detailed cost estimating	Architect	
§ 4.1.12 On-site project representation	Not provided	
§ 4.1.13 Conformed construction documents	Not provided	
§ 4.1.14 As-Designed Record drawings	Not provided	
§ 4.1.15 As-Constructed Record drawings	Not provided	
§ 4.1.16 Post occupancy evaluation	Not provided	
§ 4.1.17 Facility Support Services (B210™-2007)	Owner	
§ 4.1.18 Tenant-related services	Owner	
§ 4.1.19 Coordination of Owner's consultants	Owner	
§ 4.1.20 Telecommunications/data design	Architect	
§ 4.1.21 Security Evaluation and Planning (B206™-2007)	Not provided	
§ 4.1.22 Basic Commissioning (B211™-2007)	Architect	
§ 4.1.23 Extensive environmentally responsible design	Not provided	
§ 4.1.24 LEED® Certification (B214™-2007)	Architect	
§ 4.1.25 Historic Preservation (B205™-2007)	Architect	
§ 4.1.26 Furniture, Furnishings, and Equipment Design (B253™-2007)	Architect	

§ 4.2 [Intentionally Omitted].

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 [intentionally omitted]
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 [intentionally omitted]
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 [intentionally omitted]
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 [Intentionally Omitted]

§ 4.3.3 [Intentionally Omitted]

§ 4.3.4 [Intentionally Omitted].

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 [Intentionally Omitted]

§ 5.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Builder to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.5 The Architect shall provide as part of its basic services complete surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements,

encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.6 [Intentionally Omitted]

§ 5.7 [Intentionally Omitted]

§ 5.8 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.9 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests; **provided, however**, that nothing herein shall be construed to require Owner to pay for legal, accounting, or other services provided for the protection or benefit of Architect. The Architect, without additional compensation, shall cooperate fully with the Owner and Owner's counsel and other representatives with respect to all litigation, mediation, and other legal proceedings which may arise in connection with the Project and make its personnel available to testify in connection therewith, whether oral testimony or written interrogatory and to explain and identify to Owner or Owner's counsel and other representatives any books, records, and other documents related to the Project for work related to or arising out of Architect's Services.

§ 5.10 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.11 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.12 [Intentionally Omitted]

§ 5.13 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Builder to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 [Intentionally Omitted]

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Cost Consultant's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Cost Consultant, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall:

- .1 give written approval of an increase in the budget for the Cost of the Work;

- .2 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .3 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.2, the Architect, without additional compensation, shall incorporate the required modifications in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility as a Basic Service under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

ARTICLE 7 OWNERSHIP OF DOCUMENTS

§ 7.1 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 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 innumerable 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 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 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 8 within the period specified by applicable law, but in any case not more than 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 8.1.1.

§ 8.1.2 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 as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. 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.

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers, agents and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement.

§ 8.1.4 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, except as specifically provided in Section 9.7.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint but, in such event, mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

[☐ »] Arbitration pursuant to Section 8.3 of this Agreement

[☒ »] Litigation in the District of Columbia Contract Appeals Board

§ 8.2.5 All references to "Arbitration" in the 1997 edition of the AIA A201 General Conditions are deleted and replaced by the dispute resolution terms and conditions set forth in this AIA B103 Agreement, as modified between the Owner and Architect.

§ 8.3 [INTENTIONALLY OMITTED].

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 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.

§ 9.2 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.

§ 9.3 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.

§ 9.4 [Intentionally Omitted].

§ 9.5 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.

§ 9.6 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 9.7.

§ 9.7 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.

§ 9.8 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.

§ 9.9 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 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the laws of the District of Columbia.

§ 10.2 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.

§ 10.3 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

§ 10.4 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.

§ 10.5 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.

§ 10.6 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.

§ 10.7 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.

§ 10.8 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.

§ 10.10 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 its negligent performance of the Work.

§ 10.11 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 failure to perform to agreements with third parties made pursuant to this Agreement.

§ 10.12 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.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

« The Architect shall be paid a fixed fee of [INSERT AMOUNT] (\$NUMBER) for all services necessary to develop an acceptable set of GMP basis documents. These services include, but are not necessarily limited to, conceptual design (Section 3.1), schematic design (Section 3.2), design development (Section 3.3) and bidding and negotiation (Section 3.5). Such fixed fee is allocated to the various phases as indicated in Section 11.5.

The Architect has also quote a fixed fee of [INSERT AMOUNT] (\$NUMBER) for construction documents (Section 3.4). It is understood that compensation for Construction Document Phase services shall be negotiated by the Owner and the Architect during the design development phase. It is agreed and understood that the exact level of compensation for such services shall depend upon the level of design effort that will be required on the part of the Architect. In making this determination, the consideration will be given to which systems are being purchased on a design assist basis and the level of detail in the drawings that are required by the Design-Builder.

Monthly payments shall be made to the Architect on the percentage complete basis. In addition, to the fixed fee there are established the following allowances:

- A Reimbursable Expense Allowance in the amount of [INSERT AMOUNT] (\$NUMBER).
- An Allowance for Consultant Site Visits pursuant to Section 3.6.1.9.a in the amount of [INSERT AMOUNT] (\$NUMBER).

For Construction Administration Services, the Architect shall be reimbursed at the hourly rates set forth in **Exhibit C**. 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. The Architect shall forfeit such retention if (i) the Project is not Substantially Complete on or before July 15, 2015; or (ii) the final Project cost exceeds the approved budget for the Project developed at the conclusion of the Design Development phase which budget shall include a Project

contingency of at least seven percent (7%). The determination as to whether these goals have been achieved shall be measured irrespective of fault, and the Architect shall only be entitled to earn the retention and the five percent (5%) incentive fee 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. »

§ 11.2 [Intentionally Omitted].

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner and the Architect shall agree upon compensation for such services prior to those services being rendered by the Architect.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect without markup of any kind.

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Concept Design Phase		percent (%)
Schematic Design Phase	« »	percent (« »	%)
Design Development Phase	« »	percent (« »	%)
Construction Documents Phase	« »	percent (« »	%)
Total Basic Compensation	one hundred	percent (100	%)

The Owner acknowledges that with an accelerated Project delivery or multiple bid package process, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6 [Intentionally Omitted]

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, during the Construction Administration Phase are set forth on **Exhibit C**. Such rates shall be fixed and not subject to further adjustment for the expected period of this Agreement. Compensation for such Construction Administration Phase services shall be computed by multiplying the number of hours directly spent on the Project by the applicable hourly billing rate listed below.

« To the extent 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. »

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- 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 [Intentionally Omitted]
- 3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- 4 Reproductions, plots, standard form documents;
- 5 Postage, handling and delivery;
- 6 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;

- .7 Renderings, models, and mock-ups, requested by the Owner;
- .8 [Intentionally Omitted]
- .9 [Intentionally Omitted]
- .10 [Intentionally Omitted]
- .11 Any other similar expenditures directly related to the Project and reasonably incurred after first receiving written approval of the Owner.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants without markup of any kind.

§ 11.9 [Intentionally Omitted].

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 [Intentionally Omitted].

§ 11.10.2 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 Prompt Payment Act.

§ 11.10.3 Disputes or questions regarding a portion of an invoice shall not be cause for withholding payment for the remaining portion of the invoice. Owner agrees that invoices are correct, accurate, and binding on Owner unless Owner, within ten (10) days of receipt of such invoice, notifies Architect in writing of alleged inaccuracies or discrepancies in the services performed as indicated on the invoices.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

§ 12.1 Special terms and conditions that modify this Agreement are as follows:

« § 12.1.1 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.

§ 12.1.2 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 § 2-308.14.

§ 12.1.3 Retention of Records: Inspections and Audits.

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

§ 12.1.3.2 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.

§ 12.1.3.3 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.

§ 12.1.3.4 The Architect agrees to include the wording of this Section 12.1.3 in all its subcontracts in excess of five thousand dollars (\$5,000.00) that directly relate to Project performance.

§ 12.1.3.5 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.

§ 12.1.3.6 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.

§ 12.1.3.7 The Architect shall preserve all records described herein from the effective date of the Contract 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.

§ 12.1.4 Gratuities and Officer Not to Benefit Provisions.

§ 12.1.4.1 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 Contract 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 Contract and may pursue such other rights and remedies provided by law and under the Contract.

§ 12.1.4.2 In the event the Contract is terminated as provided in Section 12.1.4.1, 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 Contract 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.

§ 12.1.4.3 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 Contract 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 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 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.

§ 12.1.5 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.

§ 12.1.6 Anti-Deficiency Act. The Owner's obligations and responsibilities under the terms of the Contract and the Contract Documents 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 Contract nor any of the Contract Documents 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.**

§ 2.10.7 Economic Inclusion.

§ 2.10.7.1 LSDBE Utilization.

.1 The Architect shall ensure that Local, Small and Disadvantaged Business Enterprises will participate in at least 50% of the Contract. Of this amount, thirty-five percent (35%) must be awarded to entities that are certified as either Small or Disadvantaged Business Enterprises by the District of Columbia Local Business Opportunity Owner 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.

.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.

.3 Neither the Architect or a Subconsultants 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.

§ 12.1.8 Equal Employment Opportunity and Hiring of District Residents.

§ 12.1.8.1 The Architect shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

§ 12.1.8.2 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.

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

§ 12.1.9 First Source Agreement.

§ 2.1.9.1 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.

§ 12.1.9.2 The Architect and its constituent entities shall comply with subchapter III of Chapter 11 Title 1, and subchapter II of Chapter 11 of Title 1 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The Builder 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.

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

§ 12.1.9.4 The Architect shall be responsible for: (i) including the provisions of this Section 2.10.9 in all subcontracts; (ii) collecting the information required in this Section 2.10.9 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 2.10.3.

§ 12.1.10 Key Personnel. Attached as **Exhibit E** 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 the 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.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 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.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B103™–2007, Standard Form Agreement Between Owner and Architect
- .2 Other documents:

« Exhibit A – Owner's Program
Exhibit B – Project Schedule
Exhibit C – Schedule of Hourly Rates
Exhibit D – LSDBE Plan
Exhibit E – Key Personnel »

This Agreement entered into as of the day and year first written above.

OWNER

ARCHITECT

(Signature)

« »« »

(Printed name and title)

(Signature)

« »« »

(Printed name and title)

