

**AGREEMENT**  
**FOR**  
**ARCHITECTURAL /ENGINEERING SERVICES**

**BY AND BETWEEN**

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

**AND**

**[A/E]**

**THERAPEUTIC RECREATION CENTER MODERNIZATION**

**DCAM-19 -AE- RFP-0064**

**AGREEMENT BETWEEN OWNER AND ARCHITECT/ENGINEER FOR  
ARCHITECTURAL/ENGINEERING SERVICES FOR  
THERAPEUTIC RECREATION CENTER MODERNIZATION**

**DCAM-19-AE- RFP-0064**

**THIS AGREEMENT** (“Agreement” or “Contract”), effective on the date of the last signature of the Parties (“Effective Date”), is made by and between the **DISTRICT OF COLUMBIA GOVERNMENT**, acting by and through its **DEPARTMENT OF GENERAL SERVICES** (“District”, “DGS” or the “Department”) and **[INSERT CONTRACTOR]** being duly organized under the laws of Insert State of incorporated, and with a place of business at Insert the address (the Architect/Engineer” or “A/E”, and collectively with the Department, the “Parties”, or individually, the “Party”).

**WITNESSETH:**

**WHEREAS**, the Department issued a Request for Proposals (“RFP”) dated May 30, 2019 for architectural/engineering services for the modernization of the Therapeutic Recreation Center (“TR Center”) located at 3030 G Street SE, Washington DC 20019 (the “Project”);

**WHEREAS**, the existing facility constructed in the 1980s is approximately 22,000 square feet. The site is located between Minnesota Avenue SE, Massachusetts Avenue SE, and Fairlawn Avenue SE. It is bounded on the north by wooded land with residential properties beyond. To the east and south are residential properties with Fort Dupont Park further east. To the west is Anacostia Freeway (295) and Anacostia Park with the Anacostia River beyond. The TR Center sits on approximately 7.43 acres and is comprised of two one-story buildings, and exterior amenities including a mini golf course, playground, basketball court, baseball diamond, walking trails, parking and an open field and picnic area. The A/E shall design the demolition of the existing Therapeutic Recreation Center and design the new Therapeutic Recreation Center facility to meet the Department’s programmatic requirements;

**WHEREAS**, the A/E submitted a proposal dated [INSERT], in response to the Department’s RFP solicitation to provide architectural/engineering services;

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

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

**WHEREAS**, the Department intends to procure a Construction Manager at Risk (“CMAR”) during the schematic design phase of the Project;

**WHEREAS**, The A/E is required to deliver to the Department a permit set of construction documents to serve as the basis for trade bidding by the CMAR to develop Guaranteed Maximum Price (“GMP”) to modernize Therapeutic Recreation Center;

**WHEREAS**, the Department requires that the Project, including the requisite construction, be Substantially Complete by September 22, 2021 (the “Substantial Completion Date”);

**WHEREAS**, the Department has retained the services of a Program Manager (the “Program Manager”) to advise it concerning the Project; and

**WHEREAS**, the Parties entered into a letter contract dated [INSERT], 2019 (the “Letter Contract”) pursuant to which the A/E was authorized to provide preliminary services in furtherance of the Project.

**NOW, THEREFORE**, the Department and A/E, for the consideration set forth herein, mutually agree as follows.

## **ARTICLE 1 GENERAL PROVISIONS**

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

**Section 1.2 Project Description.** The modernization of the Therapeutic Recreation Center (“TR Center”) located at 3030 G Street SE, Washington DC 20019 consists of a full range of architectural and engineering services for the demolition and rebuild of the Therapeutic Recreation Center (“TR Center”). The TR Center sits on approximately 7.43 acres and is comprised of two one-story buildings, and exterior amenities including a mini golf course, playground, basketball court, baseball diamond, walking trails, parking and an open field and picnic area. The existing facility constructed in the 1980s is approximately 22,000 square feet. The site is located between Minnesota Avenue SE, Massachusetts Avenue SE, and Fairlawn Avenue SE. It is bounded on the north by wooded land with residential properties beyond. To the east and south are residential properties with Fort Dupont Park further east. To the west is Anacostia Freeway (295) and Anacostia Park with the Anacostia River beyond. The buildings house an indoor therapeutic pool, pump room, locker rooms, classrooms, a weight room, a reading room/ library, and several administration offices. The selected A/E will be required to provide a full range of architectural, engineering and consulting services necessary to demolish, modernize and rebuild the TR Center to meet the Department’s programmatic requirements.

The A/E is required to provide all of the design services necessary to implement the Project and to produce the required deliverables. The design shall incorporate the following facilities and site amenities:

1. Therapeutic Recreation Center: The new facility is envisioned to be the premier Therapeutic Recreation Center in the District and region. The TR Center is to be an all-inclusive facility catering to people of all ages and abilities. It is important that the facility can accommodate DC's large population of individuals with special needs while still catering to non-disabled users and the immediate community. The programs and amenities will focus on users with cognitive and physical disabilities; seniors; and inclusive day camps, but also offer inclusive recreational and wellness opportunities. The Therapeutic Recreation Center should incorporate a comprehensive approach to health and wellness programs and amenities.

The existing recreation center is to be demolished or renovated and a new all-inclusive/ ADA accessible recreation center built to accommodate program requirements, incorporating biophilic design elements to bring nature into the built environment. The goal is to obtain LEED Platinum certification for the new facility. The new recreation center should include a therapeutic pool, locker rooms, family changing rooms, gym, fitness center, activity rooms, library, technology lounge, dining and kitchen, functional space and senior center.

2. Therapeutic Pool and Whirlpool: The TR Center shall include a new therapeutic pool that can accommodate program requirements with a beachfront/zero depth entry access, wheel chair lifts as required and rails to provide assistance to those with disabilities.

3. Playground: The existing playground equipment shall be dismantled and removed. The TR Center shall include two, ADA accessible sensory playgrounds for both younger and older children; and, provide a stable and fully ADA accessible surface at both playgrounds.

4. Splash Pad: The TR Center shall include a new ADA accessible water feature with a splash pad. The splash pad equipment may include, but is not limited to, ground water jets, a slide, climbable play equipment, dumping buckets, and squirting jets.

5. Basketball Court: The TR Center shall include resurfacing of the basketball court and new basketball court equipment, fencing, gates and lighting to adequately illuminate the basketball court.

6. Baseball Diamond: The TR Center shall include a regraded, ADA accessible and re-sodded baseball field. In addition, the TR Center shall include new baseball seating as well as new fencing and backstop.

7. Community Trails: The TR Center shall include re-graded community trails with ADA accessibility.

8. Picnic Pavilion: The TR Center shall include a picnic pavilion with benches for event hosting.

9. Site Furnishings: The TR Center shall include new ADA accessible picnic tables, benches, trash cans, bike racks, and drinking fountains by playing fields.

10. Utilities: The TR Center shall include utility installation, including electric and storm-water management, as required by the District Department of Energy & Environment (“DOEE”).

11. Parking Lot: The TR Center shall include a re-graded and restriped parking lot, providing additional parking spaces to include a sufficient amount of Handicap parking spaces.

12. Add Alternate for a Dog Run: The TR Center shall include an enclosed dog run with appropriate fencing that is at least five (5) feet in height and includes a double-gated entryway area. The design should include DC Department of Parks and Recreation (“DPR”) standard dog park surfacing and include a water spigot and dog fountain.

**Section 1.3 Program Manager.** At its discretion, the Department may hire a Program Manager (or “PM”) to provide certain program management functions. The Program Manager shall, act solely for the benefit of the Department, not the A/E. The Program Manager shall not have the authority to modify any of the rights or obligations of the Department or the A/E pursuant to this Agreement, or to issue Change Orders, Contract Modifications or Change Directives. **The A/E hereby acknowledges and agrees that only a duly authorized contracting officer shall have the authority to issue Change Orders, Contract Modifications or Change Directives on the Department’s behalf. As of the date that this Agreement is signed, the Department’s duly authorized contracting officers are as set forth in Section 1.9 of the Agreement.** Unless otherwise provided herein, all deliverables hereunder shall be submitted to the PM.

**Section 1.4 General Description of A/E’s Duties.** It is the intent of the Parties that the A/E provide all architectural, engineering and other services necessary to develop a design for the Project that is consistent with the Department’s programmatic, budgetary and schedule requirements for the Project, and to produce the required deliverables. The A/E shall provide all required services in a timely manner to permit DPR to occupy the facility no later than the Substantial Completion Date. Without limiting the generality of the foregoing, it is understood and agreed that the A/E shall be responsible for all aspects of the design. The A/E’s services shall include, but are not limited to: (i) engineering services including the civil, structural, mechanical, electrical and plumbing engineering disciplines as well as any appropriate specialty sub-consultants; (ii) the design of FF&E; (iii) providing a site survey; (iv) engaging the services of an industrial hygienist or similar specialist to survey existing structures on the Project Site so as to identify hazardous materials that require abatement in the existing building; (v) sustainable design initiatives; (vi) engaging the services of a geotechnical engineer; and (vii) engaging, consulting with, advising, and coordinating with the CMAR such that the Project is Substantially Complete by the Substantial Completion Date, unless otherwise subsequently amended herein or in the CMAR’s agreement with the Department for completion of the Project.

The A/E shall be responsible for the professional quality, technical accuracy, and the coordination of all studies, reports, recommendations, and other deliverables furnished by the A/E under this Agreement. The A/E shall, without additional compensation, correct or revise any non-conforming deliverables that are a result of errors and or omissions in its deliverables. The A/E 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 A/E shall also perform its services as expeditiously as is consistent with such professional skill and

care and the orderly progress of the Project, review laws, codes, and regulations applicable to the A/E's services and respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

The A/E shall also work with the CMAR selected by the Department in an active and collaborative manner to address schedule, constructability, budget, and value engineering issues.

The A/E shall manage the A/E's services, consult with the Department, provide requested services, communicate with members of the Project team and report progress to the Department.

Building Information Modeling (BIM) is required to be used throughout the facility lifecycle, including all project phases from project planning and concept design through construction, as built and into facilities management. The A/E must work collaboratively with all project stakeholders. It is expected by DGS that all team members are to be committed to the use of BIM in the Project, share their ideas of BIM expertise with the team, provide BIM data as requested by other team members, look for cost savings and schedule improvements during the entire Project duration, and endeavor to leave as a legacy a fully updated, as built, facility management ready building information model. Additional details regarding requirements for incorporating BIM into the project are outlined in **Exhibit J**.

**Section 1.5 Phases.** In general, the A/E's work shall include services as fully described in Articles 2 and Article 3 of this Agreement. These services include, but not limited to, (i) development of a Permit Set of design documents for the Project that will serve as the basis of the CMAR's GMP for the Project; (ii) furthering the design documents for the Project into an issued-for-construction set of documents; and (iii) providing construction administration services. The services to be provided under Article 2 constitute the preliminary design and design phase services to be performed by the A/E (the "Design Phase Services"). The services to be provided under Article 3 constitute the construction documents and construction phase services to be provided by the A/E (the "Construction Phase Services").

**Section 1.6 Project Delivery Method.** The Department intends to implement the construction of the Project through a CMAR delivery method. The Department will engage a CMAR contractor ("Contractor") who will coordinate with the selected A/E to ensure that the design developed by the A/E is consistent with the Department's budget and schedule for the Project. The Department envisions that a permit set of construction documents shall be completed, at which point the CMAR will provide a GMP based upon the approved permit documents. It is contemplated that the Project's GMP will be finalized in sixty (60) weeks after the A/E is engaged.

The A/E will work directly for the Department by supporting design oversight and implementation throughout the design and construction phases.

The A/E understands it may be required to prepare multiple bid packages, which may include, but is not necessarily limited to (i) a foundation-to-grade/excavation package; (ii) a hazardous materials abatement package; and (iii) an interior demolition package. The A/E further acknowledges that its pricing includes sufficient funding to accommodate the division of the work into multiple packages and to address the coordination issues associated with such a delivery method as well as to

meet the milestone schedule outlined in Section 1.7.

**Section 1.7 Schedules.** An estimated schedule for the Project is set forth below. The A/E shall provide the services required hereunder in accordance with the following schedule:

- Estimated Notice of Award - on or about August 13, 2019 (projected)
- Estimated Issuance of NTP - on or about August 16, 2019 (projected)
- Findings & Recommendations Presentation - 5 weeks after Notice of Award
- Submit Concept Design - 10 weeks after Notice of Award
- Issue CMAR Contractor RFP - 12 to 16 weeks after Notice of Award
- Pre-Proposal Conference (CMAR Contractor) - 16 to 17 weeks after Notice of Award
- Submit Schematic Design - 22 weeks after Notice of Award
- Notice of Award & Notice to Proceed (CMAR Contractor) - 26 to 30 weeks after Notice of Award
- Submit 100% Design Development - 34 weeks after Notice of Award
- Early Release Packages - 40 weeks after Notice of Award
- Submit Permit Set to DCRA - 50 weeks after Notice of Award
- Submit 100% CD - 56 weeks after Notice of Award
- Trade Bidding - 40 to 58 weeks after Notice of Award
- GMP Finalized - 60 weeks after Notice of Award
- GMP Approved by Council - 68 weeks after Notice of Award
- Substantial Completion Date - September 22, 2021

**Section 1.8 Time is of the Essence.** Time is of the essence in the performance of the A/E's obligations under this Agreement.

**Section 1.9 Department's Designated Representatives and Contracting Officers.** The Department's representatives and contracting officers for this Project are:

George Lewis  
Chief Contracting Officer  
Department of General Services  
2000 14<sup>th</sup> Street, NW  
Washington, DC 20009  
[george.lewis@dc.gov](mailto:george.lewis@dc.gov)

Franklin Austin  
Contracting Officer  
Department of General Services  
1250 U Street, NW 3rd Floor  
Washington, DC 20009  
[Franklin.Austin5@dc.gov](mailto:Franklin.Austin5@dc.gov)

Although day-to-day communications with the A/E shall be routed through the Program Manager, only the individuals specified in this Section 1.9 have the authority to alter the terms of this Agreement; Without limiting the generality of the foregoing, **it is understood and agreed that the Program Manager shall not have the authority to: (i) increase the A/E's fee or the not-to-exceed amount established herein; (ii) authorize any additional work; or (iii) increase the overall Project budget or the specified design-to-budget.**

**Section 1.10 A/E's Representative.** The A/E representative for this Project shall be:

[INSERT]

The A/E hereby represents and agrees that the representative specified in this Section 1.10 has the full legal authority to bind the A/E and to agree to changes to the terms of this Agreement.

**Section 1.11 Project Budget.** The A/E has been advised that the District has a budget of \$37 million (including hard and soft costs) for the Work required to complete Project ("Budget"). The term "Work" refers to any and all work done in performance of the architectural and engineering services necessary, at any and all phases of the Agreement, to Fully Complete the Project. Such Budget is intended to cover soft costs, construction costs, FF&E, and the CMAR's fees and general conditions, and all cost estimates shall be prepared based on such components. Any increases to such Budget must be approved by the Department's Budget Representative. As used herein, the term "Budget Representative" shall mean a Contracting Officer. Any increase to the Budget shall only be effective if such authorization is signed by the Budget Representative. For the avoidance of doubt and as more fully set forth herein, the A/E further understands and agrees that it will manage its work in accordance with the budget requirements set forth herein.

**Section 1.12 Land Use Entitlements.** The Parties acknowledge that the design for the Project may require various land use approvals. The Parties anticipate that the approval of the following bodies may be required:

- a. Commission of Fine Arts
- b. Office of Zoning
- c. Office of Planning
- d. Historic Preservation Office
- e. National Park Service

The A/E shall endeavor to obtain from the bodies listed above the approvals required in order for the Project to proceed. The A/E shall utilize as part of their team necessary consultants, including land use attorneys to prepare such materials and make such presentations as necessary to obtain the required land use and entitlement approvals. The A/E acknowledges that the aspects of the design for the Project may need to be revised or redesigned in order to obtain such approvals, and the fixed fee set forth herein includes sufficient amounts for such redesign.

**Section 1.13 Permits.** In addition to securing land use approvals, the Parties anticipate that permits will be required from the following bodies:



- a. District of Columbia Department of Consumer and Regulatory Affairs
- b. District of Columbia Department of Energy and the Environment
- c. District of Columbia Department of Transportation
- d. District of Columbia Water and Sewer Authority

The A/E will be required to respond to comments provided by the regulatory agencies on the design documents as contemplated in this Agreement.

The A/E shall be responsible for preparing and submitting all of the required permit applications that are necessary to complete the Project. The A/E shall develop a list of the required permits and shall track the progress of all such permits through the review process. The A/E shall engage such permit expeditors as the A/E deems necessary or appropriate in light of the Project's schedule. The A/E shall be responsible for obtaining any building permits and clearances.

**Section 1.14 Letter Contract.** It is understood and agreed that certain of the design services required by this Agreement may have been performed by the A/E while the Letter Contract was in place, and the terms of the Letter Contract shall automatically terminate and shall merge into and be superseded by the Agreement on its Effective Date; and any services provided or work performed pursuant to the merged Letter Contract, and prior to the Effective Date of this Agreement, shall be governed by the terms and conditions of this Agreement.

**Section 1.15 Term of Agreement.** The term of this Agreement shall commence on the date of execution of the Letter Contract and Notice to Proceed ("NTP") by the Department, if applicable, or on the Effective Date, as defined in this Agreement, and such term shall continue to be in effect through the Substantial Completion Date, as achieved by the General Contractor.

**Section 1.15.1 Administrative Term.** The Agreement shall have an Administrative Term that runs from the Substantial Completion Date and shall terminate on the earlier of the following: (i) the Final Completion Date; or (ii) the A/E obtaining a minimum certification of LEED Platinum for the Project, which shall be no later than six months after the Substantial Completion Date, and submitting a Final release of Liens and Claims in the form and format required by the Contracting Officer. The Administrative Term is established for the sole purpose of permitting the District's Office of the Chief Financial Officer to process payments in the event any payments become due. Notwithstanding the foregoing, nothing herein shall be construed to: extend the Project Schedule or deliverable due dates; extend the Substantial Completion Date; extend the Final Completion Date; and, limit the Department's ability to assess liquidated damages thereon.

## **ARTICLE 2 DESIGN PHASE SERVICES**

### **Section 2.1 Program Verification and Concept Design Phase**

**Section 2.1.1 Services:** During this phase of the project A/E shall be required to develop a complete project program and a concept design. The concept design shall contain such detail as is typically

required for a concept design under standard industry practice. In general, the A/E shall be required to undertake the following tasks and submit any required deliverables to the Department:

- a. Meet with the Client Project Team to kick-off the Project. The purpose of the meeting will be to review the project scope, schedule, goals and objectives, and expectations for the Project. The selected team will also collect and present any data available for the Project and study area including, but not limited to previously completed studies, current survey data, aerial photography, GIS data, etc. This kickoff meeting shall also include the DGS Turnover Manager and a representative from the DGS Facilities and Maintenance team as outlined in the 2016 DGS Projects Turnover Protocol (**Exhibit A6**). Complete a Meeting Summary from this meeting and distribute to meeting attendees for review.
- b. Conduct workshops with DGS and DPR staff, as well as other stakeholders, in order to further clarify the goals, objectives, performance targets, service standards, responsibilities, and key agency actions necessary throughout the Department in order to fully realize the vision for the new community center. Provide report of findings.
- c. Conduct workshops with DGS and DPR staff, as well as other stakeholders to confirm program and verify facility requirements on a space-by-space basis.
- d. Attend and participate in community meeting(s) to update community regarding the Project.
- e. Coordinate with the HPO and other agencies, commissions, groups, etc. as required to assess and determine historic and/or archeological significance and requirements.
- f. Attend meetings and hearings if necessary. This includes an entitlement search to determine to identify any development restrictions if applicable, zoning research and coordination (if applicable) with all other land owners/agencies.
- g. Conduct a study of the storm water management changes/needs.
- h. Conduct life safety/building code analysis to verify compliance of design with all current applicable codes recently adopted by Washington, DC, including an ADA study to determine ways to go above and beyond typical ADA codes/measures to meet the desired program of DPR.
- i. Conduct LEED Workshops with design team and DGS representatives to identify sustainable design strategies to be included in design, to the greatest extent possible in an effort to achieve LEED Platinum certification
- j. Review 2014 reports included in **Exhibits A1-A5** and provide new surveys and environmental assessments of the existing facility to confirm locations and types of hazardous materials to be abated, or mitigated
- k. Request and receive hydrant flow test.

- l. Perform mechanical systems evaluation and recommend selection.
- m. Confer with audio-visual and acoustic consultants to establish design requirements for the Project.
- n. Confer with the Department's IT representatives/consultants to verify technological requirements for the Project.
- o. Attend meetings with DGS and DPR representatives to develop a preliminary phasing plan or swing plan for construction to maintain portions of the recreation center open at times.
- p. Design all new construction to qualify for LEED Platinum certification and should incorporate biophilic design.
- q. Draft Conceptual Plans
  - i. Based on input obtained through the process outlined in the Project Scope of Work, as well as information provided in the Program of Requirements, Stakeholder Interviews, and Public Workshop, the selected A/E will work to determine the Concept Design.
  - ii. Develop up to two (2) conceptual designs and cost estimates for the TR Center Project that provide alternatives to addressing the identified recreational, social, and cultural needs. The selected A/E will make any appropriate modifications based on DGS comments prior to presenting the concept(s) to the public.
- r. Conduct number of Community Workshops to present the plan alternatives to the neighborhood.
- s. Draft Final Conceptual Plan. The selected A/E will develop a draft final conceptual plan and cost estimate informed by the comments obtained throughout the program verification and concept design process. Submit the draft final conceptual site plan/response and cost estimate to DGS for review before presenting it to the public. The selected A/E will make any appropriate modifications prior to presenting the concepts to the public.
- t. Prepare and submit to the Department, during this phase, the below-listed deliverables. All such deliverables shall be subject to review and approval by the Department, and the Architect's pricing should assume that revisions may be required to these documents to address concerns raised by the Department and/or other project stakeholders.

**Section 2.1.2 Deliverables:** During this phase, the A/E shall prepare and submit to the Department the below-listed deliverables. All such deliverables shall be subject to review and approval by the Department, and the A/E's pricing shall assume that revisions may be required to these documents to address concerns raised by the Department and/or other Project stakeholders.

- i. Concept Plan

- A. Project Space Program
- B. Prepare two (2) conceptual floor plans and site plans. These shall include a comprehensive master plan for the site.
- C. Narratives for all major disciplines including civil, architectural, structural, mechanical, electrical, plumbing, and low voltage.
- D. Prepare two (2) cost estimates. Cost estimates should include a value engineering section for alternatives should the cost of construction need to be reduced.
- E. Final Concept Plan
  - ii. Project Schedule
  - iii. Topographic Survey
  - iv. Geotechnical Survey
  - v. Hazardous Materials Survey
  - vi. Phase 1 Environmental Assessment
  - vii. Environmental Impact Screening Form (“EISF”)
  - viii. Hydrant Flow Test
  - ix. Historic Resources Analysis
  - x. Entitlement and Zoning Analysis

**Section 2.1.3 Review and Revisions to Concept Design Submission.** The A/E shall submit the revised concept design submission to DGS for review and comment by DPR and DGS. Following review of the revised concept design submission by DPR and the Department, the A/E shall make any further revisions to the concept design submission as necessary to incorporate comments, feedback and other direction provided by DPR and the Department. The A/E’s pricing shall include such revisions, and such revisions shall not entitle the A/E to additional compensation.

**Section 2.2 Schematic Design Phase.** During this phase, the A/E shall be required to develop a schematic design that meets the program requirements set forth herein and the Department’s schedule and budget requirements for the Project, (*i.e.* designed to budget of \$25.9 Million hard construction costs). The schematic design shall contain such detail as is typically required for schematic design under standard industry practice.

**Section 2.2.1 Services:** In general, the A/E shall complete the following tasks during this phase:

- a. Utilize findings and final concept plans, perform site visits as necessary, attend and/or facilitate meetings with stakeholders and District staff to review program of requirements, required utilities, drainage, zoning and traffic needs where/when necessary to develop Schematic Design Documents. This includes coordination with the DGS Turnover Manager and a representative from the DGS Facilities and Maintenance in compliance with the 2016 DGS Projects Turnover Protocol.
- b. Continue development of phasing plan based on the approved CD, to accommodate the project’s needs.

- c. Obtain and review applicable District standards and guidelines for design (Design Criteria Manual, Unified Development Code, DPR Standards), where applicable, and provide a complete design that meets all applicable District codes. Coordinate security requirements with DC Protective Services Police Department (“PSPD”). Coordinate IT and Telecom requirements with DC Office of the Chief Technology Officer (“OCTO” and DC Net.
- d. Coordinate with Commission of Fine Arts (“CFA”)/ National Capital Planning Commission (“NCPC”) for review and approval as necessary.
- e. Coordinate with the HPO and other agencies, commissions, groups, etc. as required to assess and determine historic and/or archeological significance and requirements. Attend meetings and hearings if necessary.
- f. Coordinate a Preliminary Design Review Meeting (“PDRM”) with the Department of Consumer and Regulatory Affairs (“DCRA”), DOEE, Department of Transportation (“DDOT”), and DC Water.
- g. Coordination meetings with applicable utility Companies PEPCO and Washington Gas as well as Verizon should be conducted.
- h. Attend and participate in community meeting(s) to solicit feedback and update community regarding the Project.
- i. Act as scribe for all design related meetings. Distribute meeting minutes to all attendees.
- j. Progress LEED Certification work as required.
- k. Perform comprehensive Value Engineering effort (“VE”) utilizing 30% Plan Review submission. Provide report of findings to DGS. Conduct a meeting with DGS and other stakeholders as necessary to present and discuss VE options.
- l. Provide maintenance and repair costs services which includes conducting a 40 year life cycle cost analysis which includes a detailed list of replacement costs, an estimate of repair costs, anticipated energy costs, and a list of other relevant life cycle costs.
- m. Upload all design documentation and deliverables as required utilizing the online DGS Project Management Information System (Prolog Converge) and guidelines.
- n. Baseline Schedule bi-weekly update in the format requested by the Department.
- o. During this phase, the Architect will be required to prepare and submit to the Department the following deliverables. All such deliverables shall be subject to review and approval by the Department and the Architect’s pricing should assume that revisions may be required to these documents to address concerns raised by the Department and/or other project stakeholders.

- i. Schematic Design Documents- Three (3) hard copy sets, and one (1) electronic copy. (30% Complete Level).
  - A. Site plans, paving layouts, traffic circulation.
  - B. Digital Floor plans, building circulation, ADA requirements, etc.
  - C. Design Narrative
  - D. Plan-to-Program Comparison.
  - E. Exterior elevations, rendering and color palette.
  - F. Critical building sections and details.
  - G. Relevant right of way information such as easements, building set-backs etc.
  - H. Location of utilities and sizes.
  - I. Stormwater Management.
  - J. Preliminary MEP systems.
  - K. LEED Information as appropriate, including preliminary LEED Scorecard
  - L. Copies of all surveys and reports
  - M. Preliminary Specifications
- ii. Presentation and three (3) presentation boards for community meetings. Presentation boards shall be in full color and include at least one (1) 3-D rendering.
- iii. Updated Schedule
- iv. Cost Estimate
- v. 40 Year Life Cycle Cost Analysis
- vi. Phasing Plan/Swing Plan, if necessary
- vii. Value Engineering Report
- viii. Meeting minutes of Preliminary Design Review Meetings.
- ix. Memo response to all District comments on Schematic Documents.

**Section 2.2.2 Deliverables.** During this phase, the A/E will be required to prepare and submit to the Department the following deliverables. All such deliverables shall be subject to review and approval by the Department and the A/E's pricing should assume that revisions may be required to these documents to address concerns raised by the Department and/or other project stakeholders.

- a. Digital floor plans and site plan
- b. Preliminary building elevations, sections, and preliminary exterior material selections
- c. Plan-to-Program Comparison (Plan-to-Program Test Fit)
- d. Design Narrative
- e. Updated schedule and construction cost estimate
- f. Phasing Plan
- g. Register the project with USGBC to obtain LEED certification and pay all registration fees. Preliminary LEED Scorecard
- h. Value Engineering results.
- i. Meeting minutes of standing project meetings and Design Review Meetings

**Section 2.2.3 Schematic Design Budget Estimate.** While the preliminary schematic design submission is under review by DPR and the Department, the A/E shall prepare a detailed cost estimate of the schematic design with a magnitude of error of Not to Exceed +/- 10% of the Project hard cost budget. With regard to building systems (i.e. roofs, doors, HVAC, security, IT, etc.), the cost estimate shall be prepared on a “system” basis that identifies the key building systems or functions and allocates an estimated cost for each such system. The primary purpose of such cost estimate is to aid the Department and DPR in understanding the costs associated with key elements of the Project to better prioritize and manage the use of the funding allocated to this Project. The A/E will be required to break out the landscaping costs by Project element (e.g., pathways; playground; fountain; etc.) as directed by the Department. The cost estimate shall be submitted within two (2) weeks of the submission of the schematic design submission. The cost estimate shall be updated to reflect any changes resulting from DGS’ and DPR’s review of the schematic design and incorporated into the approved schematic design (such estimate, the “Approved Schematic Design Estimate”).

**Section 2.2.4 Review and Revisions to Schematic Design Submission.** The A/E shall submit the schematic design submission to DGS for review and comment by DGS and DPR. Following review of the schematic design submission by DPR and the Department, the A/E shall make revisions to the schematic design submission as necessary to incorporate comments, feedback and other direction provided by DPR and the Department. The A/E’s pricing shall assume that such revisions will be required, and such revisions shall not entitle the A/E to additional compensation.

**Section 2.2.5 Value Engineering Memorandum.** To the extent that the Schematic Design Budget Estimate exceeds the available funding or the A/E believes that there a value engineering ideas that could materially reduce the Project’s overall cost without adversely impacting the Project’s intended functionality, the A/E shall prepare and submit a memorandum that outlines potential value engineering ideas. Such memorandum shall be submitted to the Department no later than one (1) week after the submission of the Schematic Design Budget Estimate. The A/E shall meet with the Department as necessary to reach agreement on which, if any, of the value engineering options should be pursued. To the extent the Department directs the A/E to proceed with one or more of the value engineering options, the A/E shall revise its Schematic Design Budget Estimate to reflect the inclusion of such items, and to the extent requested by the Department, the schematic design shall also be revised to reflect such approved value engineering.

**Section 2.2.6** At the end of the Schematic Design Phase, the A/E shall seek and obtain in writing from the Department’s Budget Representative Confirmation of the hard cost construction budget, i.e. the Design-to-Budget. For the avoidance of doubt, in the absence of any adjustment to the previously approved Design-to-Budget by the Department’s Budget Representative, the A/E shall be required to design to the previously approved Design-to-Budget. The A/E shall use its best efforts to develop the design development documents and all subsequent design documents in a manner that is consistent with the Design-to-Budget.

**Section 2.3 Design Development Phase.** During this phase, the A/E shall progress the Schematic Design into Design Development Drawings (“DDs”). The DDs shall represent the logical development of the approved schematic design any oral or written feedback provided by the Department, and shall be advanced in a manner consistent with the Department’s budget and the

design objectives for the Project. Throughout the design development phase, the A/E shall work with the CMAR, and at a minimum, shall meet with the CMAR twice a month to discuss the status of the design, any key issues. A complete set of coordinated drawings between each discipline is expected to be submitted at this stage of the Design Phase.

**Section 2.3.1 Services.** The specific services required during this phase are:

- a. Coordination with the CMAR Contractor selected for this Project, and at a minimum shall meet with the CMAR Contractor twice a month to discuss the status of the design and key issues.
- b. Perform site visits as necessary and attend/facilitate meetings with District staff as necessary to develop and progress Design Development Documents. This includes coordination and review with DGS Turnover Manager and a representative from the DGS Facilities and Maintenance in compliance with the 2016 DGS Projects Turnover Protocol.
- c. Develop Design Development Documents including outline specifications for materials, systems and equipment, detailed dimensioned plans, wall sections, elevations and schedules. Incorporate VE options chosen by DGS.
- d. Prepare detailed and coordinated drawings and specifications for bidding purposes as needed by the CMAR.
- e. Complete code compliance analysis and drawings.
- f. Meet and coordinate with regulatory, reviewing, and stakeholder agencies as necessary. This includes the following actions:
  - i. Present the design to National Park Service (“NPS”), CFA, National Capital Planning Commission (“NCPC”), DC Office of Planning, and other regulatory agencies as required.
  - ii. Achieve CFA concept approval and NCPC preliminary approval
- g. Progress LEED Certification work as required
  - i) Register the Project with U.S. Green Building Council (“USGBC”) to obtain LEED certification and pay all registration fees.
- h. Coordinate furniture, fixtures, and equipment requirements (“FF&E”).
- i. Attend and participate in community meeting(s) to update community regarding the Project.
- j. Coordinate with utility companies and develop final utility plans as required.



- k. Act as scribe for all design related meetings. Distribute meeting minutes to all attendees.
- l. Upload all design documentation and deliverables as required utilizing the online DGS Project Management Information System (Prolog Converge) and guidelines.
- m. Baseline Schedule bi-weekly update in the format requested by the Department.
- n. During this phase, the Architect will be required to prepare and submit to the Department the following deliverables. All such deliverables shall be subject to review and approval by the Department and the Architect's pricing should assume that revisions may be required to these documents to address concerns raised by the Department and/or other project stakeholders.
  - i. Design Development Documents – three (3) hard-copy sets, and one (1) electronic copy. (60% Complete Level).
    - A. Site plans, paving layouts, traffic circulation, lighting, signage and utilities
    - B. Floor plans, Structural, Civil, Architectural, MEP, Fire Protection and landscaping
    - C. Exterior elevations, rendering and color palette
    - D. Building sections and details as required
    - E. Interior elevations, casework and millwork elevations as required
    - F. Playground equipment
    - G. Stormwater management
    - H. Food service or other equipment as required
    - I. LEED Information as appropriate
    - J. Specifications
  - o. Fully Developed Phasing/Swing Plan
  - p. Updated Schedule
  - q. Cost Estimate
  - r. Updates to the 40 Year Life Cycle Costs Analysis
  - s. Respond in writing to all District and Regulatory Agency comments on plans.
  - t. CFA Submission Materials
  - u. Community Presentation and a minimum of three (3) presentation boards. Presentation boards shall be in full color and include at least one (1) 3-D rendering.
  - v. Value Engineering Report or log if necessary.

**Section 2.3.2 Deliverables.** During this phase, the A/E shall prepare and submit the following deliverables for Department's review and approval. The A/E and/or other project stakeholders.

- a. 35% (minimum progress) documents for all technical disciplines, drawings, specs, and MEP calculations
- b. 50% design development progress printing

- c. A reconciliation report that addresses issues raised by the Contractor as a result of the 50% progress printing.
- d. CFA submission materials; meetings and presentations to CFA and other regulatory agencies as required.
- e. Updated LEED Scorecard
- f. Submit the A/E's revised estimate for the Cost of the Project with a Maximum +/- 5% of the applicable Project' budget.
- g. Plan-to-Program Comparison (Plan-to-Program Test Fit)
- h. Meeting minutes of standing Project meetings and Design Review Meetings

**Section 2.4 A/E Key Personnel.** The following individuals shall be considered key personnel: (i) the Design Principal; (ii) the Project Architect; (iii) the Project Designer; (iv) the lead MEP engineers; and (iv) the lead structural engineer, as identified in **Exhibit C**. The A/E will not be permitted to reassign any of the key personnel unless the Department approves the proposed reassignment and the proposed replacement. In the event that any of the key personnel become unavailable to work on this Project for reasons beyond the control of the A/E or its principal consultants (i.e. due to retirement, resignation, termination, etc.), the A/E shall propose a substitute for any such individual and obtain the Department's consent to such substitute.

All members of the A/E's Key Personnel in **Exhibit C** shall be subject to a replacement disincentive fee for their removal or reassignment by the A/E except in circumstances arising from reasons beyond the A/E's control (i.e. due to retirement, resignation, termination, etc.). In each instance where the A/E removes or reassigns one of the key personnel as being subject to such replacement fee (but excluding instances where such personnel become unavailable due to death, disability or separation from the employment of the A/E or any affiliate of the A/E) without the prior written consent of the Department's Designated Representative, the A/E shall owe to the Department the sum of Twenty Five Thousand dollars (\$25,000) as a replacement fee and not a penalty, to reimburse the Department for its administrative costs arising from the A/E's failure to provide the Key Personnel and remittance of replacement disincentive fees may be effected via deductions from payments owed to the A/E. The foregoing amount shall not bar recovery of any other damages, costs or expenses other than the Department's internal administrative costs. In addition, the Department shall have the right, to be exercised in its sole discretion, to remove, replace or to reduce the scope of services of the A/E in the event that a member of the Key Personnel has been removed or replaced by the A/E without the consent of the Department. In the event the Department exercises the right to remove, replace or to reduce the scope of services of the A/E, the Department shall have the right to enforce the terms of this Agreement and to keep-in-place those members of the A/E's team not removed or replaced and the remaining members shall complete the services required under this Agreement in conjunction with the new members of the A/E's team approved by the Department.

### **ARTICLE 3 CONSTRUCTION DOCUMENTS AND CONSTRUCTION PHASE SERVICES**

#### **Section 3.1 Permit Set**

**Section 3.1.1 Services:** The A/E shall develop a set of documents for permitting (the "Permit Set"). The Permit Set shall represent the further progression of the approved DDs together with any value

engineering strategies approved by the Department. The Permit Set shall be construction documents progressed to approximately 90% completion of those required in a traditional Design/Bid/Build delivery method; however, the Permit Set shall nevertheless be code and permit ready, with all major systems sufficiently designed, detailed, specified, coordinated and developed. In general, the A/E shall be required to undertake the following tasks and submit to the Department:

**Section 3.1.2 Deliverables:** During this phase, the A/E shall prepare and submit the following deliverables for Department's review and approval. The A/E shall provide revisions as necessary to these documents to address concerns raised by the Department and/or other Project stakeholders. The A/E shall be required to undertake the following tasks and submissions to the Department:

- a. Progress design from Design Development Documents and prepare Construction Documents.
- b. Prepare detailed and coordinated drawings and specifications for bidding purposes.
- c. Prepare application and submit documents for building permit according to DCRA requirements and file with other regulatory and reviewing agencies including DC Water, DOEE and DDOT. The permit application process will include progress printing of a "Permit Set".
- d. Correct plans to reflect issues noted by regulatory agencies and permit reviewers as required. Re-submit for additional review and approval as required.
- e. Be responsible for providing the required Environmental Impact Screening Form ("EISF").
- f. Obtain all required signatures on plans.
- g. Complete Platting and record Plat.
- h. Complete final coordination with utilities and service providers as necessary.
- i. Prepare and submit early-release excavation, foundations, concrete and steel packages, if needed.
- j. Progress LEED Certification work as required.
- k. Attend follow up meetings and coordinate with regulatory agencies, Fire Marshall, DGS Facilities personnel, and others as necessary.
- l. Prepare a presentation and provide a minimum of three (3) presentation boards for each community meetings and present/display onsite. Presentation boards shall be in full color and include at least one (1) 3-D rendering.
- m. Act as scribe for all design related meetings. Distribute meeting minutes to all attendees.

- n. Upload all design documentation and deliverables as required utilizing the online DGS Project Management Information System (Prolog Converge) and guidelines.
- o. Prepare and submit to the Department, during this phase, the following deliverables: All such deliverables shall be subject to review and approval by the Department and the Architect's pricing should assume that revisions may be required to these documents to address concerns raised by the Department and/or other project stakeholders.
  - i. Construction / Permit Documents
    - A. Three (3) hard-copy sets, and one (1) electronic copy of the complete sets of Permit Documents (90% Complete Level)
    - B. Specifications
  - ii. Cost Estimate

**Section 3.1.3** The A/E shall incorporate into the Permit Set the design requirements of governmental authorities having jurisdiction over the Project. In addition, the A/E shall (a) define, clarify, or complete the concepts and information contained in the Permit Set; (b) correct design errors or omissions, ambiguities, and inconsistencies in the Permit Set (whether found prior to or during the course of construction); and (c) correct any failure of the A/E to follow written instructions of the Department during any phase of design services or the construction of the Project provided they are compatible with industry standards. The design shall also incorporate any value engineering strategies approved by the Department.

**Section 3.1.4** Following the Department's review and approval of the Permit Set, the CMAR Contractor will solicit bids from trade subcontractors based on these documents. The A/E shall respond to Request for Information (RFIs) and provide A/E's Supplemental Instructions (ASIs) during such bidding process without additional cost to the Department or the CMAR Contractors. Based upon the trade pricing received by the CMAR Contractors, the A/E shall engage in additional value engineering efforts to return the Project to budget. The Permit Set Phase shall not be considered complete unless and until GMP for the Project is agreed upon.

**Section 3.1.5 Code Review.** The A/E shall submit the permit set of documents to the Department of Consumer and Regulatory Affairs ("DCRA") in order to obtain the necessary building permits to construct the Project. The A/E shall monitor the permit process and shall incorporate any changes or adjustments required by the Code Official. The A/E shall also issue any such changes to the Department for its review and approval. In this submittal, the A/E shall highlight (or bubble) any aspect of the design that represents a material deviation from the permit set documents and shall address in a narrative format the impact, if any, such departure shall have on the Project's aesthetics, functionality or performance.

**Section 3.1.6 Value Engineering.** To the extent that the proposed Project cost exceeds the available funding, the A/E understands and agrees that it shall be required to work with the Department and that such efforts may involve redesigning portions of the Project or its systems and that the A/E shall not be entitled to any additional compensation as a result of such efforts. The A/E

further understands and agrees that the Permit Set phase shall not be considered complete until and unless a GMP is agreed upon. The A/E understands and agrees that any such redesign may need to be completed on an expedited basis or in multiple packages in order to keep the Project on schedule and the A/E shall use its best efforts to meet the Project's schedule requirements in performing such redesign. It is understood and agreed by both the Department and the A/E that the A/E's redesign obligations under this Section 3.1.5 shall be the limit of the A/E's liability for the failure to meet its Design to Budget obligations.

**Section 3.2 Issued for Construction (IFC) Documents.** Upon review and approval of the Permit Set, the CMAR Contractor will construct the modernization work. The A/E shall provide such additional design services as are requested by the Department, including, but not limited to, the preparation of more developed CDs ("Issued for Construction" or "IFC Set"). The IFC Set shall represent the further progression of the approved Permit Set together with any value engineering strategies approved by the Department. The IFC Set shall be progressed to One Hundred Percent (100%) completion of those required in a traditional Design/Bid/Build delivery method. The CDs shall be coordinated and shall contain at a minimum the level of detail typically required by standard industry best practices for CDs. The A/E shall respond to and revise the CDs as may be necessary in order to address any concerns raised by the code official. The A/E shall provide three (3) hard-copy sets and one electronic PDF copy of the IFC Set to DGS (100% Construction Documents). Additionally, the A/E and DGS shall agree on appropriate conference or industry publication to present/profile the project, awards to apply for the A/E to prepare submissions for DGS.

**Section 3.2.1** If it should become necessary to amend any of the approved construction drawings, the A/E shall prepare an amendment to the drawings and shall submit such amendment to the Department for its review and approval. In this submittal, the A/E shall highlight (or bubble) any aspect of the design that represents a material deviation from the Permit Set documents and shall address in a narrative format the impact, if any, such departure shall have on the Project's aesthetics, functionality or performance. In the event the Department does not approve a document within ten (10) business days after issuance, unless otherwise denied, such document shall be deemed approved, provided however that the Department has not advised that such document is still under review.

### **Section 3.3 Bidding and Construction Administration Services**

**Section 3.3.1 Bidding.** The A/E shall provide support to the CMAR and the Department as necessary to support the bidding of trade subcontracts. These services shall include, but are not necessarily limited to:

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

**Section 3.3.2 Construction Administration.** The A/E shall provide support to the Department as may be necessary to support the construction phase of the Project. Prior to the completion of the Permit Set, the Department and the A/E shall agree upon a plan for how construction

administration services will be performed (the “**Construction Administration Plan**”). The Construction Administration Plan shall specifically address: (i) whether the A/E will be required to assign staff on-site; (ii) turn-around time for submittals; and (iii) such other matters as the A/E and the Department consider relevant to the orderly administration of the Project. The A/E shall submit to the Department a signed copy of the Construction Administration Plan. Throughout the construction administration phase of the Project, the A/E shall comply with the Construction Administration Plan. The A/E’s services during this phase will include, but are not necessarily limited to:

**Section 3.3.2.1 Services.** These services shall include, but are not necessarily limited to:

- a. Attend weekly progress meetings. A/E’s site visits are included in the Design Fee.
- b. Review and process shop drawing submissions, RFI’s, etc.
- c. Prepare meeting notes and records of decisions/changes made.
- d. Conduct pre-closeout/punchlist inspections.
- e. Review closeout documents for completeness. Close-Out documentation shall comply with the 2016 DGS Project Turnover Protocol included as Attachment A6.
- f. Provide as As-Built Drawings based on the Contractor’s red line drawings and/or coordinated set developed during the subcontractor coordination process. As-Built Drawings should be transmitted to DGS in hard copy, PDF, and CAD formats. Close-Out documentation shall comply with the 2016 DGS Project Turnover Protocol.

**Section 3.3.2.2 Deliverables.** In addition, the A/E shall provide the following deliverables during this phase:

- a. Meeting minutes.
- b. RFI Responses
- c. ASI’s and/or other clarification documents.
- d. Punch lists.
- e. Closeout document review comments.
- f. As-Built Drawings in CAD format.

**Section 3.4 Continued Design-to-Budget Obligations.** In general, the A/E shall use its best efforts to develop the Construction Documents in a manner that is consistent with the Design-to-Budget that was established at the end of the Schematic Design phase. In furtherance of the A/E’s design to budget obligations, the A/E hereby agrees as follows:

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

**Section 3.5 Liquidated Damages.** The A/E acknowledges that the Department is engaging the A/E to provide design support services to minimize the potential for cost overruns, schedule delays or the need for extensive value engineering/re-design late in the Project and that the reports and/or deliverables required under Article 3 of this Contract are key to realizing the value of such services. In the event the A/E fails to deliver any of the reports or key design deliverables required in this Section (and unless such failure is the result of any event of Force Majeure), the A/E shall be subject to liquidated damages in an amount of Five Thousand Dollars (\$5,000) plus Five Hundred Dollars (\$500) per day after receiving written notice from either the COTR or the Contracting Officer of failure to submit such report.

## **ARTICLE 4 COMPENSATION**

### **Section 4.1 Compensation.**

**Section 4.1.1 Value of Agreement.** The value of this Agreement is \$[INSERT] (“Design Fee”). This amount includes Concept Design fee of \$[INSERT]; Schematic Design fee of \$[INSERT]; Design Development fee of \$[INSERT]; a Permit Set fee of \$[INSERT]; Issued for Construction Documents fee of \$[INSERT]; Construction Administration & Close-out fee of \$[INSERT]; and an Owner’s Allowance of \$[INSERT] for permit fees as set forth in Section 4.5 of this Agreement, all in accordance with the A/E’s Price Proposal included as **Exhibit B**.

**Section 4.1.2 Compensation for Reimbursable Expenses.** Reimbursable Expenses are in addition to compensation for Design Phase Services and Construction Document and Construction Phase Services and include expenses incurred by the A/E and the A/E’s consultants directly related to the Project. An allowance in the amount of \$[INSERT] is established for such reimbursable expenses. In the event, Reimbursable Expenses reach the limit of this allowance, A/E shall notify the District, and shall not incur any additional Reimbursable Expense unless the District authorizes an increase in the allowance. Such expenses shall be reimbursed without markup of any kind and records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Department at mutually convenient times. Reimbursable expenses shall include the following:

- a. Transportation and authorized out-of-town travel and subsistence, provided, however, that local transportation costs (i.e. taxis, parking, etc.) shall not be reimbursable;
- b. Fees paid for securing approval of authorities having jurisdiction over the Project;
- c. Reproductions, plots, standard form documents;
- d. Postage, handling and delivery;
- e. Expense of overtime work requiring higher than regular rates, if authorized in advance by the Department, provided, however, that such expenses shall only be reimbursable to the extent that they were caused by the failure of the Department to act within timeframes agreed to by the parties in advance and in writing; and
- f. Additional renderings, models, and mock-ups, requested by the Department.

**Section 4.2 Retention.** An amount equal to five percent (5%) of the firm, fixed Design Fee (but not expenses) shall be withheld as retention from all progress payments that are due to the A/E. In addition, the Department agrees to provide an incentive equal to 5% of the original Design Fee (but not expenses). This 5% retention and 5% incentive will only be due to the A/E if: (i) the Project is Substantially Complete on or before September 22, 2021; and (ii) the total hard construction costs (inclusive of the CMAR's fees and general conditions and FF&E) do not exceed One Hundred Three Percent (103%) of the amount allocated in the Design-to-Budget established at the end of the schematic design phase. The determination as to whether these goals have been achieved shall be measured irrespective of fault, only if both goals are met irrespective of whether the reason these goals were not met was caused by the A/E, the CMAR, the Department, the District, the Code Official or any other person or cause.

**Section 4.3 Payments.** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the A/E's invoice. Amounts unpaid thirty (30) days after a proper invoice is received shall bear interest in accordance with the District of Columbia Quick Payment Act.

**Section 4.4 Payment Disputes.** Disputes or questions regarding a portion of an invoice shall not be cause for withholding payment for the remaining portion of the invoice.

**Section 4.5 Allowance.** The Contract's value includes an Owner Directed Allowance of \$[INSERT]; and charges to such allowance will be paid on a cost-reimbursement basis without markup of any kind.

## **ARTICLE 5 INSURANCE**

### **Section 5.1 General Requirements.**

The A/E (the "Contractor" for the purpose of this Article 5) at its sole expense shall procure and maintain, during the entire period of performance under the contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverage prior to commencing performance under the contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A- / VII or higher. The Contractor shall require all of its subcontractors to carry the same insurance required herein.

All required policies shall contain a waiver of subrogation provision in favor of the Government of the District of Columbia.

The Government of the District of Columbia shall be included in all policies required hereunder to be maintained by the Contractor and its subcontractors (except for workers' compensation and professional liability insurance) as an additional insureds for claims against The Government of the



District of Columbia relating to the contract, with the understanding that any affirmative obligation imposed upon the insured Contractor or its subcontractors (including without limitation the liability to pay premiums) shall be the sole obligation of the Contractor or its subcontractors, and not the additional insured. The additional insured status under the Contractor's and its subcontractors' Commercial General Liability insurance policies shall be effected using the ISO Additional Insured Endorsement form CG 20 10 11 85 (or CG 20 10 07 04 **and** CG 20 37 07 04) or such other endorsement or combination of endorsements providing coverage at least as broad and approved by the CO in writing. All of the Contractor's and its subcontractors' liability policies (except for workers' compensation and professional liability insurance) shall be endorsed using ISO form CG 20 01 04 13 or its equivalent so as to indicate that such policies provide primary coverage (without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an Additional Insured) for all claims against the additional insured arising out of the performance of this Statement of Work by the Contractor or its subcontractors, or anyone for whom the Contractor or its subcontractors may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

If the Contractor and/or its subcontractors maintain broader coverage and/or higher limits than the minimums shown below, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Grantee and subcontractors.

#### **Section 5.1.1 Required Insurance.**

**Section 5.1.1.1 Commercial General Liability Insurance ("CGL").** The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. ("ISO") form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor, including ongoing and completed operations under all subcontracts, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$1,000,000 each occurrence, a \$2,000,000 general aggregate (including a per location or per project aggregate limit endorsement, if applicable) limit, a \$1,000,000 personal and advertising injury limit, and a \$2,000,000 products-completed operations aggregate limit.

**Section 5.1.1.2 Automobile Liability Insurance.** The Contractor shall provide evidence satisfactory to the CO of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the CO in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Contractor, with minimum per accident limits equal to the greater of (i) the limits set forth in the Contractor's commercial automobile liability policy or (ii) \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

**Section 5.1.1.3 Workers' Compensation Insurance.** The Contractor shall provide evidence satisfactory to the CO of Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

**Section 5.1.1.3.1 Employer's Liability Insurance** - The Contractor shall provide evidence satisfactory to the CO of employer's liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.

All insurance required by this Section 5.1.1.3 shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.

**Section 5.1.1.4 Crime Insurance (3rd Party Indemnity).** The Contractor shall provide a 3rd Party Crime policy to cover the dishonest acts of Contractor's employees which result in a loss to the District. The policy shall provide a limit of \$25,000 per occurrence.

**Section 5.1.1.5 Cyber Liability Insurance.** The Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. This insurance requirement will be considered met if the general liability insurance includes an affirmative cyber endorsement for the required amounts and coverages.

**Section 5.1.1.6 Professional Liability Insurance (Errors & Omissions).** The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under the Contract. The policy shall provide limits of \$5,000,000 per claim or per occurrence for each wrongful act and \$5,000,000 annual aggregate. The Contractor warrants that any applicable retroactive date precedes the date the Contractor first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services.

**Section 5.1.1.7 Environmental Liability Insurance.** The Contractor shall provide evidence satisfactory to the CO of pollution legal liability insurance covering losses caused by pollution conditions that arise from the ongoing or completed operations of the Contractor. Completed operations coverage shall remain in effect for at least ten (10) years after completion of the work. Such insurance shall apply to bodily injury, property damage (including loss of use of damaged property or of property that has been physically injured), cleanup costs, liability and cleanup costs while in transit, and defense (including costs and expenses incurred in the investigation, defense and settlement of claims). There shall be neither an exclusion nor a sublimit for mold-related claims. The minimum limits required under this paragraph shall be equal to the

greater of (i) the limits set forth in the Contractor's pollution legal liability policy or (ii) \$2,000,000 per occurrence and \$2,000,000 in the annual aggregate. If such coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverages under the policy precedes the Contractor's performance of any work under the Contract and that continuous coverage will be maintained or an extended reporting period will be exercised for at least ten (10) years after completion. The Contractor also must furnish to the Owner certificates of insurance evidencing pollution legal liability insurance maintained by the transportation and disposal site operators(s) used by the Contractor for losses arising from facility(ies) accepting, storing or disposing hazardous materials or other waste as a result of the Contractor's operations. Such coverages must be maintained with limits of at least the amounts set forth above.

**Section 5.1.1.8 Commercial Umbrella or Excess Liability.** The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits equal to the greater of (i) the limits set forth in the Contractor's umbrella or excess liability policy or (ii) \$5,000,000 per occurrence and \$5,000,000 in the annual aggregate, following the form and in excess of all liability policies. All liability coverages must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.

**Section 5.1.1.9 Sexual/Physical Abuse & Molestation**

The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate of affirmative abuse and molestation liability coverage. This insurance requirement will be considered met if the general liability insurance includes an affirmative sexual abuse and molestation endorsement for the required amounts. So called "silent" coverage under a commercial general liability or professional liability policy will not be acceptable.

**Section 5.2 PRIMARY AND NONCONTRIBUTORY INSURANCE.** The insurance required herein shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the Government of the District of Columbia.

**Section 5.3 DURATION.** The Contractor shall carry all required insurance until all contract work is accepted by the District of Columbia, and shall carry listed coverages for ten years for construction projects following final acceptance of the work performed under the contract and two years for non-construction related contracts.

**Section 5.4 LIABILITY.** These are the required minimum insurance requirements established by the District of Columbia. **HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE WILL NOT IN ANY WAY LIMIT THE CONTRACTOR'S LIABILITY UNDER THE CONTRACT.**

**Section 5.5 CONTRACTOR'S PROPERTY.** The Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.

**Section 5.6 MEASURE OF PAYMENT.** The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.

**Section 5.7 NOTIFICATION.** The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. The Contractor will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract.

**Section 5.8 CERTIFICATES OF INSURANCE.** The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Certificates of insurance must reference the corresponding contract number. Evidence of insurance shall be submitted to:

**The Government of the District of Columbia**  
**And mailed to the attention of:**  
**Franklin Austin, CPPB, CPM**  
**Department of General Services**  
**2000 14th Street, NW, 8th Floor**  
**202-727-7128**  
[Franklin.Austin5@dc.gov](mailto:Franklin.Austin5@dc.gov)

The CO may request and the Contractor shall promptly deliver updated certificates of insurance, endorsements indicating the required coverages, and/or certified copies of the insurance policies. If the insurance initially obtained by the Contractor expires prior to completion of the contract, renewal certificates of insurance and additional insured and other endorsements shall be furnished to the CO prior to the date of expiration of all such initial insurance. For all coverage required to be maintained after completion, an additional certificate of insurance evidencing such coverage shall be submitted to the CO on an annual basis as the coverage is renewed (or replaced).

**Section 5.9 DISCLOSURE OF INFORMATION.** The Contractor agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.

**Section 5.10 CARRIER RATINGS.** All Contractor's and its subcontractors' insurance required in connection with the contract shall be written by insurance companies with an A.M. Best

Insurance Guide rating of at least A- VII (or the equivalent by any other rating agency) and licensed in the in the District.

## **ARTICLE 6 OWNERSHIP OF DOCUMENTS**

**Section 6.1 Ownership of Documents.** Regardless of whether the Project is completed, any design documents prepared by the A/E and the architectural, engineering or other consultants engaged by the A/E, any copies thereof furnished to the CMAR, and all other documents created in association with the Project shall become the sole property of the Department upon full payment of A/E's fees then due under this Agreement, and shall not to be used by the A/E, its sub-consultants on other projects, or for additions to this Project outside the scope of the work, without the specific written consent of the Department. However, the Department expressly acknowledges and agrees that the documents to be provided by the A/E under this Agreement will contain design details, features and concepts including some from the A/E'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 A/E. 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 A/E's absolute right to re-use such component design details, features and concepts on other projects, in other contexts or for other clients.

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

## **ARTICLE 7 MISCELLANEOUS PROVISIONS**

**Section 7.1** This Agreement shall be governed by the laws of the District of Columbia.

**Section 7.2** Terms in this Agreement shall have the same meaning as construed under District law.

**Section 7.3** The Department and A/E, 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 A/E shall not assign this Agreement without the written consent of the Department.

**Section 7.4** If the Department requests the A/E to execute certificates, the proposed language of such certificates shall be submitted to the A/E for review at least fourteen (14) days prior to the requested dates of execution. The A/E shall not be required to execute Certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

**Section 7.5** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Department or the A/E.

**Section 7.6** Unless otherwise required in this Agreement, the A/E shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

**Section 7.7** The A/E shall have the right to include photographic or artistic representations of the design of the Project among the A/E's promotional and professional materials. The A/E shall be given reasonable access to the completed Project to make such representations. However, the A/E's materials shall not include the Department's confidential or proprietary information if the Department has previously advised the A/E in writing of the specific information considered by the Department to be confidential or proprietary. The Department shall provide professional credit for the A/E in the Department's promotional materials for the Project.

**Section 7.8** If the A/E receives information specifically designated by the Department as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to: (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

**Section 7.9 RESERVED.**

**Section 7.10 Prolog.** The A/E shall utilize the Department's Prolog system to submit any and all documentation required to be provided by the A/E for the Project, including, but not limited to: (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) invoices/applications for payment (full package including all forms required by the Department); (v) certified payrolls (in addition to

upload via LCP Tracker); (vi) drawings and specifications; (vii) punchlist; and (viii) other documents as may be designated by the Department. The A/E shall also require all subcontractors and subconsultants to utilize prolog for the Project.

**Section 7.11** The A/E agrees to indemnify and hold the Department, the Department's Representative and the Department's officers, agents and employees harmless from and against all claims, liabilities, demands, losses, damages, judgments, costs, or expenses, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the A/E, its employees and its consultants in the performance of professional services pursuant to this Agreement.

**Section 7.12** The A/E agrees to indemnify and hold the Department and the Department's Representative harmless from and against any and all claims, liabilities, demands, losses, damages, costs, or expenses arising from the A/E's failure to perform its obligations pursuant to agreements with third parties, including, but not limited to, subconsultants, made in order to provide the services required of the A/E under this Agreement.

**Section 7.13** The A/E shall pay for and defend all such suits or claims arising out of the Work for infringement of any patent rights or copyrights and hold the Department and Department's Representative harmless from loss on account thereof.

**Section 7.14 Confidentiality.** The A/E shall maintain the confidentiality of information specifically designated as confidential by the Department, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the A/E from establishing a claim or defense in an adjudicatory proceeding. The A/E shall require of the A/E's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Department.

**Section 7.15** Except with the knowledge and consent of the Department's Designated Representative, the A/E shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the A/E's professional judgment with respect to this Project.

**Section 7.16** The A/E shall manage the A/E's services, consult with the Department, research applicable design criteria, attend Project meetings, and communicate with members of the Project team and report progress to the Department. The A/E shall review the Department's Program and other information furnished by the Department, and shall review laws, codes, and regulations applicable to the A/E's services.

**Section 7.17** Upon request of the Department, the A/E shall make periodic presentations to explain the design of the Project to representatives of the Department and to others in support of the Department's efforts for the Project.

**Section 7.18 Notices.** All notices or communications required or permitted under the Contract shall be in writing and shall be hand delivered or sent by tele-copier or by recognized overnight carrier to the intended recipient at the address stated below, or to such other address as the

recipient may have designated in writing. Any such notice or communication shall be deemed delivered as follows: if hand delivered, on the day so delivered, if sent by tele-copier, on confirmation of successful transmission, and if sent by recognized overnight carrier, the next business day.

If to the Department:

George G. Lewis  
Associate Director/Chief Contracting Officer  
Department of General Services  
2000 14th St, NW – 8th Floor  
Washington, DC 20009

If to the A/E:

Name  
Title  
  
Address  
City, State Zip

This Section 7.18 shall be read as imposing minimum requirements for distribution of required contractual notices, and not as displacing distribution requirements with respect to design documents, construction submittals, periodic reports, and other documents.

The A/E agrees that any statute of limitations applicable to any claim or suit by the Department arising from this Contract or its breach shall not begin to run, or shall be deemed to be tolled, until Final Completion or, with respect to latent defects or nonconformities, such later time as the Department knew or should have known of the defect or nonconformity.

## ARTICLE 8 GOVERNMENTAL PROVISIONS

**Section 8.1 Buy American Act Provision.** The A/E shall not design or specify a proprietary product that does not comply with the provisions of the Buy American Act (41 U.S.C. § 10a). The Trade Agreements Act and the North American Free Trade Agreement (NAFTA) provide that designated country (as defined in FAR 25.401) and NAFTA country construction materials are exempted from application of the Buy American Act and are therefore acceptable hereunder.

**Section 8.1.1** In accordance with the Buy American Act (41 U.S.C. § 10a-10d), and Executive Order 10582, December 17, 1954 (3 CFR, 1954-58 Comp., p. 230), as amended by Executive Order 11051, September 27, 1962 (3 CFR, 1059—63 Comp., p. 635), the A/E agrees that only domestic construction material will be specified in the performance of the Agreement, except for non-domestic material listed in the Agreement.

“Components” as used in this Section, means those articles, materials and supplies incorporated directly into the end products.

“Domestic end product”, as used in this section, means, (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States, exceeds 50 percent of the cost of all its components.



Components of foreign origin of the same class or kind as the products shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

“End Products”, as used in this Section, means those articles, materials, and supplies to be acquired for public use under this Contract.

The A/E shall specify only domestic end products, except those:

- i. For use outside the United States;
- ii. That the District determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
- iii. For which the District determines that domestic preference would be inconsistent with the public interest; or
- iv. For which the District determines the cost to be unreasonable.

**Section 8.1.2 Domestic Construction Material.** “Construction material” means any article, material or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a “domestic construction material” if it has been mined or produced in the United States. A manufactured construction material is a “domestic construction material” if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. “Component” means any article, material, or supply directly incorporated in a construction material.

**Section 8.1.3 Domestic Component.** A component shall be considered to have been “mined, produced, or manufactured in the United States” regardless of its source, in fact, if the article, material or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

**Section 8.1.4 Foreign Material.** When steel materials are used in a project a minimal use of foreign steel is permitted. The cost of such materials cannot exceed one-tenth of one percent of the total project cost, or \$2,500,000, whichever is greater.

**Section 8.2 False Claims Act.** The A/E 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.

**Section 8.3 Retention of Records: Inspections and Audits.** The A/E shall maintain books, records, documents and other evidence directly pertinent to performance under the Agreement in accordance with generally accepted professional practice and appropriate accounting

procedures and practices consistently applied in effect on the date of execution of the Agreement.

**Section 8.3.1** The A/E shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Department and the required cost submissions in effect on the date of execution of the Department.

**Section 8.3.2** The Department, the District of Columbia government, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the A/E for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the A/E. The A/E shall provide proper facilities for such access and inspection.

**Section 8.3.3** The A/E agrees to include the wording of this Section 8.3 in all its subcontracts in excess of five thousand dollars (\$5,000.00) that directly relate to Project performance.

**Section 8.3.4** Audits conducted pursuant to this Section 8.3 will be in accordance with generally accepted auditing standards with the results prepared in accordance with generally accepted accounting principles and established procedures and guidelines of the applicable reviewing or audit agency.

**Section 8.3.5** The A/E agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the A/E, the auditing agency will afford the A/E an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

**Section 8.3.6** The A/E shall preserve all records described herein from the effective date of the Agreement completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

**Section 8.4 Gratuities Not to Benefit Provisions.** If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the A/E , or any agent or representative of the A/E, to any official, employee or agent of the Department or the District with a view toward securing the Agreement or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the A/E, terminate the right of the A/E to proceed under the Agreement and may pursue such other rights and remedies provided by law and under the Contract.

**Section 8.4.1** In the event the Agreement is terminated as provided in Section 8.4, the

Department shall be entitled:

- a. to pursue the same remedies against the A/E as it could pursue in the event of a breach of the Agreement by the A/E; and
- b. as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Department) which shall be not less than ten times the costs incurred by the A/E in providing any such gratuities.

**Section 8.4.2** No member of, nor delegate to Congress, Mayor or City Council Member, nor the Department nor employee of the District, nor the Department nor employee of the Department shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom, and all agreements entered into by the Contracting Officer of the Department in which he or she be personally interested as well as all agreements made by the Department in which the Mayor or City Council Member or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department; 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 employee of the District is de minimis.

**Section 8.5 Ethical Standards For the Department's Employees And Former Employees.** The Department expects the A/E 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 A/E, nor any person associated with the A/E, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The A/E shall not engage the services of any person or persons in the employment of the Department or the District for any work required, contemplated or performed under the Contract. The A/E may not assign to any former employee or District employee or agent who has joined the A/E's firm any matter on which the former employee, while employed by the Department, had material or substantial involvement in the matter. The A/E may request a waiver to permit the assignment of such matters to former personnel on a case-by-case basis. The A/E shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each A/E or vendor.

**Section 8.6 Anti-Deficiency Act.** The obligations of the Department to fulfill financial obligations pursuant to this Agreement, or any subsequent agreement entered into pursuant to this Agreement or referenced herein (to which the Department is a party), are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 1511-1519 (2004) (the "**Federal ADA**"), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2001); (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (2004 Supp.) (the "**D.C. ADA**" and (i) and (ii) collectively, as amended from time to time, the "**Anti-Deficiency Acts**"); and (iii) Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2001). Pursuant to the Anti-Deficiency Acts, nothing in this Agreement shall create an obligation of the Department in anticipation of an appropriation by Congress for such purpose, and the Department's legal liability for payments and other charges under this Agreement shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress.

**Section 8.6.1** The Department agrees to exercise all lawful authority available to it to satisfy the financial obligations of the Department that may arise under this Agreement. During the term of this Agreement, the Mayor of the District of Columbia or other appropriate official shall, for each fiscal period, include in the budget application submitted to the Council of the District of Columbia the amount necessary to fund the Department's known potential financial obligations under this Agreement for such fiscal period. In the event that a request for such appropriations is excluded from the budget approved by the Council and submitted to Congress by the President for the applicable fiscal year or if no appropriation is made by Congress to pay any amounts due under this Agreement for any period after the fiscal year for which appropriations have been made, and in the event appropriated funds for such purposes are not otherwise lawfully available, the Department will not be liable to make any payment under this Agreement upon the expiration of any then-existing appropriation, the Department shall promptly notify the A/E , and this Agreement shall immediately terminate upon the expiration of any then-existing appropriation.

**Section 8.6.2** Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of the District or Department shall have any personal liability in connection with the breach of the provisions of this Section or in the event of non-payment by the Department under this Agreement.

**Section 8.6.3** This Agreement shall not constitute an indebtedness of the District and/or the Department nor shall it constitute an obligation for which the Department is obligated to levy or pledge any form of taxation or for which the District has levied or pledged any form of taxation. No District of Columbia Official or employee is authorized to obligate or expend any amount under this Agreement unless such amount has been appropriated by Act of Congress and is lawfully available.

**Section 8.7 Extent of Contract.** The Contract, which includes the terms set forth in the RFP, the Exhibits hereto, and other documents incorporated herein by reference, represents the entire and integrated agreement between the Department and A/E and supersedes all prior negotiations representations or agreements, either written or oral. No modifications to the Contract shall be effective against the Department unless made by written instrument signed by both the Department and A/E.

**Section 8.8 RESERVED.**

**Section 8.9 Laws and Regulations Incorporated by Reference.** All federal and District of Columbia laws and regulations, and all Department procedures now or hereafter in effect, whether or not expressly provided for or referred to in the Contract, are incorporated by reference herein and shall be binding upon the A/E and the Department. It shall be the responsibility of the A/E to perform the Contract in conformance with the Department's procurement regulations and all statutes, laws, codes, ordinances, regulations, rules, requirements, and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the A/E to determine the procurement regulations, statutes, laws, codes, ordinances, regulations, rules, requirements, and orders that apply and their effect on the A/E 's obligations thereunder. However, if the application of a future law or regulation requires the A/E to undertake additional work that is materially different in scope than that presently contemplated or required, the A/E shall be entitled to an equitable

adjustment for such additional work.

**Section 8.10 Tax Exemption Provision.** Any tax exemptions applicable to the District of Columbia, including the gross receipts sales tax exemption for the sale of tangible personal property to the District, codified in D.C. Code § 47-2005, shall apply to the performance of the Contract.

**Section 8.11 Covenant Against Contingent Fees Provisions.** The A/E warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a Commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the A/E for the purpose of securing business. For breach or violation of this warranty, the Department shall have the right to terminate the Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the Department, percentage, brokerage of contingent fee.

**Section 8.12 Non-Discrimination in Employment Provisions.**

**Section 8.12.1** The A/E agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. The affirmative action shall include, but not be limited to, the following:

- a. Employment, upgrading, or transfer;
- b. Recruitment or recruitment advertising;
- c. Demotion, layoff, or termination;
- d. Rates of pay, or other forms of compensation; and
- e. Selection for training and apprenticeship.

**Section 8.12.2** Unless otherwise permitted by law and directed by the Department, the A/E agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Department setting forth the provisions of this Section concerning non-discrimination and affirmative action.

**Section 8.12.3** The A/E agrees to send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Department, advising each labor union or workers' representative of the A/E's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**Section 8.12.4** The A/E agrees to permit access by the Department to all books, records and accounts pertaining to its employment practices for purposes of investigation to ascertain compliance with this Section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

**Section 8.12.5** The A/E shall include in every subcontract the equal opportunity clauses

of this Section so that such provisions shall be binding upon each Subcontractor or vendor.

**Section 8.12.6** The A/E shall take such action with respect to any Subcontractor as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for non-compliance.

**Section 8.13 RESERVED.**

**Section 8.14 Interpretation of Contract.** All of the documents comprising the Contract should be read as complementary, so that what is called for by one is called for by all. Ambiguities should be construed in favor of a broader scope of work for the A/E, as the intent of the Contract is, with specific identified exceptions, to require the A/E to assume entire responsibility for construction of the Project. If there is any inconsistency among the documents comprising the Contract, the order of precedence among them is as follows, with the first listed document having the highest priority: this Agreement and its Exhibits, the General Conditions, and the Construction Documents released by the Department. Any Change Order issued and executed by the Department shall supersede those portions of earlier dated contract documents to which it pertains.

**Section 8.15 Independent Contractor.** In carrying out all its obligations under the Contract, the A/E shall be acting as an independent Contractor, and not as an employee or agent of the Department, or joint venture or partner with the Department. The A/E shall have exclusive authority to manage, direct, and control the Work, and shall be responsible for all construction means, methods, techniques, sequences, and procedures, as well as for Project safety.

**Section 8.16 Confidential Information.** In the course of the A/E's performance of the Work, the Department may make available to the A/E information that the Department designates as trade secrets or other confidential engineering, technical and business information. As long as, and to the extent that, such information remains confidential and available to others only with the consent of the Department, or is not generally available to the public from other sources, the A/E shall maintain such information in strict confidence and shall not disclose any such information to others (including its employees or Subcontractors), except to the extent necessary to enable the A/E to carry out the Project. The A/E shall similarly obligate any and all persons to whom such information is necessarily disclosed to maintain the information in strict confidence. The A/E agrees that, in the event of any breach of this confidentiality obligation, the Department shall be entitled to equitable relief, including injunctive relief or specific performance, in addition to all other rights or remedies otherwise available.

**Section 8.17 No Third-Party Beneficiary Rights.** Nothing in this Agreement shall be construed as creating third-party beneficiary rights in any person or entity, except as otherwise expressly provided in this Agreement.

**Section 8.18 Media Releases.** Neither the A/E, its employees, agents nor Subcontractors or material suppliers shall make any press release or similar media release related to the Project unless such press release have been discussed with the Department prior to its issuance.

**Section 8.19 Construction.** This Agreement shall be construed fairly as to all parties and not in favor of or against any party, regardless of which party prepared the Agreement.

**Section 8.20 Limitations.** The A/E agrees that any statute of limitations applicable to any claim or suit by the Department arising from this Contract or its breach shall be controlled by applicable District of Columbia law.

**Section 8.21 Binding Effect; Assignment.** The Contract shall inure to the benefit of, and be binding upon and enforceable by, the parties and their respective successors and permitted assigns. The A/E acknowledges that, in entering into the Contract, the Department is relying on the particular qualifications of the A/E, and the A/E therefore shall not delegate or assign any of its duties or obligations under the Contract, except in accordance with the Contract's provisions relating to subcontracting, or pursuant to the Department's prior written consent. The A/E shall not assign its rights under the Contract, including the right to all or a portion of its compensation, without the Department's prior written consent. Any delegation or assignment made contrary to the provisions of this Section shall be null and void.

**Section 8.22 Survival.** All agreements warranties and representations of the A/E contained in the Contract or in any certificate or document furnished pursuant to the Contract shall survive termination or expiration of the Contract.

**Section 8.23 No Waiver.** If the Department waives any power, right, or remedy arising from the Contract or any applicable law, the waiver shall not be deemed to be a waiver of the power, right, or remedy on the later recurrence of any similar events. No act, delay, or course of conduct by the Department shall be deemed to constitute the Department's waiver, which may be affected only by an express written waiver signed by the Department.

**Section 8.24 Remedies Cumulative.** Unless specifically provided to the contrary in the Contract, all remedies set forth in the Contract are cumulative and not exclusive of any other remedy the Department may have, including, without limitation, at law or in equity. The Department's rights and remedies will be exercised at its sole discretion, and shall not be regarded as conferring any obligation on the Department's to exercise those rights or remedies for the benefit of the A/E or any other person or entity.

**Section 8.25 Headings/Captions.** The headings or captions used in this Agreement or its table of contents are for convenience only and shall not be deemed to constitute a part of the Contract, nor shall they be used in interpreting the Contract.

**Section 8.26 Entire Agreement; Modification.** The Contract supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to the Contract shall be effective against the Department unless made in writing signed by both the Department and the A/E, unless otherwise expressly provided to the contrary in the Contract. Notwithstanding the foregoing, nothing herein shall be construed to limit the Department's ability to unilaterally modify the Contract.

**Section 8.27 Severability.** In the event any one or more of the provisions contained in this

Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable; each part of this Agreement is intended to be severable.

## **Section 8.28 The Quick Payment Act**

### **Section 8.28.1 Interest Penalties to Contractors**

**Section 8.28.1.1** The District will pay interest penalties on amounts due to the A/E under the Quick Payment Act, D.C. Official Code §2-221.01 *et seq.*, for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before:

- a. the 3rd day after the required payment date for meat or a meat product;
- b. the 5<sup>th</sup> day after the required payment date for an agricultural commodity; or
- c. the 15<sup>th</sup> day after the required payment date for any other item.

**Section 8.28.1.2** Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

### **Section 8.28.2 Payments to Subcontractors**

**Section 8.28.2.1** The A/E must take one of the following actions within seven (7) days of receipt of any amount paid to the A/E by the District for work performed by any subcontractor under this contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the District that is attributable to the subcontractor for work performed under the Contract; or
- b. Notify the District and the subcontractor, in writing, of the A/E's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

**Section 8.28.2.2** The A/E must pay any subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before:

- a) The 3rd day after the required payment date for meat or a meat product;
- b) The 5th day after the required payment date for an agricultural commodity; or
- c) The 15th day after the required payment date for any other item.



**Section 8.28.2.3** Any amount of an interest penalty which remains unpaid by the A/E at the end of any 30-day period shall be added to the principal amount of the debt to the subcontractor and thereafter interest penalties shall accrue on the added amount.

**Section 8.28.2.4** A dispute between the A/E and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District of Columbia is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

### **Section 8.28.3 Subcontract flow-down requirements**

**Section 8.28.3.1** The A/E shall include in each subcontract under this Contract a provision requiring the subcontractor to include in its contract with any lower-tier subcontractor or supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code §2-221.02(d).

### **Section 8.28.4 Requirements for Change Order Payments**

**Section 8.28.4.1** The Department and the A/E are prohibited from requiring a prime contractor or a subcontractor to undertake any work that is determined to be beyond the original scope of the prime contractor's or a subcontractor's contract or subcontract, including work under a District-issued change order, when the additional work increases the contract price beyond the not-to-exceed price or negotiated maximum price of the underlying contract, unless the Contracting Officer:

- a. Agrees with the prime contractor and, if applicable, the subcontractor on a price for the additional work;
- b. Obtains a certification from the Chief Financial Officer that there are sufficient funds to compensate the prime contractor and, if applicable, the subcontractor for the additional work;
- c. Has made a written, binding commitment with the prime contractor to pay for the additional work within 30 days after the prime contractor submits a proper invoice for the additional work to the Contracting Officer; and
- d. Gives written notice of the funding certification from the Chief Financial Officer to the prime contractor;

**Section 8.28.4.2** The A/E is required to include in its subcontracts a clause that requires the prime contractor to:

- a) Within 5 business days of receipt of the notice required under subparagraph (A)(iv) of this paragraph, provide the subcontractor with notice of the approved amount to be paid to the subcontractor based on the portion of the additional work to be completed by the subcontractor;

- b) Pay the subcontractor any undisputed amount to which the subcontractor is entitled for any additional work within 10 days of receipt of payment for the additional work from the District; and
- c) If the prime contractor withholds payment from a subcontractor, notify the subcontractor in writing and state the reason why payment is being withheld and provide a copy of the notice to the contracting officer; and

**Section 8.28.4.3** The Department, A/E, prime contractor, or subcontractors are prohibited from declaring another party to the contract to be in default or assessing, claiming, or pursuing damages for delays in the completion of the construction due to the inability of the parties to agree on a price for the additional work.

**Section 8.29 General Conditions.** To the extent that this Agreement is silent on an action or requirement of the A/E, and current as of the date of this Agreement the Standard Contract Provisions for Architectural and Engineering Services (**Exhibit G**) shall govern the A/E's obligations with respect to such action or requirement under this Agreement.

## **ARTICLE 9 ECONOMIC INCLUSION**

### **Section 9.1 LSDBE Utilization.**

**Section 9.1.1** If the A/E subcontracts any Work, **at least (35 %) of the dollar volume of the Agreement shall be subcontracted with certified business enterprises (CBEs) and with small business enterprises (SBEs).** For subcontracted work, pass through entities will not count toward this goal. In order to count toward the subcontracting requirement, the SBE must perform at least thirty five percent (35%) of the work that is being counted toward the goal with its own forces. The LSDBE certification shall be, in each case, as of the effective date of the applicable subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal. The Subcontracting Plan (**Exhibit D**) shall demonstrate how the requirements will be met and the specific firms that will be used and their respective roles.

### **Section 9.1.2 Mandatory Subcontracting Plan and Requirements.**

**Section 9.1.2.1** Unless the Director of the Department of Small and Local Business Development (“DSLBD”) has approved a waiver in writing, in accordance with D.C. Official Code § 2-218.51, for all contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted to qualified SBEs.

**Section 9.1.2.2** If there are insufficient SBEs to completely fulfill the requirement of paragraph 9.1.2.1, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.

**Section 9.1.2.3** A prime contractor that is certified by DSLBD as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections 9.1.2.1 and 9.1.2.2.

**Section 9.1.2.4** Except as provided in 9.1.2.5 and 9.1.2.6, a prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

**Section 9.1.2.5** A prime contractor that is a certified joint venture and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A certified joint venture prime contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

**Section 9.1.2.6** Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.

**Section 9.1.2.7** A prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the on-site work with its own organization and resources if the contract is \$1 million or less.

#### **Section 9.1.2.8 Subcontracting Plan**

If the A/E is required by law to subcontract under this Contract, it must submit a Subcontracting Plan (**Exhibit D**) in accordance with this Section 9. The Subcontracting Plan (**Exhibit D**) may only be amended with the prior written approval of the Contracting Officer (CO) and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the Subcontracting Plan shall inure to the benefit of the District. The Subcontracting Plan shall include the following:

- (1) The name and address of each subcontractor;
- (2) A current certification number of the small or certified business enterprise;
- (3) The scope of work to be performed by each subcontractor; and
- (4) The price that the prime contractor will pay each subcontractor.

#### **Section 9.1.2.9 Copies of Subcontracts**

Within twenty-one (21) days of the date of award, the Contractor shall provide fully executed copies of all subcontracts identified in the subcontracting plan (**Exhibit D**) to the Contracting

Officer (CO), City Administrator (CA), District of Columbia Auditor and the Director of DSLBD.

### **Section 9.1.2.10 Subcontracting Plan Compliance Reporting**

**Section 9.1.2.10.1** If the Contractor has a subcontracting plan required by law for this contract, the Contractor shall submit a quarterly report to the CO, CA, District of Columbia Auditor and the Director of DSLBD. The quarterly report shall include the following information for each subcontract identified in the subcontracting plan:

- (A) The price that the prime contractor will pay each subcontractor under the subcontract;
- (B) A description of the goods procured or the services subcontracted for;
- (C) The amount paid by the prime contractor under the subcontract; and
- (D) A copy of the fully executed subcontract, if it was not provided with an earlier quarterly report.

**Section 9.1.2.10.2** If the fully executed subcontract is not provided with the quarterly report, the prime contractor will not receive credit toward its subcontracting requirements for that subcontract.

### **Section 9.1.2.11 Annual Meetings**

Upon at least 30-days written notice provided by DSLBD, the Contractor shall meet annually with the CO, CA, District of Columbia Auditor and the Director of DSLBD to provide an update on its subcontracting plan.

### **Section 9.1.2.12 DSLBD Notices**

The Contractor shall provide written notice to the DSLBD and the District of Columbia Auditor upon commencement of the contract and when the contract is completed.

### **Section 9.1.2.13 Enforcement and Penalties for Breach of Subcontracting Plan**

**Section 9.1.2.13.1** A contractor shall be deemed to have breached a subcontracting plan required by law, if the contractor (i) fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information in a reasonably timely manner; (ii) submits a monitoring or compliance report or other required subcontracting information containing a materially false statement; or (iii) fails to meet its subcontracting requirements.

**Section 9.1.2.13.2** A contractor that is found to have breached its subcontracting plan for utilization of CBEs in the performance of a contract shall be subject to the imposition of penalties, including monetary fines in accordance with D.C. Official Code § 2-218.63.

**Section 9.1.2.14** If the CO determines the Contractor's failure to be a material breach of the contract, the CO shall have cause to terminate the contract under the default provisions in **Article 8 of the SCP, Default**.

**Section 9.1.2.15** Neither the A/E nor a Subcontractor may remove a Subcontractor or tier-Subcontractor if such Subcontractor or tier-Subcontractor is certified as an LSDBE company unless the Department approves of such removal, in writing. The Department may condition its approval upon the CMAR developing a plan that is, in the Department's sole and absolute judgment, adequate to maintain the level of LSDBE participation on the Project.

### **Section 9.2 Equal Employment Opportunity and Hiring of District Residents**

**Section 9.2.1** The A/E shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs. In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985, the forms for completion of the Equal Employment Opportunity Information Report are incorporated herein as **Exhibit I**. A contract award cannot be made to any contractor that has not satisfied the equal employment requirements.

**Section 9.2.2** The A/E shall ensure that at least fifty-one percent (51%) of the A/E's team and every sub-consultant's and subcontractor's employees hired after the effective date of the Agreement, or after such subconsultant or subcontractor enters into a contract with the A/E, to work on the Project shall be residents of the District of Columbia. A copy of the First Source Employment Agreement and Plan is attached as **Exhibit E**. This percentage shall be applied in the aggregate, and not trade by trade. In addition, the A/E shall use commercially reasonable best efforts to comply with the workforce percentage goals established by the recently adopted amendments to the First Source Employment Agreement Act of 1984 (D.C. Code §§ 2-219.01 *et seq.*) and any implementing regulations, including, but not limited to the following requirements:

- (i) At least 20% of journey worker hours by trade shall be performed by District residents;
- (ii) At least 60% of apprentice hours by trade shall be performed by District residents;

- (iii) At least 51% of the skilled laborer hours by trade shall be performed by District residents; and
- (iv) At least 70% of common laborer hours shall be performed by District residents.

### **Section 9.2.3** Intentionally Omitted

**Section 9.2.4** Thirty five percent (35%) of all apprentice hours worked on the Project shall be worked by District residents.

## **Section 9.3 Economic Inclusion Reporting Requirements**

**Section 9.3.1** Upon execution of the Agreement, the A/E and all its member firms, if any, and each of its Subcontractors shall submit to the Department a list of current employees and apprentices that will be assigned to the Agreement, the date they were hired and whether or not they live in the District of Columbia.

**Section 9.3.2** The A/E and its constituent entities shall comply with subchapter X of Chapter II of Title 2 of the D.C. Code, and all successor acts thereto, including by not limited to the Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011, and the rules and regulations promulgated thereunder, and all successor acts thereto and the rules and regulations promulgated thereunder

**Section 9.3.3** The A/E shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

**Section 9.3.4** The A/E shall be responsible for: (i) including the provisions of Section 9.3 in all subcontracts; (ii) collecting the information required in Section 9.3 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in the reports required to be submitted by the CMAR pursuant to Section 9.3.

**Section 9.4 Service Contract Act Provision.** The A/E agrees that the work performed under this Agreement shall be subject to the Service Contract Act Wage Determination in effect on the date this agreement is executed. Service Contract Wage Schedules are available at [wdol.gov](http://wdol.gov), **Exhibit F**. Notwithstanding the terms of the Standard Contract Provisions for Architectural and Engineering services, the Davis-Bacon Act is not applicable to this Agreement.

**Section 9.5 Living Wage Act.** In addition to the requirements set forth in the First Source Employment Agreement, the A/E shall comply with all applicable provisions of the Living Wage Act of 2006, **Exhibit H**, as amended (codified at D.C. Official Code §§ 2-220.01 et seq.) and its implementing regulations.

**Section 9.6 Apprenticeship Act.** The D.C. Apprenticeship Act of D.C. Law 2-156, (as amended, the Act) may apply to these Projects. As applicable, the A/E firms and its subcontractors selected to perform work on the Projects on a craft-by-craft basis may be required to comply with the Act. If applicable, all terms and conditions of the D.C. Apprenticeship Council Rules and Regulations

shall be implemented, and the selected A/E firms shall be liable for any subcontractor non-compliance.

## **ARTICLE 10 CHANGES**

### **Section 10 Changes In The Work**

**Section 10.1 Changes Authorized.** In accordance with the Standard Contract Provisions, the Department may, without invalidating the Agreement, and without notice to or approval of any surety, order changes in the Work, including additions, deletions or modifications. Any such change must be conveyed by the Department to the A/E via written Change Directive or Change Order.

**Section 10.2 Executed Change Directive/Change Order Required.** Only a written Change Directive or Change Order, executed by the Department, may make changes to the Agreement. In particular, but without limitation, a written Change Directive or Change Order executed by the Department is the only means by which changes may be made to the Substantial or Final Completion Dates, or the Design Fee.

### **Section 10.3 Department-Initiated Changes**

**1.** If the Department wishes to make a change in the Work or to accelerate the Work, it will execute and issue to the A/E a written Change Directive, either directing the A/E to proceed at once with the changed Work or directing it to not to proceed, but to inform the Department, in writing, of the amount, if any, by which the A/E believes that Substantial or Final Completion Dates and/or the Design Fee should be adjusted to take the Change Order or Change Directive into account.

**2.** Within ten (10) days of receiving a Change Directive, the A/E shall provide the Department with a written statement of all changes in the Agreement, including, without limitation, any changes to the Substantial or Final Completion Dates or the Design Fee to which it believes it is entitled as a result of the Change Directive. If additional time is sought, a schedule analysis supporting the requested extension should be included. The schedule analysis should include a written narrative explanation. If a change in the Design Fee is sought (or if the Department has requested a deduct change), the statement should include a breakdown, by line item, of the estimated cost changes attributable to the proposed change. The Department may request, and the A/E shall provide, further cost breakdowns, clarifications, documentation or back-up if the Department reasonably believes such additional information is needed to understand and evaluate the request. The additional information required may include cost and pricing data in accordance with the Department's regulations.

**3.** If the Department has not yet directed the A/E to proceed with the change described by a Change Directive, the Department may rescind it. If the Department wishes to proceed, or has already directed the A/E to proceed, the A/E shall immediately proceed with the changed Work and, the Department and the A/E shall use their good faith best efforts to reach an

agreement upon the modifications to the Substantial or Final Completion Dates, and/or the Design Fee that are justified by the Change Directive. If the Department and the A/E reach agreement, the agreement shall be set forth in a Change Order and the A/E shall also execute it, at which point it will become binding on both Parties.

4. If the Parties fail to reach an agreement within sixty (60) days after the Department receives the A/E's detailed cost statement, and such other documentation as the Department may request, the A/E may assert a claim in accordance with the Agreement. In such a case, and subject to adjustment via the claims and disputes process, the Department shall unilaterally grant the A/E such adjustments, if any, to the Substantial or Final Completion Dates, or the Design Fee as the Department has judged to be appropriate.

**Section 10.4 Notice of Change Event.** The A/E must give the Department written notice of any Change Event within ten (10) calendar days of the date on which the A/E knew, or reasonably should have known, of the Change Event. To the extent available, the notice must state the nature of the Change Event and describe, generally, all changes in the Agreement to which the A/E believes it is entitled. Such notice is an express condition precedent to any claim or request for adjustment to the Substantial or Final Completion Dates, or the Design Fee arising from the Change Event and, if the notice is not given within the required time, the A/E will have waived the right to any adjustment to the Substantial or Final Completion Dates, or the Design Fee arising from the Change Event.

**Section 10.5 Detailed Change Request.** Within twenty (20) days after giving notice of a Change Event, the A/E shall submit a written Change Request to the Department describing, in reasonable detail, all adjustments it seeks to the Substantial or Final Completion Dates or the Design Fee as a result of the Change Event. The Change Request shall include the same information as described in Section 10.3 with respect to any Agreement changes the A/E seeks due to the Change Event, and the amount of any requested adjustment to the Design Fee shall be limited in accordance with that Section 10.3.

**Section 10.6 Changes to Design Fee.** Subject to the condition precedent that the A/E have complied with the notice and documentation provisions of this Article, and subject to the limitations stated in this Agreement, the A/E is entitled to an adjustment to the Design Fee if the Department issues a Change Directive or Change Order that directs the A/E to proceed with work which is beyond the scope of Work included within this Agreement.

**Section 10.7 Deductive Change Orders.** The Department reserves the right to issue deductive Change Orders (reducing the Design Fee or modifying the Substantial or Final Completion Dates to an earlier date) when changes are effected, by Change Directive or otherwise, which will decrease the cost of completing the Work or the time within which it can be completed.

**Section 10.8 Executed Change Orders Final.** The A/E agrees that any Change Order executed by the Department and the A/E constitutes its full and final adjustment for all costs, delays, disruptions, inefficiencies, accelerations, schedule impacts, or other consequences arising



from the change in question, whether a Change Directive, or a Change Event, or from any claimed cumulative effect of changes made to the date of the Change Order, and that no further adjustments in compensation or time shall be sought or made with respect to the Change Directive or the Change Event giving rise to the Change Order.

**Section 10.9 Failure to Agree.** If the A/E claims entitlement to a change in the Agreement, and the Department does not agree that any action or event has occurred to justify any change in time or compensation, or if the Parties fail to agree upon the appropriate amount of the adjustment in time or compensation, the Department will unilaterally make such changes, if any, to the Agreement, as it determines are appropriate pursuant to the Agreement. The A/E shall proceed with the Work and the Department's directives, without interruption or delay, and shall make a claim as provided in Article 11 herein. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Contract and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

## **ARTICLE 11 CLAIMS & DISPUTES**

All claims or disputes arising out of or under this Agreement shall be governed by the terms of the Standard Contract Provisions (**Exhibit G**).

## **ARTICLE 12 TERMINATION OR SUSPENSION**

Any terminations or suspensions arising out of or under this Agreement shall be governed by the terms of the Standard Contract Provisions (**Exhibit G**).

## **ARTICLE 13 EXHIBITS**

<b>Exhibit A1</b>	Therapeutic Recreation Center Aerial Site Photo
<b>Exhibit A2</b>	2014 Building Conditions Assessment
<b>Exhibit A3</b>	2014 Hazardous Material Survey
<b>Exhibit A4</b>	2014 Phase 1 Environmental Site Assessment
<b>Exhibit A5</b>	2014 Abatement Specification
<b>Exhibit A6</b>	2016 DGS Project Turnover Protocol
<b>Exhibit B</b>	A/E's Price Proposal
<b>Exhibit C</b>	Key Personnel
<b>Exhibit D</b>	SBE Subcontracting Plan
<b>Exhibit E</b>	First Source Employment Agreement and Employment Plan
<b>Exhibit F</b>	Service Contract Act Wage
<b>Exhibit G</b>	Standard Contract Provisions, Architectural & Engineering Services
<b>Exhibit H</b>	2019 Living Wage Act

**Exhibit I** Equal Employment Opportunity  
**Exhibit J** BIM Requirements

**IN WITNESS WHEREOF**, the Parties' duly authorized representatives have executed this Agreement (DCAM-19-AE-RFP-0064) as of the dates signed below: