

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF GENERAL SERVICES



**Addendum No. 4**

To

**ARCHITECTURAL/ENGINEERING SERVICES FOR OAK HILL CAMPUS MASTERPLAN  
NO. DCAM-23-CS-AERFP-0003**

**Issued: September 20, 2023.**

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This Addendum No. 4 is issued and hereby published on the DGS website and is effective as of the date shown above. Except as modified hereby, the Request for Proposals (“RFP”) remains unmodified.

**Item No. 1:** Questions and answers about this RFP are hereby attached as **(Exhibit A)**.

**Item No. 2:** Attachment M (Form of Contract) of the RFP is hereby attached as **(Exhibit B)** and incorporated into the RFP.

By: Obi Ranjbar P.P Obi Ranjabr  
Kianna Shepherd  
Contracting Officer

Date: 9/20/2023

- End of Addendum No. 4 -

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



**EXHIBIT A  
Questions and Answers**

**[EXHIBIT WILL APPEAR ON THE FOLLOWING PAGE]**

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF GENERAL SERVICES



EXHIBIT A  
QUESTIONS & ANSWERS  
REQUEST FOR PROPOSAL No. DCAM-23-CS-AERFP-0003  
FOR OAKHILL MASTERPLAN

No.	Questions	Answers
1.	What is the intended use of the site? If undefined, what are you open to?	The site/campus will be used by the DC Government and its agencies for a variety of uses.
2.	The RFP indicates that we should provide an org chart and resumes in both the, "General Team Information and Firm(s) Data" and "Professional Qualifications" sections of the technical proposal. It is our assumption that these items should only be included in one of these sections. If this is correct, please confirm which of the two sections you would like them in.	The Org Chart and Resumes must be included in the Technical Proposal. It is each firm's discretion how its technical proposal is organized.
3.	In addition to the site assessment (site survey, existing building assessment, etc.) what, if any, design work is expected? Landscape design? Buildable sites for new construction? Potential building massings?	A campus design with building locations.
4	Should the consultant consider the existing programming on the site and identify potential improvements and/or synergies with other facilities?	Yes, the consultant should consider the existing programming on this site and identify any potential improvements and synergies with other facilities.
5.	Should the plan identify particular opportunities for specific DC agencies at Oak Hill?	No

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6.	Are there any existing plans for new development or new programming at the site?	No
7.	Is the DCGSA interested in, or open to, repurposing a portion of the site for potential private or non-governmental development?	No not under this project
8.	Are you looking for a strategic vision as a part of your master plan?	Yes
9.	What disciplines do you believe are required to complete this scope of work	Please review the RFP for details
10.	Is there a chance that a part of the site could be subleased to another entity, for income? (This questions because the land right off the highway would be prime real estate for some uses, such as warehouse, etc.)	Yes
11.	How many functioning and non-functioning buildings exist on the site?	Estimated 12 functional and 17 nonfunctional
12.	What survey information is available, above ground (buildings, roads, topo, stream, trees, etc) and below ground (utilities)?	None at this time
13.	Has the military every used the property for training, weapons testing or any other use that would have produced toxins in the soil?	DC National Guard has an occupied space on the campus that is in use. No weapons testing it's being done at this site.
14.	Could the 1940 master plan be made available for review?	Currently unavailable

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15	Will there be any community engagement or only stakeholder/agency?	No
16	The preference points add up to 90 + 12, not 100 + 12. Should the value of some factors be bumped up or the factors total 90 + 12?	See Section D.3 Evaluation and Selection Criteria.
17	Can DGS name a number of required agency meetings or can bidders propose a set number of meetings with additional meetings on an hourly or per meeting basis?	DGS it's available for weekly or bi-weekly meeting to review the progress, answer questions and review deliverables. Not an hourly rate project.
18	Do wetland or stream valley buffers need to be delineated?	No
19	What level of utility investigation is required for the underground utilities. Level A, B, C, or D?	Level C
20	Is a boundary survey prepared by a licensed surveyor required for the existing conditions analysis?	Yes
21	Can the existing topographic information be based on the county's contour information, or must we provide a new aerial survey?	Both can be used
22	Are existing conditions/as-built plans for each building required?	Existing conditions
23	What is the size of the property, in acres?	Over 800 A/C
24	What zoning regulations apply to the property? Specifically, we would like to know what uses are permitted, and the available FAR.	DC Government Department Of Buildings "DOB"

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25	What is the square footage of existing built space on the property?	That is a part of this contract scope.
26	Has DGS conducted a preliminary market assessment for the property?	No
27	How many buildings will be required to evaluate and what is the total square footage of existing buildings to evaluate?	That is a part of this contract scope.
28	Will the following buildings/campus facilities need evaluation: a. New Beginnings b. Potomac Job Corps c. National Guard	Yes
29	Is utility infrastructure evaluation part of the scope?	Yes
30	Please provide documentation of the planned, recently initiated paving, water tank and fire service replacements/improvements.	Will be made available to the successful bidder.
31	Is perimeter physical/technical security required for the full site.	No
32	Will detailed programming be part of the base scope of services for this master plan?	No
33	Please confirm that the successful offeror will not be precluded from follow-on contracts for implementation.	Due to the nature of the Work to be performed under this Contract, the A/E awarded shall be precluded from competing as a Prime or Subcontractor for any future contract pertaining to the future redevelopment of the Oak Hill Campus site arising from the master plan developed pursuant to this Project.

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34	The RFP seems to limit the scope to architectural, structural, MEP disciplines, and cost estimator. Please confirm the need for architectural, structural, MEP/FP, civil engineer, land surveyor and cost estimator. Are there any other required disciplines?	Architectural, structural, MEP/FP, civil engineer, land surveyor and cost estimator should be included.
35	What are the expected entitlement reviews for the master plan (HPO, CFA, NCPC, OP, etc.)? Or is it expected for those reviews to occur later during implementation?	Expected for those reviews to occur later during implementation
36	“Would the awarded firm for the Oak Hill Campus Master Plan be precluded from competing and/or being awarded any future design or build projects at the site”?	Due to the nature of the Work to be performed under this Contract, the A/E awarded shall be precluded from competing as a Prime or Subcontractor for any future contract pertaining to the future redevelopment of the Oak Hill Campus site arising from the master plan developed pursuant to this Project.
37	“Will a list of attendees of the pre-proposal and site visit be made available by DGS”?	Yes, it is available, refer to Addendum 3 of this solicitation
38	What is the program of this project?	See SOW for the project in the RFP
39	Can you describe the goal of the masterplan with respect to the existing school?	See SOW for the project in the RFP
40	How is the tragic history of the site meant to be accounted for?	Please refer to Section 2 of the SOW.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
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**EXHIBIT B  
Form of Contract**

**[EXHIBIT WILL APPEAR ON THE FOLLOWING PAGE]**





**AGREEMENT FOR  
ARCHITECTURAL/ENGINEERING SERVICES  
FOR  
OAK HILL CAMPUS MASTERPLAN**

**BY AND BETWEEN  
DISTRICT OF COLUMBIA  
DEPARTMENT OF GENERAL SERVICES**

**AND**

**[NAME OF CONTRACTOR]**

**CONTRACT NUMBER: DCAM-23-CS-AERFP-0003**

**THIS AGREEMENT** (“Agreement”) is made by and between the **DISTRICT OF COLUMBIA GOVERNMENT**, acting by and through its **DEPARTMENT OF GENERAL SERVICES** (“DGS” or the “Department”), and **[NAME OF CONTRACTOR]**, with a place of business at **[CONTRACTOR ADDRESS]** (the “Contractor”, “A/E”, or “Architect”, and collectively with the Department, the “Parties”).

**WITNESSETH:**

**WHEREAS**, the Department requires to provide services of an Architectural/Engineering firm to provide professional planning and design services to assist in the development of a master plan (the “Campus Site Master Plan”) and conceptual design documents (including preliminary cost estimate/budget, scope, and schedule documents) to support the future redevelopment of the Oak Hill Campus site, located at 8400 River Road, Laurel, MD 20724 (the “Project”).

**WHEREAS**, the Architect submitted a proposal dated **[PROPOSAL DATE]** to provide such services;

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

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

**WHEREAS**, the Department requires that the Project, be Substantially Complete no later than September 2, 2024 (the “Substantial Completion Date”); and

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

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

## **ARTICLE 1 GENERAL PROVISIONS**

**Section 1.1** 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 Architect under this Contract. 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 contractors practicing in the same or similar locality under the same or similar circumstances. The A/E shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The A/E shall review laws, codes, and regulations applicable to the Architect's services. The A/E shall respond to requirements imposed by governmental authorities having jurisdiction over the Project.

**Section 1.2** 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 1.3 Relationships 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 Project Manager in furthering the interests of the Department. The A/E shall use its best efforts to perform the required services in an expeditious and economical manner consistent with the interests of the Department. The Department shall endeavor to promote harmony and cooperation among the Department, Architect, Project Manager, and other persons or entities employed by the Department for the Project.

**Section 1.3.1 Project Manager.** Project Manager (or "PM") will be assigned to provide certain project management functions. The Project Manager shall, at all times, act solely for the benefit of the Department, not the Contractor. Although day-to-day communications with the A/E shall be routed through the Project Manager, only the individual(s) specified in Section 1.3.2 shall have the authority to alter the terms of this Contract. Without limiting the generality of the foregoing, it is understood and agreed that the Project Manager shall not have the authority to increase the fee or the not-to-exceed amount established under this Contract. The Project Manager for this Contract is:

Darrell Hardie  
Program Manager  
Capital Construction Services  
3924 Minnesota Ave, NE, 5th Floor  
Washington, DC 20019  
[darrell.hardie@dc.gov](mailto:darrell.hardie@dc.gov)

**Section 1.3.2** The Contracting Officer for this Contract shall be:

**Kianna Shepherd**  
Contracting Officer  
Contracts and Procurement  
Department of General Services  
3924 Minnesota Ave, NE, 5<sup>th</sup> Floor  
Washington, DC 20019  
[kianna.shepherd@dc.gov](mailto:kianna.shepherd@dc.gov)

**Section 1.4** All deliverables are subject to review and approval by the PM. The Architect shall prepare, modify, and correct all such non-conforming deliverables in sufficient detail to obtain final approval under the Contract.

**Section 1.5** Neither the District's review, approval or acceptance of, nor payment for, any of the services required under this Contract shall be construed as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract and the Architect shall be and remain liable to the District in accordance with applicable law for all damages to the District caused by the Contractor's negligent performance of any of the services furnished under this Contract.

**Section 1.6** The rights and remedies of the District provided for under this Contract is in addition to any other rights and remedies provided by law.

**Section 1.7** During the performance of work under this Contract, the A/E shall submit a monthly progress report, completely and clearly stating the current status of the Contractor's work under this Contract. The proposed form of this report shall be submitted for review and approval prior to the first invoice for partial payment.

**Section 1.8** During the performance of work under this Contract, the Architect shall take notes and minutes of any meeting attended in connection with the Project, recording any decision altering, expanding, or deleting any provision which may affect the contractual obligation, and submit two (2) copies to the PM.

**Section 1.9 Key Personnel.** The following individuals shall be considered key personnel: (i) the Design Principal; (ii) the Project Architect; (iii) Project Manager; (iv) MEP Engineer; and (v) Structural Engineer, as identified in **Exhibit F**. 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.

**Section 1.10 Schedule.** A schedule for the Project is set forth in **Exhibit E**. The A/E shall provide the services required hereunder in accordance with this schedule.

## **ARTICLE 2 SCOPE OF SERVICES**

**Section 2.1 General.** The A/E shall provide professional planning and design services to assist in the development of a master plan, conceptual design documents (including preliminary cost estimate/budget, scope, and schedule documents), and related community outreach plan to support the future redevelopment of the Oak Hill Campus site.

**Section 2.2 Project Background.** The Campus Site Masterplan development shall incorporate the following components:

- Existing Conditions Analysis & Strengths, Weaknesses, Opportunities, and Threats (“SWOT”) Memo
- Design Development Phase Deliverables
- Conceptual Design Development
- Master Plan Development

**Section 2.3 Performance Criteria.** The A/E shall develop a Project schedule that results in completion and includes the following work products:

**Section 2.3.1 Existing Conditions Analysis & SWOT Memo:** The A/E shall analyze existing site conditions (e.g. general plan, census data) and conducts other research as deemed necessary (e.g., key stakeholder interviews) and develop a SWOT memo (e.g., analysis of issues/opportunities related to site control, due diligence, constraints, environmental issues, easements & encumbrances, etc.).

**Section 2.3.2 Design Development Phase Deliverables:** Building off the SWOT analysis and in partnership with DGS staff, the A/E shall develop a site program plan to inform the master plan (e.g., what is needed, how much, and where).

**Section 2.3.3 Master Plan Development (Drafts and Final):** Using the findings from the SWOT analysis, program development information, and feedback gathered through the community outreach process, the A/E shall develop a master plan for the Campus site which incorporates the items above. In the proposed schedule, this should allow for a minimum of two (2) rounds of staff review and feedback.

**Section 2.3.4 Conceptual Design Development):** The A/E shall develop conceptual design documents for the Project, including Project renderings, conceptual site plan, and preliminary Project budget and schedule. The site plan will include massing, sizing, and programmatic elements for the proposed design. The A/E will provide support to staff, as needed, in the development of an Oak Hill campus redevelopment plan (the “Oak Hill Campus Redevelopment Plan”) and budget plan (the “Budget Plan”).

**Section 2.4 Project Close-Out.** The A/E shall submit all project deliverables, including but not limited to Concept Design Reports, Master Plan Design, Meeting Minutes, and Existing Conditions Analysis & SWOT Memo.

## **Section 2.5 General Requirements**

**Section 2.5.1.** The A/E shall coordinate all work through the project manager (“Project Manager”) including but not limited to all site surveys and other field investigations germane to the work.

**Section 2.5.2.** The A/E shall ensure all developed documents are compliant with all appropriate regulatory agencies including, but not limited to the Historic Preservation Office (“HPO”), Department of Energy & Environment (“DOEE”), National Capital Planning Commission (“NCPC”), Commission of Fine Arts (“CFA”), DC Water, Pepco, and Washington Gas, to ascertain zoning analysis, deed restrictions and requirements, traffic study, and potential environmental considerations for compliance.

**Section 2.5.3.** The Department will provide the A/E access to the DGS ProjectTeam system. The A/E shall be responsible for using ProjectTeam to execute selected contract document requirements in coordination with DGS’ Project Manager to include communication with the general contractor during the construction phase.

**Section 2.5.4. Meeting Minutes.** The A/E shall be responsible for acting as recorder for all meetings with the government agencies that the A/E attends. The minutes shall clearly indicate the meeting number and date, numbering of each issue discussed, including a description of the issue, who is responsible to address, by what date, and date completed. Minutes shall also record all open items, and will note the schedule of the Contract, how far along the Project is (including how far over schedule, if applicable), the financial status of the Contract, and payments and a list of open change orders and requests for information as it relates to this Contract’s Scope of Work. Memorandum for the record of such meetings shall be typewritten and submitted to the Project Manager within five (5) calendar days from the date of the meeting for review and approval, and for such distribution as may be required.

The work under this Contract shall be performed and documented in a professional manner.

**Section 2.6** The A/E shall perform the Project in accordance with the Scope of Work (**Exhibit A**) and the Contractor’s Proposal (**Exhibit B**).

**ARTICLE 3  
TYPE OF AGREEMENT, TERM OF AGREEMENT  
AND COMPENSATION**

**Section 3.1 Type of Agreement.** This is a firm fixed price Contract in the amount of [TBD] as set forth in the Contractor’s Proposal dated [DATE] provided in **Exhibit B**.

**Section 3.2 Term of Agreement.**

The Project shall be completed by September 2, 2024 (“**Substantial Completion Date**”). The final completion date for the Project shall be October 1, 2024 (“**Final Completion Date**”).

**Section 3.3 Value of Agreement.** The value of the Contract is [TBD]. The A/E will be paid \$216,000 to provide the required services. The costs for required deliverables and submittals are included. The A/E shall not be paid more than [TBD] unless this amount is increased in writing and in advance by the Department’s Contracting Officer.

**Section 3.4 Use of ProjectTeam.** The A/E shall utilize the Department’s ProjectTeam 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) proposed changes; and (v) applications for payment.

**Section 3.5 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. Time is of the essence in the performance of the A/E’s obligations under this Agreement.

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## **ARTICLE 4 INSURANCE**

### **INSURANCE**

- A. GENERAL REQUIREMENTS.** The Contractor at its sole expense shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall submit a Certificate of Insurance to the Contracting Officer (CO) giving evidence of the required coverage prior to commencing performance under this 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.

The Government of the District of Columbia shall be included in all policies, where applicable and allowable by law, 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 this 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 Contractor and subcontractors.

### **B. INSURANCE REQUIREMENTS**

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 and under all subcontracts, covering claims for bodily injury, including without limitation sickness, disease or death and mental anguish of any persons, broad form property damage, 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.

The Commercial General Liability shall be further endorsed to:

- a) To the fullest extent permitted by law, provide additional insured coverage using ISO form CG 2015 0413 (or its equivalent) to The Government of the District of Columbia
- b) Coverage available to the additional insureds shall apply on a primary and non-contributing basis as respects any other insurance, deductibles, or self-insurance available to the additional insureds
- c) A waiver of subrogation in favor of The Government of the District of Columbia
- d) Any Annual Aggregate shall apply on a per location or per project basis (where applicable)
- e) Defense costs shall be in addition to and not erode the limits of liability

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 in connection with work under this agreement, with a minimum combined single limit of \$1,000,000 for bodily injury or death and property damage, including loss of use thereof. Such policy or policies of automobile liability insurance shall be written on an "occurrence" (as opposed to a "claims made") basis.

Auto Physical Damage Coverage - The Contractor shall provide auto physical damage insurance to cover "loss" to a covered "auto" or its equipment:

- a) Comprehensive - Fire, lightning or explosion; theft; windstorm, hail or earthquake; flood; mischief or vandalism; or the sinking, burning, collision or derailment of any conveyance transporting the covered "auto".
- b) Collision Coverage - Caused by: The covered "auto's" collision with another object or the covered "auto's" overturn.

The Commercial Auto Liability policy shall be further endorsed to:

- a. To the fullest extent permitted by law, provide additional insured coverage to The Government of the District of Columbia
  - b. Coverage available to the additional insureds shall apply on a primary and non-contributing basis as respects any other insurance, deductibles, or self-insurance available to the additional insureds
  - c. A waiver of subrogation in favor of The Government of the District of Columbia
  - d. Defense costs shall be in addition to and not erode the limits of liability
  - e. If applicable, include Form CA 99 48 03 06 Pollution Liability - Broadened Coverage for Covered Autos - Business Auto, Motor Carrier and Truckers (or it's equivalent)
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.

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.

The Workers Compensation and Employers Liability shall be further endorsed to:

- a) Include a Waiver of Subrogation in favor of The Government of the District of Columbia.
  - b) Where applicable, include United States Longshore and Harbor Workers Compensation Act (USL&H)
  - c) Where applicable, include Jones Act Coverage for seamen or crew members on an "if any" basis.
4. Network Security/Privacy (Cyber) Liability Insurance covering acts, errors, omissions, breach of contract, and violation of any consumer protection laws arising out of Contractor's operations or services with a limit of \$2,000,000 per claim and in the aggregate. Such coverage shall include but not be limited to, third party and first party coverage for loss or disclosure of any data, including personally identifiable information and payment card information, network security failure, violation of any consumer protection laws, unauthorized access and/or use or other intrusions, infringement of any intellectual property rights (except patent), unintentional breach of contract, negligence or breach of duty to use reasonable care, breach of any duty of confidentiality, invasion of privacy, or violations of any other legal protections for personal information, defamation, libel, slander, commercial disparagement, negligent transmission of computer virus, or use of computer networks in connection with denial of service attacks. Such coverage shall include regulatory defense and fines/penalties in any jurisdiction anywhere in the world. Such coverage shall include contractual privacy coverage for data breach response and

crisis management costs that would be incurred by Contractor on behalf of The Government of the District of Columbia in the event of a data breach including legal and forensic expenses, notification costs, credit monitoring costs, and costs to operate a call center. Contractor shall maintain coverage in force during the term of this Agreement and for an extended reporting period of not less than two (2) years after.

5. 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 this Contract. The policy shall provide limits of \$1,000,000 per claim or per occurrence for each wrongful act and \$2,000,000 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. Limits may not be shared with other lines of coverage.
6. Commercial Umbrella or Excess Liability - The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits of \$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 Government of the District of Columbia and the “other insurance” provision must be amended in accordance with this requirement and principles of vertical exhaustion.
7. Sexual/Physical Abuse & Molestation - The Contractor shall provide evidence satisfactory to the CO 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. Coverage should include physical abuse, such as sexual or other bodily harm and non-physical abuse, such as verbal, emotional or mental abuse; any actual, threatened or alleged act; errors, omission or misconduct. This insurance requirement will be considered met if the general liability insurance includes an affirmative sexual abuse and molestation endorsement for the required amounts or through a separate stand alone sexual abuse and molestation policy with confirmation there are no exclusions for abuse or assault & battery under the General Liability. So called “silent” coverage or “shared” limits under a commercial general liability or professional liability policy will not be acceptable. Limits may not be shared with other lines of coverage. The applicable policy may need to be submitted to the ORM for compliance review.

**C. SUBCONTRACTOR INSURANCE REQUIREMENTS**

Any and all subcontractors engaged by Contractor for work under this agreement shall be required to have the same insured required of Contractor. Should the Contractor wish to propose different insurance requirements than outlined below, then, prior to commencement of work by the subcontractor, the Contractor shall submit in writing the name and brief description of work to be performed by the subcontractor on the Subcontractors Insurance Requirement Template provided to the Office of Risk Management (ORM). ORM will determine the insurance requirements applicable to the subcontractor and promptly deliver such requirements in writing to the Contractor. In either instance, the Contractor must provide proof of the subcontractor's required insurance prior to commencement of work by the subcontractor.

**D. 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.

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

**F. LIABILITY.** These are the required minimum insurance requirements established by The Government of the District of Columbia. However, it is understood that The Government of the District of Columbia does not in any way represent that the insurance or the limits of insurance specified herein are sufficient or adequate to protect your interests or liabilities and will not in any way limit the contractor's liability under this contract.

**G. CONTRACTOR'S PROPERTY.** 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 Government of the District of Columbia.

**H. MEASURE OF PAYMENT.** The Government of the District of Columbia 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.

**I. 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 cancellation, non-renewal, or

material changes to the extent such cancellation or material changes results in Contractor no long complying with the above requirements. 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. The Government of the District of Columbia may reasonably change the above insurance coverage requirements during the Term by giving Contractor at least 30 days' notice of the change. Contractor must comply, at your expense, and deliver to the CO evidence of compliance before the change becomes effective.

- J. CERTIFICATES OF INSURANCE.** The Contractor must send to CO, at least 10 days after execution of this Agreement, certificates of insurance evidencing the required insurance coverage and endorsements required herein. Contractor must also provide us with evidence of renewal before the expiration date of each insurance policy. Contractor is responsible for providing us with 30 days advanced written notice if the certificate of insurance by the insurer has been canceled, reduced in coverage, or otherwise altered. . . 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:**

Kianna Shepherd  
Contracting Officer  
Department of General Services  
Contracts & Procurement Division  
3924 Minnesota Avenue NE, 5<sup>th</sup> Floor  
Washington, DC 20019  
[kianna.shepherd@dc.gov](mailto:kianna.shepherd@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).

- K. DISCLOSURE OF INFORMATION.** The Contractor agrees that The Government of the District of Columbia may disclose the name and contact information of its insurers to any third party which presents a claim against The Government of the District of Columbia 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.

**L. CARRIER RATINGS.** All Contractor's and its subcontractors' insurance required in connection with this contract shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A- VII or better (or the equivalent by any other rating agency) and licensed in the District of Columbia.

**M. WARRANTIES.** When applicable, the Contractor should be named as an additional insured on the applicable manufacturer's/distributor's Commercial General Liability policy using Insurance Services Office, Inc. ("ISO") form CG 20 15 04 13 (or another occurrence-based form with coverage at least as broad). CO should collect, review for accuracy, and maintain all warranties for goods and services

## **ARTICLE 5 OWNERSHIP OF DOCUMENTS**

**Section 5.1 Ownership of Documents.** Regardless of whether the Project is completed, any reports, studies, and other work prepared by the Architect and the architectural, engaged by the Contractor, and all other documents created in association with the Project shall become the sole property of the Owner upon full payment of Contractor's fees then due under this Contract, and shall not to be used by the Contractor and its sub-consultants on other projects, or for additions to this Project outside the Scope of Work, without the specific written consent of the Owner. However, the Owner expressly acknowledges and agrees that the documents to be provided by the Contractor under this Contract may contain design details, features and concepts including some from the Contractor'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 Contractor. 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 Contractor's absolute right to re-use such component design details, features and concepts on other projects, in other contexts or for other clients.

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

## **ARTICLE 6 CLAIMS AND DISPUTES**

**Section 6.1 Notice of Claim.** If the Architect submits a written request to change the terms of the agreement and the Department denies the change(s) requested in a written Change Proposal, or fails to respond to a written Change Proposal within thirty (30) days, and the Architect wishes to pursue a claim over the disputed item; or, if the Architect wishes to assert a claim over a contract dispute not arising from matters related to a Change Proposal, Change Order or Change Directive, then a written notice of claim must be submitted to the Department pursuant to the procedures in section 4732 of the Department of General Services ("DGS" or "Department") procurement rules

(27 DCMR 4732) and section 1004 of the District's *Procurement Practices Reform Act of 2010* (PPRA) (D.C. Official Code section 2-361.06(a)(2))(2011 Repl.).

**Section 6.1.1 Contents of Notice of Claim.** The notice of claim shall state the nature of the claim, the events or circumstances giving rise to the claim, the type of relief requested, and the amount of time or additional compensation, or other damages sought. If the amount of time, compensation, or other damages sought is not reasonably ascertainable at the time, the Architect shall so state, explain why, and provide whatever estimates it can reasonably provide. The notice shall state clearly that the Architect intends to assert a claim against the Department.

**Section 6.2 Appeal Procedures.** All claims arising under or in connection with the Agreement or its breach, or relating to the Project, whether framed in contract, tort or otherwise, and which are not resolved via the claims process, may be resolved by filing an appeal with the District of Columbia Board of Contract Appeals in accordance with Title X of the *Procurement Practices Reform Act of 2010* (PPRA). However, if a third party brings any claim against the Department, including, without limitation, claims of infringement of patents, copyrights or other intellectual property rights, the Department may bring an action for defense or indemnification against the Architect in the court in which such claim is being litigated.

## **ARTICLE 7 ECONOMIC INCLUSIONS**

### **Section 7.1 Certified Business Enterprise**

**Section 7.1.1** If the A/E subcontracts, the Architect shall subcontract at least 35% of the dollar volume of this contract to certified small business enterprises; provided, however, that the costs of materials, goods and supplies shall not be counted towards the 35% subcontracting requirements unless such materials, goods and supplies are purchased from the certified small business enterprises.

**Section 7.1.2** If there are insufficient qualified small business enterprises to completely fulfill the requirement of Section 7.1.1, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any certified business enterprises; provided, however, that all reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.

**Section 7.1.3** The A/E if certified as a small, local or disadvantage business enterprise and self-performs the entire Contract, shall not be required to comply with the provisions of Sections 7.1.1 and 7.1.2.

### **Section 7.2 First Source Employment Agreement**

**Section 7.2.1** The A/E and each of its Subcontractors shall submit to the Department a list of current employees that will be assigned to the Contract, the date they were hired and whether or not they live in the District of Columbia.

**Section 7.2.2** The A/E and its constituent entities shall comply with subchapter III of



Chapter 11 Title 1, and subchapter II of Chapter 11 of Title 1 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The Architect and all Subcontractors shall execute a First Source Agreement with the District of Columbia Department of Employment Services (“DOES”) prior to beginning the Project, if applicable.

**Section 7.2.3** The A/E shall maintain detailed records relating to the general hiring of District of Columbia and community residents. At least fifty-one percent (51%) of the Contractor’s Team and every subcontractor’s employees hired under this Agreement or after such sub Architect enters into a contract with the Architect to work on a project shall be residents of the District of Columbia.

**Section 7.2.4** The A/E shall be responsible for: (i) including the provisions of this Section 7.2 in all subcontracts; (ii) collecting the information required in this Section 7.2 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in any reports required to be submitted by the Architect pursuant to this Section 7.2.

**Section 7.3 Living Wage Act.** The A/E agrees that the work performed under this Agreement shall be subject to the District of Columbia Living Wage Act, Exhibit C.

## **ARTICLE 8 MISCELLANEOUS PROVISIONS**

**Section 8.1** This Agreement shall be governed by the laws of the District of Columbia.

**Section 8.2** The Owner and Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns of such other party with respect to all covenants of this Agreement. The Architect shall not assign this Agreement without the written consent of the Owner.

**Section 8.3** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Contractor.

**Section 8.4** 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 a Project site.

**Section 8.5** The A/E shall have the right to include photographic or artistic representations of the Project among the Contractor’s promotional and professional materials. If applicable, the Architect shall be given reasonable access to the completed Project to make such representations. However, the Contractor’s materials shall not include the Owner’s confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner’s promotional materials for the Project.

**Section 8.6** In accordance with Section 8.11 below, if the A/E or Owner receives information specifically designated by the other party as “confidential” or “business proprietary,”

the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

**Section 8.7** The A/E agrees to indemnify and hold the Owner, the Owner's Representative and the Owner's officers, agents and employees harmless from and against all claims, liabilities, demands, losses, damages, judgments, costs, or expenses, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Contractor, its employees and its consultants in the performance of professional services pursuant to this Agreement.

**Section 8.8** The A/E agrees to indemnify and hold the Owner and the Owner's Representative harmless from and against any and all claims, liabilities, demands, losses, damages, costs, or expenses arising from the Contractor's failure to perform its obligations pursuant to agreements with third parties, including, but not limited to, subconsultants, made in order to provide the services required of the Architect under this Agreement.

**Section 8.9** 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 Owner and Owner's Representative harmless from loss on account thereof.

**Section 8.10 Confidentiality.** The A/E shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the A/E from establishing a claim or defense in an adjudicatory proceeding. The A/E shall require of the Contractor's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner.

**Section 8.11 Extent of Agreement.** This Agreement represents the entire and integrated agreement between the Owner and the A/E and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Contractor.

## **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:

**Section 8.12.1.1** Employment, upgrading, or transfer;

**Section 8.12.1.2** Recruitment or recruitment advertising;

**Section 8.12.1.3** Demotion, layoff, or termination;

**Section 8.12.1.4** Rates of pay, or other forms of compensation; and

**Section 8.12.1.5** Selection for training and apprenticeship.

**Section 8.12.2** Unless otherwise permitted by law and directed by the Department, the Architect 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 shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor; state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in this Section.

**Section 8.12.4** 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 Contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**Section 8.12.5** 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 8.12.6** The A/E shall include in every subcontract the equal opportunity clauses of this Section so that such provisions shall be binding upon each Sub Architect or vendor.

**Section 8.12.7** The A/E shall take such action with respect to any Sub Architect as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for non-compliance.

**Section 8.13 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 District of Columbia Code § 22-2514.

**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 Contractor, as the intent of the Contract is, with specific identified exceptions, to require the Architect 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 Architect 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 Architect 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 Reserved**

**Section 8.17 Confidential Information.** In the course of the Contractor's performance of the Work, the Department may make available to the Architect 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 architect 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 Architect to carry out the Project. The Architect shall similarly obligate any and all persons to whom such information is necessarily disclosed to maintain the information in strict confidence. The Architect 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 8.18 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 8.19 Media Releases.** Neither the Contractor, its employees, agents or 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 8.20 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 8.21 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:

Kianna Shepherd  
Contracting Officer  
Department of General Services  
Contracts & Procurement Division  
3924 Minnesota Avenue NE, 5<sup>th</sup> Floor  
Washington, DC 20019  
[kianna.shepherd@dc.gov](mailto:kianna.shepherd@dc.gov)

If to the Contractor:

[NAME OF CONTRACTOR]

This Paragraph 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.

**Section 8.22 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 not begin to run, or shall be deemed to be tolled, until Final Completion as achieved by the general contractor or, with respect to latent defects or nonconformities, such later time as the Department knew or should have known of the defect or nonconformity.

**Section 8.23 Separate Contracts on Project.** Due to the nature of the Work to be performed under this Contract, the A/E awarded shall be precluded from competing as a Prime or Subcontractor for any future contract pertaining to the future redevelopment of the Oak Hill Campus site arising from the master plan developed pursuant to this Project.

**Section 8.24 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 Architect acknowledges that, in entering into the Contract, the Department is relying on the particular qualifications of the Contractor, and the Architect 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 architect 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 Paragraph shall be null and void.

**Section 8.25 Survival.** All agreements warranties, and representations of the Architect contained in the Contract or in any certificate or document furnished pursuant to the Contract shall survive termination or expiration of the Contract.

**Section 8.26 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 effected only by an express written waiver signed by the Department.

**Section 8.27 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 Architect or any other person or entity.

**Section 8.28 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 8.29 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 unless made in writing signed by both the Department and the Contractor, unless otherwise expressly provided to the contrary in the Contract.

**Section 8.30 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.

## **ARTICLE 9 GOVERNMENTAL PROVISIONS**

**Section 9.1 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 9.1.1** 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 Architect 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 Architect 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 9.1.2 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 9.1.3 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 9.1.4 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 9.2 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 9.3 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 9.3.1** 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 Owner and the required cost submissions in effect on the date of execution of the Owner.

**Section 9.3.2** Owner, the District of Columbia government, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Architect for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Architect shall provide proper facilities for such access and inspection.

**Section 9.3.3** The A/E agrees to include the wording of this Section 9.3 in all its subcontracts in excess of five thousand dollars (\$5,000.00) that directly relate to Project performance.

**Section 9.3.4** Audits conducted pursuant to this Section will be in accordance with generally accepted auditing standards with the results prepared in accordance with generally accepted accounting principles and established procedures and guidelines of the applicable reviewing or audit agency.

**Section 9.3.5** The A/E agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Owner. Where the audit concerns the Contractor, 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 9.3.6** 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 9.4 Gratuities and Owners Not to Benefit Provisions.** If it is found, after notice and hearing, by the Owner that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any official, employee or agent of the Owner or the District with a view toward securing the Agreement or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the



performance of the Contract, the Owner may, by written notice to the Contractor, terminate the right of the Architect to proceed under the Agreement and may pursue such other rights and remedies provided by law and under the Contract.

**Section 9.4.1** In the event the Agreement is terminated as provided in Section 9.4, the Owner shall be entitled:

1. to pursue the same remedies against the Architect as it could pursue in the event of a breach of the Agreement by the Contractor; and
2. as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Owner) which shall be not less than ten times the costs incurred by the Architect in providing any such gratuities to any such Owner or employee.

**Section 9.4.2** No member of, nor delegate to Congress, Mayor or City Council Member, nor Owner nor employee of the District, nor Owner nor employee of the Owner shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom, and all agreements entered into by the Contracting Owner of the Owner in which he or any Owner or employee of the Owner shall be personally interested as well as all agreements made by the Owner in which the Mayor or City Council Member or Owner or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Owner or by any Owner thereof; but this provision shall not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or Owner or employee of the District is de Minimis.

**Section 9.5 Ethical Standards For Owner's Employees And Former Employees.** The Owner expects the Architect to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Owner not in conformity with applicable law, rules or regulations. The Architect shall not engage the services of any person or persons in the employment of the Owner or the District for any Work required, contemplated or performed under the Contract. The A/E may not assign to any former Owner or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while employed by the Owner, had material or substantial involvement in the matter. The A/E may request a waiver to permit the assignment of such matters to former Owner 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 9.6 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 9.6.1** 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 Contractor, and this Agreement shall immediately terminate upon the expiration of any then-existing appropriation.

**Section 9.6.2** 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 9.6.3** 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.

## **ARTICLE 10 TERMINATION OR SUSPENSION**

**Section 10.1** All terminations or suspensions arising out of or under this Contract shall be in accordance with the terms of the Standard Contract Provisions for Architectural/Engineering Services Contracts.

**Section 10.2 Cancellation Before Notice to Proceed.** The Department may cancel the Contract at any time before issuance of a Notice to Proceed, in the Department's sole discretion. Such a cancellation shall not be a breach of the Contract, and the Architect shall not be entitled to any compensation or damages if cancellation occurs.

**Section 10.3 Termination for Default.** The Department may terminate the Contract for default if the A/E fails materially to perform any of its duties or obligations under the Contract. In particular, but without limitation, the Department may terminate the Contract if:

1.The A/E fails to perform the Work diligently, in accordance with the Project Schedule or to make such progress in the Work as the Department reasonably believes is necessary to complete the Project within the time required by the Agreement; or

2.The A/E fails to perform the Work in a good and workmanlike manner or to correct defects in the Work promptly upon notice by the Department; or

3.The Department reasonably determines that the A/E has abandoned the Work, or has failed to pay laborers, mechanics, materialmen, Subcontractors or suppliers when payment is due; or

4.The A/E becomes insolvent, makes an assignment for the benefit of creditors, files a voluntary petition under any chapter of the Bankruptcy Code or has an involuntary petition filed against it under any chapter of the Bankruptcy Code, or the A/E has a receiver appointed, or files for dissolution or otherwise is dissolved; or

5.The A/E fails to pay its debts in a timely manner or becomes insolvent, the Department reasonably determines that the A/E does not have the financial ability to carry out its obligations under the Agreement and the A/E fails to give the Department prompt and reasonable assurances of its ability to perform.

### **Section 10.4 Termination for Convenience**

The Department may terminate the Contract in whole or specified part, for its convenience, for any reason. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions. The termination for convenience that arises out of or under this Agreement shall be in accordance with the terms of the Standard Contract Provisions for Architectural/Engineering Services Contracts.

**Section 10.5 Continued Responsibility After Termination.** If the A/E is terminated, either for default or otherwise, the Architect shall remain responsible for defects or non-conformities in all Work performed to the date of the termination.

**ARTICLE 11  
OTHER CONDITIONS AND SERVICES**

**Section 11 General Conditions.** To the extent that this Agreement is silent on an action or requirement of the Contractor, and current as of the date of this Agreement, the Department’s Standard Contract Provisions for A&E Services Contracts (**Exhibit D**) shall govern the Contractor’s obligations with respect to such action or requirement under this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date last written below.

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

By: \_\_\_\_\_  
Name: Kianna Shepherd  
Title: Contracting Officer  
Date: \_\_\_\_\_

**[Name of Contractor]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Exhibits:**

- Exhibit A-Scope of Work
- Exhibit B-Contractor (A/E)’s Proposal
- Exhibit C-Living Wage Act
- Exhibit D-Standard Contract Provisions for Architectural/Engineering Services
- Exhibit E-Design Schedule
- Exhibit F-Key Personnel

**EXHIBIT A**

**SCOPE OF WORK**

**[EXHIBIT WILL APPEAR ON THE FOLLOWING PAGE]**

**EXHIBIT B**

**CONTRACTOR (A/E)'S PROPOSAL**

**[EXHIBIT WILL APPEAR ON THE FOLLOWING PAGE]**

**EXHIBIT C**

**LIVING WAGE ACT**

**[EXHIBIT WILL APPEAR ON THE FOLLOWING PAGE]**

**EXHIBIT D**

**STANDARD CONTRACT PROVISIONS FOR ARCHITECTURAL/ENGINEERING  
SERVICES**

**[EXHIBIT WILL APPEAR ON THE FOLLOWING PAGE]**



**EXHIBIT E**

**DESIGN SCHEDULE**

**[EXHIBIT WILL APPEAR ON THE FOLLOWING PAGE]**

**EXHIBIT F**

**KEY PERSONNEL**

**[EXHIBIT WILL APPEAR ON THE FOLLOWING PAGE]**