

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF GENERAL SERVICES



**Addendum No. 1**  
**To**  
**REQUEST FOR QUALIFICATIONS NO. DCAM-21-CS-RFQ-0001**  
**FOR**  
**CONSTRUCTION PROJECTS**

**Issued: October 19, 2021**

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This Addendum No. 1 is issued and hereby published on the DGS website and effective as of the date shown above. Except as modified hereby, the Request for Qualifications (“RFQ”) remains unmodified.

**Item No. 1:** Attachment A (Past Performance Evaluation Form) of the RFQ is hereby revised as attached in **(Exhibit 1)**.

**Item No. 2:** Attachment D (Bidder/Offeror Certification Form) of the RFQ is hereby revised in **(Exhibit 2)** and incorporated to the RFQ.

**Item No. 3:** Attachment G (Form of Contract) of the RFQ is hereby revised in **(Exhibit 3)** and incorporated as to the RFQ

**Item No. 4:** Attachment I of the RFQ is hereby revised in **(Exhibit 4)** and incorporated as to the RFQ.

By: *Eric Njonjo*  
Eric Njonjo  
Contracting Officer

Date: 10/18/2021

- End of Addendum No. 1 -

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



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**EXHIBIT 1**

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

**PAST PERFORMANCE EVALUATION  
FORM DCAM-21-CS-RFQ-0001  
CONSTRUCTION PROJECTS**  
(Check appropriate box)

**OFFEROR** \_\_\_\_\_

Performance Elements	Excellent	Good	Acceptable	Poor	Unacceptable
Quality of Services/ Work					
Timeliness of Performance					
Cost Control					
Business Relations					
Customer Satisfaction					

1. Name and Title of Evaluator: \_\_\_\_\_
2. Signature of Evaluator: \_\_\_\_\_
3. Name of Organization: \_\_\_\_\_
4. Telephone Number of Evaluator: \_\_\_\_\_  
E-mail address of Evaluator: \_\_\_\_\_
5. State type of service received: \_\_\_\_\_
6. State Contract Number, Amount and Period of Performance \_\_\_\_\_  
\_\_\_\_\_
7. Remarks on Excellent Performance: Provide data supporting this observation. Continue on separate sheet if needed)
8. Remarks on unacceptable performance: Provide data supporting this observation. (Continue on separate sheet if needed)

Please submit completed evaluation to [dashante.peterson@dc.gov](mailto:dashante.peterson@dc.gov)

**RATING GUIDELINES**

Summarize Contractor performance in each of the rating areas. Assign each area a rating of 0 (Unacceptable), 1 (Poor), 2 (Acceptable), 3 (Good), 4(Excellent), or ++ (Plus). Use the following instructions a guidance in making these evaluations.

	<b>Quality Product/Service</b>	<b>Cost Control</b>	<b>Timeless of Performance</b>	<b>Business Relations</b>
	<ul style="list-style-type: none"> <li>-Compliance with contract requirements</li> <li>-Accuracy of reports</li> <li>-Appropriateness of personnel</li> <li>-Technical excellence</li> </ul>	<ul style="list-style-type: none"> <li>-Within budget (over/ under target costs)</li> <li>-Current, accurate, and complete billings</li> <li>-Relationship of negated costs to actual</li> <li>-Cost efficiencies</li> <li>-Change order issue</li> </ul>	<ul style="list-style-type: none"> <li>-Meet Interim milestones</li> <li>-Reliable</li> <li>-Responsive to technical directions</li> <li>-Completed on time, including wrap-up and</li> <li>-contract administration</li> <li>-No liquidated damages assessed</li> </ul>	<ul style="list-style-type: none"> <li>-Effective management</li> <li>-Businesslike correspondence</li> <li>-Responsive to contract requirements</li> <li>-Prompt notification of contract problems</li> <li>-Reasonable/cooperative</li> <li>-Flexible</li> <li>-Pro-active</li> <li>-effective contractor recommended solutions</li> <li>-Effective snail/small disadvantaged business Subcontracting program</li> </ul>
<b>0. Zero</b>	Nonconformances are comprises the achievement of contract requirements, despite use of Agency resources	Cost issues are comprising performance of contract requirements.	Delays are comprising the achievement of contract requirements, Despite use of Agency resources.	Response to inquiries, technical/ service/administrative issues is not effective and responsive.
<b>1, Unacceptable</b>	Nonconformances require major Agency resources to ensure achievement of contract requirements.	Cost issues require major Agency resources to ensure achievement of contract requirements.	Delays require major Agency resources to ensure achievement of contract requirements.	response to inquiries, technical/ service/administrative issues is marginally effective and responsive.
<b>2. Poor</b>	Nonconformances require minor Agency resources to ensure achievement of contract requirements.	Costs issues require minor Agency resources to ensure achievement of contract requirements.	Delays require minor Agency resources to ensure achievement of contract requirements.	Responses to inquiries, technical/ service/administrative issues is somewhat effective and responsive.
<b>3. Acceptable</b>	Nonconformances do not impact achievement of contract requirements.	Cost issues do not impact achievement of contract requirements.	Delays do not impact achievement of contract requirements.	Responses to inquires, technical/ service/administrative issues is usually effective and responsive.
<b>4. Good</b>	There are no quality problems.	There are no cost issues.	There are not delays.	Responses to inquiries, technical/ service/administrative issues is effective and responsive,
<b>5. Excellent</b>	The contractor has demonstrated an exceptional performance level in some or all of the above categories.			

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



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EXHIBIT 2

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

## BIDDER/OFFEROR CERTIFICATION FORM

### COMPLETION

The person(s) completing this form must be knowledgeable about the Bidder's/Offeror's business and operations.

### RESPONSES

Every question must be answered. Each response must provide all relevant information that can be obtained within the limits of the law. Individuals and sole proprietors may use a Social Security number but are encouraged to obtain and use a federal Employer Identification Number (EIN). Provide any explanation at the end of the section or attach additional sheets with numbered responses. Include the Bidder's/Offeror's name at the top of each attached page.

### GENERAL INSTRUCTIONS

This form contains five (5) sections. Section I concerns the bidder's/offeror's responsibility; Section II includes additional required certifications; Section III relates to the Domestic Preferences (if applicable); Section IV relates to the Walsh-Healey Act; and Section V requires the bidder's/offeror's signature. Please note, a determination that a prospective contract is found to be "not responsible" is final and not appealable.

### SECTION I. BIDDER/OFFEROR RESPONSIBILITY CERTIFICATION

*Instructions for Section I: Section I contains ten (10) parts. Part 1 requests information concerning the Bidder's/Offeror's business entity. Part 2 inquires about current or former owners, partners, directors, officers or principals. Part 3 relates to the responsibility of the Bidder's/Offeror's business. Part 4 concerns the Bidder's/Offeror's business certificates and licenses. Part 5 inquires about legal proceedings. Part 6 relates to the Bidder's/Offeror's financial and organizational status. Part 7 requires the Bidder/Offeror to agree to update the information provided. Part 8 relates to disclosures under the District of Columbia Freedom of Information Act (FOIA).*

#### PART 1: BIDDER/OFFEROR INFORMATION

Legal Business Entity Name:	Solicitation #:	
Address of the Principal Place of Business (street, city, state, zip code)	Telephone # and ext.:	Fax #:
Email Address:	Website:	

Additional Legal Business Entity Identities: If applicable, list any other DBA, Trade Name, Former Name, Other Identity and EIN used in the last five (5) years and the status (active or inactive).

Type:	Name:	EIN:	Status:

1.1 Business Type (Please check the appropriate box and provide additional information if necessary.):

<input type="checkbox"/> Corporation (including PC)	Date of Incorporation:
<input type="checkbox"/> Joint Venture	Date of Organization:
<input type="checkbox"/> Limited Liability Company (LLC or PLLC)	Date of Organization:
<input type="checkbox"/> Nonprofit Organization	Date of Organization:
<input type="checkbox"/> Partnership (including LLP, LP or General)	Date of Registration or Establishment:
<input type="checkbox"/> Sole Proprietor	How many years in business?:
<input type="checkbox"/> Other	Date established?:

If "Other," please explain:

1.2 Was the bidder's/offeror's business formed or incorporated in the District of Columbia?	<input type="checkbox"/> Yes <input type="checkbox"/> No
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If "No" to Subpart 1.2, provide the jurisdiction where the bidder's/offeror's business was formed or incorporated. Attach a Certificate or Letter of Good Standing from the applicable jurisdiction and a certified Application for Authority from the District, or provide an explanation if the documents are not available.

State \_\_\_\_\_

Country \_\_\_\_\_

1.3 Please provide a copy of each District of Columbia license, registration or certification that the Bidder/Offeror is required by law to obtain (other than those provided in Subpart 1.2). If the Bidder/Offeror is not providing a copy of its license, registration or certification to transact business in the District of Columbia, it shall either: (a) Certify its intent to obtain the necessary license, registration or certification prior to contract award; or (b) Explain its exemption from the requirement.	
1.4 If your company, its principals, shareholders, directors, or employees own an interest or have a position in another entity in the same or similar line of business as the Bidder/Offeror, please describe the affiliation in detail.	
1.5 If any officer, director, shareholder or anyone holding a financial interest in the Bidder/Offeror has a relationship with an employee of the Department or any District agency for whom the Department is procuring goods or services, please describe the nature of the relationship in detail.	
<b>PART 2: INDIVIDUAL RESPONSIBILITY</b>	
<i>Additional Instructions for Section 1, Parts 2 through 8: Provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).</i>	
Within the past five (5) years, has any current or former owner, partner, director, officer, principal or any person in a position involved in the administration of funds, or currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the bidder/offeror with any government entity:	
2.1 Been sanctioned or proposed for sanction relative to any business or professional permit or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.2 Been under suspension, debarment, voluntary exclusion or determined ineligible under any federal, District or state statutes?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.3 Been proposed for suspension or debarment?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.4 Been the subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation for any business-related conduct?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.5 Been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime, or subject to a judgment or a plea bargain for:	
(a) Any business-related activity; or	<input type="checkbox"/> Yes <input type="checkbox"/> No
(b) Any crime the underlying conduct of which was related to truthfulness?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.6 Been suspended, cancelled, terminated or found non-responsible on any government contract, or had a surety called upon to complete an awarded contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please provide an explanation for each "Yes" in Part 2 above.	
2.7 In the past ten (10) years has the Bidder/Offeror had a contract terminated, in whole or in part, for any reason? If so, describe each such termination in detail.	
2.8 In the past ten (10) years has the Bidder/Offeror ever been assessed liquidated damages, costs to re-procure, costs to complete, or any other monetary damages under a contract? If so, describe each such assessment in detail.	
<b>PART 3: BUSINESS RESPONSIBILITY</b>	
Within the past five (5) years, has the Bidder/Offeror:	
3.1 Been under suspension, debarment, voluntary exclusion or determined ineligible under any federal, District or state statutes?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.2 Been proposed for suspension or debarment?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.3 Been the subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation for any business-related conduct?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.4 Been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime, or subject to a judgment or plea bargain for:	<input type="checkbox"/> Yes <input type="checkbox"/> No
(a) Any business-related activity; or	
(b) Any crime the underlying conduct of which was related to truthfulness?	
3.5 Been disqualified or proposed for disqualification on any government permit or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.6 Been denied a contract award (in whole or in part, for any reason) or had a bid or proposal rejected based upon a non-responsibility finding by a government entity? If so, describe each such occurrence in detail.	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.7 Had a low bid or proposal rejected on a government contract for failing to make good faith efforts on any Certified Business Enterprise goal or statutory affirmative action requirements on a previously held contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.8 Been suspended, cancelled, terminated or found non-responsible on any government contract, or had a surety called upon to complete an awarded contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please provide an explanation for each "Yes" in Part 3.	

<b>PART 4: CERTIFICATES AND LICENSES</b>	
Within the past five (5) years, has the Bidder/Offeror:	
4.1 Had a denial, decertification, revocation or forfeiture of District of Columbia certification of any Certified Business Enterprise or federal certification of Disadvantaged Business Enterprise status for other than a change of ownership?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please provide an explanation for "Yes" in Subpart 4.1.	
4.2 Please provide a copy of the bidder's/offeror's District of Columbia Office of Tax and Revenue Tax Certification Affidavit.	
<b>PART 5: LEGAL PROCEEDINGS</b>	
Within the past five (5) years, has the Bidder/Offeror:	
5.1 Had any liens or judgments (not including UCC filings) filed against it which remain undischarged?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 5.1, provide an explanation of the issue(s), relevant dates, the Lien Holder or Claimant's name, the amount of the lien(s) and the current status of the issue(s).	
5.2 Had a government entity find a willful violation of District of Columbia compensation or prevailing wage laws, the Service Contract Act or the Davis-Bacon Act?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.3 Received any OSHA citation and Notification of Penalty containing a violation classified as serious or willful?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.4 Engaged in any litigation with any government entity? If so, please identify and/or describe all threatened and pending litigation and/or claims, including but not limited to matters pending before any Boards of Contracts Appeals.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please provide an explanation for each "Yes" in Part 5.	
<b>PART 6: FINANCIAL AND ORGANIZATIONAL INFORMATION</b>	
6.1 Within the past five (5) years, has the Bidder/Offeror received any formal unsatisfactory performance assessment(s) from any government entity on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 6.1, provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).	
6.2 Within the past five (5) years, has the bidder/offeror had any liquidated damages assessed by a government entity over \$25,000?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 6.2, provide an explanation of the issue(s), relevant dates, the government entity involved, the amount assessed and the current status of the issue(s).	
6.3 Within the last seven (7) years, has the Bidder/Offeror initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 6.3, provide the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as "initiated," "pending" or "closed".	
6.4 During the past three (3) years, has the Bidder/Offeror failed to file a tax return or pay taxes required by federal, state, District of Columbia or local laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 6.4, provide the taxing jurisdiction, the type of tax, the liability year(s), the tax liability amount the bidder/offeror failed to file/pay and the current status of the tax liability.	
6.5 During the past three (3) years, has the Bidder/Offeror failed to file a District of Columbia unemployment insurance return or failed to pay District of Columbia unemployment insurance?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 6.5, provide the years the Bidder/Offeror failed to file the return or pay the insurance, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s).	
6.6 During the past three (3) years, has the Bidder/Offeror failed to comply with any payment agreement with the Internal Revenue Service, the District of Columbia Office of Tax and Revenue and the Department of Employment Services?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 6.6, provide the years the Bidder/Offeror failed to comply with the payment agreement, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s).	



6.7 Indicate whether the Bidder/Offeror owes any outstanding debt to any state, federal or District of Columbia government.	<input type="checkbox"/> Yes <input type="checkbox"/> No														
If "Yes" to Subpart 6.7, provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).															
6.8 During the past three (3) years, has the Bidder/Offeror been audited by any government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No														
(a) If "Yes" to Subpart 6.8, did any audit of the Bidder/Offeror identify any significant deficiencies in internal controls, fraud or illegal acts; significant violations of provisions of contract or grant agreements; significant abuse; or any material disallowance?	<input type="checkbox"/> Yes <input type="checkbox"/> No														
(b) If "Yes" to Subpart 6.8(a), provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).															
<b>PART 7: CONTRACTOR PROCUREMENT ACTIVITY WITHIN THE DEPARTMENT</b>															
7.1 What is your organization's Design Capacity (total labor hours) to conduct or pursue business with the Department of General Services (DGS) in the current fiscal year? Design capacity is calculated by multiplying the total number of company employees dedicated to a particular line of business by no more than 12 hours per day. Person's completing this form may be required to provide supporting documentation to substantiate allocable labor hours presented.															
(a) Construction: _____ labor hours															
(b) Non-Construction: _____ labor hours															
7.2 In the table below, please list:															
(1) The active contracts your organization currently holds with the Department of General Services, please include the contract number(s) as a part of your response; and															
(2) The number of labor hours your organization has allocated to each active contract within the current fiscal year. (Note, if more entries are required, please															
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;">Contract Number</th> <th style="width: 50%;">Labor Hours Allocated</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>	Contract Number	Labor Hours Allocated												
Contract Number	Labor Hours Allocated														
<b>PART 8: RESPONSE UPDATE REQUIREMENT</b>															
8.1 In accordance with the requirement of Section 302(c) of the Procurement Practices Reform Act of 2010 (D.C. Official Code § 2-353.02), the Bidder/Offeror shall															
(a) Within sixty (60) days of a material change to a response; and															
(b) Prior to the exercise of an option year contract.															
<b>PART 9: FREEDOM OF INFORMATION ACT (FOIA)</b>															
9.1 Indicate whether the Bidder/Offeror asserts that any information provided in response to a question in Section I is exempt from disclosure under the District of Columbia Freedom of Information Act (FOIA), effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code §§ 2-531, et seq.). Include the question number(s) and explain the basis for the claim. (The District will determine whether such information is, in fact, exempt from FOIA at the time of request for disclosure under FOIA.)	<input type="checkbox"/> Yes <input type="checkbox"/> No														
<b>PART 10: CERTIFICATIONS RELATED TO THE COVID-19 EMERGENCY</b>															
9.1 The bidder/offeror certifies that it will comply with Mayor's Order 2021-099, and all substantially similar vaccine requirements, unless and until they are rescinded															
9.2 The bidder/offeror certifies that it will comply with City Administrator's Order 2021-04, and all substantially similar mask requirements, unless and until they are															
<b>SECTION II. ADDITIONAL REQUIRED BIDDER/OFFEROR CERTIFICATIONS</b>															
<i>Instructions for Section II: Section II contains eight (8) parts. Part 1 requests information concerning District of Columbia employees. Part 2 applies to the Bidder/Offeror's pricing. Part 3 relates to equal employment opportunity requirements. Part 4 relates to First Source requirements.</i>															
<b>PART 1. DISTRICT EMPLOYEES NOT TO BENEFIT</b>															
1.1 The bidder/offeror certifies that no officer or employee of the District of Columbia will benefit from this contract. List the name(s) of any officer or employee of the District of Columbia that may benefit from this contract in section 1.2 below.															
1.2 The following officer or employee of the District of Columbia may benefit from this contract.															
(a) _____															
(b) _____															

**PART 2: INDEPENDENT PRICE DETERMINATION REQUIREMENTS**

The Bidder/Offeree certifies that:

2.1 The signature of the Bidder/Offeree is considered to be a certification by the signatory that:

(a) The contract prices have been arrived at independently without, for the purpose of restricting competition, any consultation, communication or agreement with any bidder/offeree or competitor related to:

- (i) Those prices;
- (ii) The intention to submit a bid/proposal; or
- (iii) The methods or factors used to calculate the prices in the contract.

(b) The prices in this contract have not been and will not be knowingly disclosed by the Bidder/Offeree, directly or indirectly, to any other bidder/offeree or competitor before bid/proposal opening unless otherwise required by law; and

(c) No attempt has been made or will be made by the Bidder/Offeree to induce any other concern to submit or not to submit a contract for the purpose of restricting competition.

2.2 The signature on the bid/proposal is considered to be a certification by the signatory that the signatory:

(a) Is the person in the Bidder's/Offeree's organization responsible for determining the prices being offered in this contract, and that the signatory has not participated and will not participate in any action contrary to subparagraphs 2.1(a)(i) through (a)(iii) above; or

(b) Has been authorized, in writing, to act as an agent for the following principal in certifying that the principal has not participated, and will not participate, in any action contrary to subparagraphs 2.1(a)(i) through (a)(iii) above:

\_\_\_\_\_  
*[Insert full name of person(s) in the organization responsible for determining the prices offered in this contract and the title of his or her position in the bidder's/offeree's organization]*

(i) As an authorized agent, certifies that the principals named in subparagraph 2.2(b) above have not participated, and will not participate, in any action contrary to subparagraphs 2.1(a)(i) through (a)(iii) above; and

(ii) As an agent, has not participated and will not participate in any action contrary to subparagraphs 2.1(a)(i) through (a)(iii) above.

2.3 If the Bidder/Offeree deletes or modifies subparagraph 2.1(b) above, the bidder/offeree must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

2.4 The Bidder/Offeree certifies that:

(a) there are no other entities related to it that are responding to or bidding on the subject solicitation or invitation to bid. Related entities include, but are not limited to, any entity that shares management positions, board positions, shareholders, or persons with a financial interest in the Bidder/Offeree.

(b) there are no current or former owners, partners, officers, directors, principals, managers, employees or any persons with a financial interest in the Bidder/Offeree who have a financial interest in the request for proposal or invitation for bid or any asset, tangible or intangible, arising out of any contract or scope of work related to the request for proposal or invitation for bid.

With regards to 2.4 (b), if the Bidder/Offeree has knowledge of such a financial interest, please provide a detailed explanation.

**PART 3: EQUAL OPPORTUNITY AND HUMAN RIGHTS OBLIGATIONS**

3.1 I hereby certify that I am fully aware of the contents of Mayor's Order 85-85, Mayor's Order 2017-313 and the Office of Human Rights' regulations in Chapter 11 of the DCMR, and agree to comply with them while performing this contract.

**PART 4: FIRST SOURCE OBLIGATIONS**

4.1 I hereby certify that I am fully aware of the requirements of the Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011 (D.C. Law 19-84), and agree to enter into a First Source Employment Agreement with the Department of Employment Services if awarded any contract valued at \$300,000 or more which receives funds or resources from the District, or funds or resources which, in accordance with a federal grant or otherwise, is administered by the District government.

4.2 I certify that the Initial Employment Plan submitted with my bid or proposal is true and accurate.

**PART 5: EMPLOYMENT ELIGIBILITY OBLIGATIONS**

5.1 I hereby certify that the Bidder/Offeree has verified the identity and employment eligibility of all its employees.

**PART 6: LANGUAGE ACCESS OBLIGATIONS**

6.1 For contracts where the contracting agency is a "covered entity" or "covered entity with major public contact" as defined in Sections 2(2) and 2(3) of the Language Access Act of 2004 (D.C. Official Code § 2-1931(2) and § 2-1931(3)), I hereby certify that I will comply with Language Access compliance requirements of the contracting agency while performing this contract.

**PART 7: CONFLICTS OF INTEREST**

7.1 The bidder/offeror certifies that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its obligations under the contract.

**PART 8: SUBCONTRACTING OBLIGATIONS**

8.1 The bidder/offeror certifies that it has verified with the Department of Small and Local Business Development (DSLBD) the current certifications of its proposed certified business enterprise (CBE) subcontractors.

8.2 The bidder/offeror certifies that it has verified with the Department of Consumer and Regulatory Affairs (DCRA), and any other licensing authority, that its proposed subcontractors possess all applicable licenses and permits required to perform the work.

**SECTION III. DOMESTIC PREFERENCE CERTIFICATIONS**

*Instructions for Section III: Section III contains three (3) part which should only be completed if goods are being provided that are subject to the requirements of the Buy American Act.*

**PART 1: BUY AMERICAN ACT COMPLIANCE (Applies if the bidder/offeror will provide goods to the District that are subject to the requirements of the Buy American Act)**

1.1 In accordance with 41 USC 8301 *et. seq.* and implementing regulations, the bidder/offeror certifies that each end product, except the end products listed below, is a domestic end product.  Yes  No

\_\_\_\_\_ EXCLUDED END PRODUCTS

\_\_\_\_\_ COUNTRY OF ORIGIN

**PART 2: FHWA BUY AMERICA ACT COMPLIANCE (Applies to FHWA-funded construction contracts)**

2.1 In accordance with 23 CFR 635.410(b), the bidder/offeror certifies that only steel or iron materials manufactured in the United States will be used for permanent incorporation on the project.  Yes  No

**PART 3: BUY AMERICAN ACT COMPLIANCE (Applies to locally-funded construction contracts)**

3.1 In accordance with 41 USC 8301 *et. seq.* and implementing regulations, the bidder/offeror certifies that only construction materials manufactured in the United States will be used on the project.  Yes  No

**SECTION IV. WALSH-HEALEY ACT**

*Instructions for Section IV: Walsh-Healey Act.*

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. §§ 35-45) (the "Act", as used in this section), the following terms and conditions apply:

(a) All representations and stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR 50-201.3) are incorporated by reference. These representations and stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2) (41 U.S.C. §40). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (29 U.S.C. §214).

**SECTION V. CERTIFICATION**

*Instruction for Section V: This section must be completed by all bidder/offerors.*

I, [ \_\_\_\_\_ ], as the person authorized to sign these certifications, hereby certify that the information provided in this form is true and accurate. In accordance with the requirements of section 302(c) of the Procurement Practices Reform Act of 2010 (D.C. Official Code § 2-353.02(c)), I shall update any response provided in this form within 60 days of a material change to a response and prior to the exercise of an option period.

Name [Print and sign]:	Telephone #:	Fax #:
Title:	Email Address:	
Date:	Contract No:	

*The District of Columbia is authorized to verify the above information with appropriate government authorities. Penalty for making false statements is a fine of not more than \$1,000.00, imprisonment for not more than 180 days, or both, as prescribed in D.C. Official Code § 22-2405. Penalty for false swearing is a fine of not more than \$2,500.00, imprisonment for not more than three (3) years, or both, as prescribed in D.C. Official Code § 22-2404.*

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



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**EXHIBIT 3**

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

**BASIC ORDERING AGREEMENT  
ON-CALL GENERAL CONSTRUCTION PROJECTS  
DCAM-21-CS-RFQ 0001**

**THIS AGREEMENT** (“Agreement” or “Contract”) is made by and between the **DISTRICT OF COLUMBIA GOVERNMENT**, acting by and through its **DEPARTMENT OF GENERAL SERVICES** (the “Department” or “DGS”) and **[SELECTED OFFEROR]**, duly organized under the laws of \_\_, and with a place of business at \_\_\_\_\_ (the “Contractor” or “Prime Contractor”, and collectively with the Department, the “Parties”).

**ARTICLE 1  
NATURE OF AGREEMENT**

**Section 1.1 Nature of Agreement.** This Agreement is issued pursuant to the Department’s Request for Qualifications for FY22 On-Call General Construction Projects Number: DCAM-21-CS-RFQ-0001 (the “RFQ”), and the Contractor, by virtue of this Agreement, shall be included on the Department’s list of pre-qualified contractors to be eligible to compete, as set forth in Section 1.3 of this Agreement with other pre-qualified contractors on on-call general construction projects for District of Columbia Public Schools (“DCPS”) and Department of Parks and Recreation (“DPR”) facilities. **This Agreement does not authorize any specific work or constitute a guarantee that any work will be assigned to the Contractor. All work will be awarded and released through individual project task orders as set forth in Section 1.3 of this Agreement**

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**Section 1.2** The term “Agreement” shall include this Contract, any and all Task Order Agreements, the Department’s Standard Contract Provisions (Construction and Architectural/Engineering, if applicable), as amended, attached hereto as **Exhibit A**, all other exhibits attached hereto, and/or any document incorporated by reference.

**Section 1.3 Competitive Bidding.**

**Section 1.3.1** For each project identified and funded by the Department to be competed among pre-qualified contractors that entered into a basic ordering agreements (“BOA”) pursuant to the RFQ, the Department will develop a scope of work. The scope of work will be issued to three (3) or more of the pre-qualified contractors via a Request for Task Order Proposals (“RFTOP(s)”), and each of those contractors may be provided with an opportunity to walk the project with the Department’s representatives in order to better understand and clarify the required work.

**Section 1.3.2** The Department contemplates that the scopes of work that will be issued to the pre-qualified contractors during the bidding phase will not include complete drawings. The Parties

acknowledge and agree that the Contractor may be required to complete work on a design-build or design-assist basis or any such other method as described in the RFTOPs.

**Section 1.3.3** The Department will select the contractor to be awarded each such project primarily based on price, but the Department reserves the right to consider non-price factors when making such decisions and will also consider differences in scope and/or proposed finishes, equipment and materials. RFTOPs will detail the award criteria for each project.

**Section 1.3.4** In the event the Contractor is selected for a project, the Contractor shall enter into a Task Order Agreement (“Task Order Agreement”). The Contractor shall not proceed with any work unless and until such Task Order Agreement is fully executed by the Department’s Contracting Officer (“Contracting Officer” or “CO”) and the Contractor is directed to begin work. Before the Department executes the Task Order Agreement, the Contractor must resolve any clean hand compliance matters with relevant authorities including, but not limited, to the District of Columbia Office of Tax and Revenue (“OTR”).

Section 1.3.5 Each contractor will be required to submit, within the time allotted by the Department, a lump sum price, a guaranteed maximum price (“GMP”), or such other pricing as may be requested by the Department for the proposed work (such price, “Task Order Agreement Price”). Absent specific instructions to the contrary, the proposed Task Order Agreement Price should be “all inclusive” and should include sufficient funding to cover all of the Contractor’s costs necessary to complete the project, including, but not limited to, profit, home and field office overhead, supervision, labor, materials, equipment, bonds, insurance and any other professional services as may be required to complete the design and construction, other type of work or to obtain the necessary permits. The Contractor shall be responsible for using the then-current Davis-Bacon wage determination or Service Contract Act (as applicable) when developing its pricing for any given project.

**Section 1.4 Task Order Agreements.** Any and all work performed under any Task Order Agreement issued pursuant hereto shall be governed by the terms and conditions set forth in the BOA. It is contemplated that individual Task Order Agreement shall, in general, contain the following information: (i) a description of the scope of work included in such Task Order Agreement; (ii) a lump sum price, GMP, and/or such other terms of compensation for the work included in the Task Order Agreement’s scope of work; (iii) the Substantial Completion Date for the Task Order Agreement’s scope of work and/or such other schedule requirements for Task Order Agreement; (iv) liquidated damages; (v) name and contact information for the assigned Project Manager; and (vi) any other specific requirements of the scope of work. The Task Order Agreement shall also set forth a general description and requirements of the given project (such description and requirements, the “**Project**”). The form of Task Order Agreement is attached as **Exhibit D.**

**Section 1.5 Term of Agreement.** The Agreement shall be effective from the date of

execution by Department's Contracting Officer subsequent to the Contractor's execution. through one year from such date (such time period, the "Term"). Any and all work assigned to the Contractor pursuant to a Task Order Agreement issued pursuant to the Agreement must be completed within the Term of the Agreement, and no later than the Substantial Completion Date identified in the individual Task Order Agreement.

**APPLICABLE IF LETTER CONTRACT WAS ISSUED:** This Agreement shall be effective for one year following the date of execution of the letter contract ("Letter Contract") by both parties (such time period, the "Term"). It is understood and agreed that certain of the activities described in this Agreement were performed while the Letter Contract was in place, and that upon execution of this Agreement, the terms of the Letter Contract shall merge into and be superseded by this Agreement. For avoidance of doubt, any services provided, or work performed pursuant to the Letter Contract and prior to the date that this Agreement is effective shall be governed by the terms and conditions of this Agreement. Any and all work assigned to the Contractor pursuant to a Task Order Agreement issued pursuant to this Agreement must be completed within the Term of this Agreement, and no later than the Substantial Completion Date identified in the applicable Task Order Agreement.

**Section 1.6 Option Year.** The Department shall have the right to extend the term of this Agreement for four (4) one-year option periods (each such period, an "Option Year"), the first of which would begin on the date that the base year Term expires and end one year from the date that such Term expires; the second of which would begin on the date that Option Year 001 expires and end one year from the date that Option Year 001 expires. the third of which would begin on the date that Option Year 002 expires and end one year from the date that Option Year 002 expires; and the fourth of which would begin on the date that Option Year 003 expires and end one year from the date that Option Year 003 expires. . In the event the Department desires to extend the Term of this Agreement pursuant to this Section 1.6, the Department shall provide the Contractor written notice of such election at least thirty (30) days prior to the beginning of the applicable Option Year.

**Section 1.7 Standard Task Order Provisions.** Unless otherwise expressly stated in a Task Order Agreement, all of the provisions of Article 2 through Article 14 of this Agreement shall be deemed incorporated into each Task Order Agreement as if set forth therein.

**Section 1.8 Minimum Value of Agreement.** The Contractor shall be entitled to receive a minimum of Fifty Dollars (\$50) during the base year and each option year period.

**Section 1.9 Not-to-Exceed Maximum Value of Agreement.** In addition, this Agreement has an aggregate not-to-exceed amount of Fifteen Million Dollars (**\$15,000,000**) (the "NTE Amount"). It is understood that the Contractor is not authorized to proceed with any work based solely on this Agreement. Any and all work performed under this Agreement shall be authorized by a written Task Order Agreement. In no event shall the Contractor be entitled to recover in the aggregate, pursuant to this Agreement and any and all Task Order Agreements issued pursuant hereto, more than the NTE Amount, unless and until the Department's Contracting Officer has

authorized the Contractor to exceed the NTE Amount in advance and in writing through a duly executed Change Order to this Agreement. In addition, each Option Year shall have the same value as the base period; thus, for each Option Year exercised by the Department, the minimum value of services will be Fifty Dollars (\$50) and an aggregate NTE Amount of Fifteen Million Dollars (\$15,000,000). All amounts must be authorized by Task Order Agreements.

## **ARTICLE 2 GENERAL PROVISIONS**

**Section 2.1 Relationship of Parties.** The Contractor accepts the relationship of trust and confidence established with the Department by this Agreement, and covenants with the Department to furnish the Contractor's reasonable skill and judgment and to cooperate with the Program Manager in furthering the interests of the Department. The Contractor shall use its best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Department.

**Section 2.2 General Scope of Project.** The Department anticipates that the projects assigned through Task Order Agreements pursuant to this Agreement will be on-call general construction projects and may include building repairs, upgrades, and tenant-fit out improvements including, but not limited to, building repairs, upgrades, and tenant-fit-out improvements including, but not limited to, patching and plumbing, carpentry, masonry, electrical as well as small park and playground type projects as may be necessary at DCPS, DPR and municipal sites and shall be performed on an as directed/as needed basis and must be completed by the substantial completion dates specified in each competitively bid Task Order Agreement..

**Section 2.3 Completion Date.** Subject to the Excusable Delay provisions of this Agreement, the Contractor agrees to substantially complete the Project on or before the date set forth in the individual Task Order Agreement for any given project.

**Section 2.4 Program Manager and Project Manager.** The Department shall assign a Program Manager and Project Manager to oversee the Contractor's work under any Task Order Agreement. The name and contact information for the assigned PMs will be specified in the applicable Task Order Agreement. The Contractor shall take direction from, and coordinate with, the assigned PMs. The Contractor will be required to develop work plans that are coordinated with, and acceptable to, the PMs assigned to each project. **The Contractor acknowledges, however, that the Program Manager and Project Manager are not authorized to modify any of the rights or obligations of the Department or the Contractor pursuant to the Agreement, or to issue Task Order Agreements, Change Orders or Change Directives. The Contractor hereby acknowledges and agrees that only a duly authorized Contracting Officer of the Department shall have the authority to issue Task Order Agreements, Change Orders or Change Directives on the Department's behalf.**

**The Parties understand that:**



- a. The CO is the only person authorized to approve changes in any of the requirements of this Agreement and any subsequent Task Order Agreement.
- b. The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this Agreement and any subsequent Task Order Agreements, unless issued in writing and signed by the CO.
- c. In the event the Contractor effects any change at the instruction or request of any person other than the CO, the change will be considered to have been made without authority and no adjustment will be made in the Task Order Agreement Price to cover any cost increase incurred as a result thereof.

## **Section 2.5 Administrative Matters.**

**2.5.1 Use of Department's Electronic Project Management Information System (Project Team).** Awarded Contractor shall utilize the Department's Project Team system to create, manage and/or submit any and all documentation required to be provided by the Contractor during the course of each Project, including, but not limited to: (i) requests for information; (ii) submittals; (iii) potential change orders; (iv) meeting minutes; (v) pencil copy invoices; (vi) drawings and specifications; (vii) punchlist; and (viii) other documents as may be designated by the Department.

**2.5.2 Invoice Submittal.** The Contractor shall create and submit payment requests in an electronic format through the DC Vendor Portal, <https://vendorportal.dc.gov>. The Contractor shall submit proper invoices on a monthly basis. To constitute a proper invoice, the Contractor shall enter all required information into the Portal after selecting the applicable purchase order number which is listed on the Contractor's profile.

**Section 2.6 Central Office.** During the Term of this Agreement, the Contractor shall maintain a central office that is staffed between the hours of 7am - 5pm Monday through Friday. This office will be used to manage work associated with this Agreement. A separate office does not need to be established, and it is acceptable if the Contractor elects to the run projects from its current office. The office should be equipped with telephone lines, a fax machine, email, access to the internet and such other equipment and supplies as are necessary to fulfill the work required under this Agreement.

## **Section 2.7 Coordination with DGS**

**Section 2.7.1 Working Hours.** The Contractor is required to coordinate with the assigned Project Manager for each individual project. The work may be performed during normal business hours; however, the Contractor may be required to work after hours or on weekend and holidays so as to not adversely impact the work of the District of Columbia employees/and or contractors.

The Contractor will base its bid on normal working hours; off-peak rates will be handled on a case by case basis for projects requiring work after normal business hours. The Contractor will be required to develop work plans that are coordinated with, and acceptable to, the Project Manager and/or the Program Manager assigned to the Task Order Agreement. If work is to be performed in an occupied facility, the Contractor will be required to submit an initial coordination plan (“**Coordination Plan**”) with its Task Order Agreement’s proposal for the project describing how the Contractor will work with the Department and the facility occupants to ensure that the project proceeds smoothly in order to minimize impact on facility operations. Such Coordination Plan would be evaluated as part of the bidding process described in **Section 1.3** above.

**Section 2.7.2 Supervision & Coordination**. The Contractor shall properly supervise and coordinate its work. At a minimum, the Contractor will undertake the following tasks:

- (1) Participate and assist in Project/Planning meetings;
- (2) Maintain full-time on-site construction supervision and provide daily inspections, quality control, monitoring, coordination of various trades, record drawings, and daily work log;
- (3) Coordinate work with any on-site personnel so as to ensure that their activities are not adversely affected;
- (4) Conduct periodic progress meetings following a Contractor generated agenda with the Program Manager;
- (5) Provide general safety and signage and posting for the project and see that each subcontractor prepares and submits adequate safety program and monitoring throughout the project;
- (6) Obtain all job permits and approvals from the Department of Consumer and Regulatory Affairs (“DCRA”) that are required to perform and complete the work, unless otherwise noted herein or in the Task Order Agreement;
- (7) Prepare payment requests, verify accuracy and forward to Department for approval and payment;
- (8) Assemble close-out documents required;
- (9) Provide assistance to the Department through all applicable warranty periods.
- (10) Coordinate its work with all third parties so as not to delay the critical path of the Project; and

- (11) Prepare and submit to the Department construction meeting minutes, progress meeting minutes, daily logs, inspection reports, preliminary and baseline schedules, (Primavera format) and schedule updates demonstrating the critical path of the Project (Primavera format).

### **ARTICLE 3 PRECONSTRUCTION DELIVERABLES**

**Section 3.1 Schedule.** Within seven (7) days of the issuance of a Notice to Proceed (“NTP”) for any Task Order Agreement awarded by the Department, the Contractor shall be required to submit to the Department’s Contracting Officer and Program Manager for their approval a schedule for each project awarded under a Task Order Agreement. Such schedule shall include a schedule for submittals and key milestones that are reasonably acceptable to the Project Manager and the Contracting Officer. The Contractor shall not begin any construction activities until the Project Manager has approved a schedule for the Task Order Agreement. Unless otherwise authorized by the Task Order Agreement, prior to mobilizing to the Project site and commencing work, the Contractor shall complete those activities set forth in Sections 3.1, 3.2, 3.3, 3.4 ,3.5, 5.13, 5.14 and 5.15.

**Section 3.2 Potential Subcontractors and Suppliers.** Within seven (7) days of the issuance of an NTP for any Task Order awarded by the Department, the Contractor shall furnish to the Project Manager a list of the subcontractors and suppliers that will work on the Project as well as a general description of each such subcontractor’s scope of work. Within five (5) business days after such list is submitted, the Project Manager shall advise the Contractor if it has any objection to any of the listed subcontractors or suppliers. In the event the Project Manager has a reasonable objection to any such subcontractor or supplier, the parties shall discuss such objection and agree on an appropriate course of action.

**Section 3.3 Design Services.** Prior to providing its bid for a Task Order Agreement, the Contractor will have an opportunity to review and ask questions regarding the scope of work for the Task Order Agreement and to ascertain what design services, if any, are necessary in order to complete the Project and which will be included in its price the costs of any necessary design services, and the Contractor shall be required to provide, at no additional cost to the Department, such design services as are necessary to implement the Project. The Contractor and the Project Manager shall agree upon the exact design services to be required prior to the commencing of construction services.

**Section 3.4 Design Reviews/Submittals.** On or before the dates specified in the approved detailed schedule as required per Section 3.1, the Contractor shall submit the necessary design information (i.e. permit drawings, shop drawings, submittals, sketches, etc.) to the Project Manager for review and approval. Unless a different timeframe is established in the approved detailed schedule, the Project Manager shall have five (5) business days to review such

documents. In the event the Project Manager finds such documents to be unacceptable, the Contractor shall be required to revise and resubmit such documents. The Contractor shall not commence construction activities unless and until such documents have been approved by the Project Manager. Any delays that result from design resubmissions shall be considered Non-Excusable. In addition, the Contractor shall coordinate with the Program Manager and the Department's architect/engineer (if applicable) with respect to requests for information ("RFIs"), architect's supplemental instructions and other construction administration, as well as the District of Columbia Historic Preservation Review Board and Commission of Fine Arts, as required.

**Section 3.5. Permits.** Unless otherwise specified in the Task Order Agreement, it is understood that the Contractor shall be required to secure and pay for any and all permits, governmental fees, licenses and inspections necessary for the execution and completion of the work. The Department shall cooperate with the Contractor in securing such permits, licenses and inspections; provided however, the Department shall not be required to pay the fees for such permits, licenses and inspections unless otherwise noted in the Task Order Agreement. The costs of any such fees or inspections are included in the Task Order Agreement Price.

## **ARTICLE 4 CONTRACT SUM**

**Section 4.1 Lump Sum Price or Other Terms of Compensation.** For the work covered by any given Task Order Agreement, the Contractor shall be paid the lump sum price, GMP or other terms of compensation set forth in the Task Order Agreement ("Contract Sum") to Fully Complete the Project.

**Section 4.2 Nature of the Contract Sum.** The Contractor acknowledges and understands that the Contract Sum is based on the scope of work included with the Project Task Order Agreement. It is understood and agreed that the Contract Sum represents the Contractor's payment to fully complete the Project. The Parties acknowledge and agree that it is their intent to have the Contractor to construct and deliver a fully functional Project as contemplated in the scope of work for the Contract Sum and consistent with the project schedule. In furtherance of such intent, the Contractor hereby assumes the risks associated with and shall be responsible for (i) any changes in market conditions that affect the cost of labor or materials; (ii) coordination issues between any drawings for the Project; (iii) elements of work not shown on the Scope of Work, but which are reasonably inferable from the Scope of Work; (iv) cost associated with acceleration of the work and expediting of materials necessary to meet the Project Schedule which are the result of anything other than an Excusable Delay; and (v) the risk of subcontractor default.

**Section 4.3 Risks Assumed by Contractor.** By submitting a bid for any project, the Contractor shall be deemed to have thoroughly examined the terms of the RFTOP, the drawings and specifications that may be included with the RFTOP, and shall constitute its acknowledgement that it has been provided with an opportunity to visit the Project site and that such Contractor has had the opportunity to become familiar with local conditions under which the work is to be performed. Further, in submitting any such bid, the Contractor shall be deemed to represent that

it has satisfied itself that it can undertake the work for the stated cost. Among other things, by submitting a bid, the Contractor assumes the following risks: (1) the nature of the land and subsoil unless such conditions constitute a Differing Site Condition under Article 4.A of the Standard Contract Provisions for Construction Contracts; (2) the form and nature of the site and surrounding areas; (3) details and levels of existing pipe lines, conduits, sewers, drains, cables or other existing services; (4) the quantities, nature and availability of the materials, tools, equipment and labor necessary for the completion of the work; (5) the means of access to the site and any accommodation that may be required; (6) uncertainties of weather and physical conditions at the site; and in general to have itself obtained all necessary information as to risk contingencies, climatic, hydrological and natural conditions and other circumstances which may influence or affect his performance of the work.

**Section 4.4 Allowances.** To the extent that the Contract Sum related to a Task Order Agreement includes one or more allowances, such allowances shall be reflected on the Schedule of Values attached to such Task Order Agreement. The Contract Sum associated with that Task Order Agreement shall be adjusted (either upward or downward) by change order to reflect the actual cost of the work covered by such allowance. However, the Contractor shall not exceed the allowance amount specified in each Task Order Agreement without the Contracting Officer's approval.

**Section 4.5 Tax Exempt Status.** The Department expects that the Project will qualify as tax-exempt under the applicable laws, and such tax exemption shall be reflected in the Contract Sum.

## ARTICLE 5 CONSTRUCTION PHASE

**Section 5.1 General.** The construction phase for the work covered by a Task Order Agreement shall commence when the Project Manager issues an NTP for construction. The Contractor shall construct the work described on the approved design submittals including any work that is not specifically shown thereon but is reasonably inferable therefrom or necessary for a fully functioning Project. The work shall be carried out in a workmanlike and timely fashion. All materials and equipment to be incorporated into the Project shall be new and previously unused, unless otherwise specified, and shall be free of manufacturing or other defects.

**Section 5.2 Mandatory Subcontract Provisions.** To the extent the Contractor intends to subcontract a portion of the work, any subcontract in excess of \$25,000 shall include the following provisions:

- (1) that, to the extent of the work or supply within the Task Order Agreement's scope, the subcontractor or supplier is bound to the Contractor for the performance of all obligations which the Contractor owes the Department under the Agreement;
- (2) that the Subcontractor or supplier is not in privity with the Department and shall not seek compensation directly from the Department on any third-party beneficiary, quantum meruit, or unjust enrichment claim, or otherwise, except as may be permitted by any applicable mechanic's lien law;
- (3) that the Department is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit;
- (4) that the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Contractor is terminated for default;
- (5) that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Contractor to suspend or stop work;
- (6) that the Subcontractor or supplier shall maintain records of all work that is requested or authorized to do on a time and material or cost-plus basis, or with respect to claims that it has asserted on a time and materials or cost-plus basis, during the Project and for a period of time specified in the Standard Contract Provisions and requiring the Subcontractor or supplier to make those records available for review or audit by the Department during that time;

- (7) that the Subcontractor shall obtain and maintain, throughout the Project, workers' compensation insurance in accordance with the laws of the District of Columbia (This provision is not applicable to supply agreements);
- (8) that, if the Department terminates the Agreement for convenience, the Contractor may similarly terminate the subcontract or supply agreement for convenience, and that the Subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in the Termination for Convenience provisions of this Agreement;
- (9) that the Department shall have the right to enter into a contract with the Subcontractor or supplier for the same price as its subcontract or supply agreement price less amounts already paid, if the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;
- (10) that the Subcontractor or supplier shall not be entitled to payment for defective or non-conforming work, materials or equipment, and shall be obligated promptly to repair or replace non-conforming work, materials or equipment at its own cost;

**Section 5.3 Certified Subcontractors.** The Contractor shall not substitute or replace any Subcontractor or supplier certified by the District of Columbia Department of Small and Local Business Development (“DSLBD” or “Department of Small and Local Business Development”) without the Department's Contracting Officer and the Director of DSLBD’s prior written consent.

**Section 5.4 Site Observations.** The Contractor may be provided with an opportunity to visit the site, become familiar with local conditions under which the work is to be performed and correlate personal observations with requirements of the Agreement, Task Order Agreement, and approved design submittals; as provided for projects solicited under the RFTOPs. The Contractor shall carefully study and compare the Agreement, Task Order Agreement, and approved design submittals with each other and with information furnished by the Department. Before commencing activities, the Contractor shall: (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Agreement, Task Order Agreement, and approved design submittals; and (3) promptly report errors, inconsistencies or omissions discovered to the Department. Once work is started, the Contractor assumes the responsibility and costs for the work and the cost of correcting work previously installed.

**Section 5.5 Warranty of the Construction Work.** The Contractor warrants to the Department that materials and equipment furnished under Task Order Agreement will be of good quality and new and previously unused unless otherwise expressly permitted in writing, and shall be free of manufacturing or other defects and that for the one (1) year period following the Substantial Completion Date the construction work will be free from defects not inherent in the quality required or permitted, and that the work will conform to the Scope of Work and/or any

approved design documents. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. The Contractor and a representative of the Department shall walk the project together eleven (11) months after the Substantial Completion Date to identify any necessary warranty work. In the event the Contractor fails to schedule such a walk, the warranty period shall be extended until such time as the Contractor schedules such a walk.

**Section 5.6 Extent of Responsibility and Site Conditions.** The Contractor shall be entitled to submit a change request for differing site conditions only to the extent that such conditions could not have been discovered by a competent visual inspection of the site and are of unusual nature and differ materially from those ordinarily encountered and generally recognized as inhering to work of the character provided for in the Contract (such circumstances, "**Differing Site Conditions**"). The term Differing Site Conditions shall mean subsurface conditions on or adjacent to the Project site which differ materially from those indicated in the geotechnical reports prepared by the Contractor. The term Differing Site Conditions shall also include unknown physical conditions at the site of an unusual nature which differ materially from those ordinarily encountered and generally recognized as inhering to work of the character provided for in this Contract. Prior to commencing construction, the Contractor shall be required to conduct a thorough review of the Project site and the surrounding area and shall document its findings. In the event the Contractor fails to undertake and document such a thorough review, the Contractor shall be deemed to have known of those conditions which a thorough review would have detected. Any change request related to Differing Site Conditions shall be made pursuant to the Standard Contract Provisions for Construction Contracts.

### **Section 5.7 Unsafe Materials and Hazardous Materials**

**Section 5.7.1** The Contractor shall not bring, spill or release onto the site asbestos, Polychlorinated Biphenyls (PCBs) , or any other hazardous material that is not customarily used in a facility of the type and similar to the Project, and shall bring to the Department's attention any specification of such Hazardous Materials in the design documents. If the Contractor believes that anything in the Task Order Agreement would require that it use or bring onto the site asbestos, PCBs, or any Hazardous Material that is not customarily used in a facility of the type and similar to the Project, it shall immediately inform the Department and seek direction before proceeding.

**Section 5.7.2** If Hazardous Materials are discovered on the site, the Contractor shall immediately inform the Program Manager and the Department of such discovery. The Contractor shall be entitled to submit a Change Request in accordance with the Standard Contract Provisions for any Hazardous Materials abatement and disposal work. The Contractor shall comply with all laws, including, without limitation, the requirements of the Environmental Protection Agency (EPA) and all jurisdictional agencies as well as all laws relating to safety, health welfare, and protection of the environment, in removing, treating, encapsulating, passivating, and/or disposing



of hazardous materials, including, but not limited to, removal, treatment, encapsulation, passivation, and/or disposal of the Hazardous Materials. If any notices to governmental authorities are required, the Contractor shall also give those notices at the appropriate times.

**Section 5.7.3** The Contractor shall keep detailed records documenting Work done so that the Department may independently verify compliance with all laws, the number of units actually removed, treated, and/or disposed of, and the appropriate unit price(s) applicable to the work.

**Section 5.8 Progress Meetings.** The Contractor shall schedule and conduct at a minimum bi-weekly progress meetings at which the Department, the Program Manager and the Contractor and appropriate subcontractors can discuss the status of the work. The Contractor shall prepare and promptly distribute meeting minutes.

**Section 5.9 Written Reports.** The Contractor shall provide written reports to the Program Manager on the progress of the entire work in accordance at least every other week, including, but not limited to, a baseline schedule and schedule updates with narrative demonstrating the critical path of the Project in Primavera format. The Contractor shall also maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, major equipment on the site, Work accomplished, problems encountered and other similar relevant data as the Department may reasonably require. The log shall be available to the Department, the architect/engineer and the Project Manager and/or the Program Manager and on a monthly basis a copy of the log shall be submitted to the Department.

**Section 5.10 Key Personnel.**

The Contractor's personnel should have the necessary experience and licenses to perform the required work. Toward that end, the Contractor should include within its Task Order Agreement's proposal a description of the staff available to perform this work and their qualifications.

The Contractor will not be permitted to reassign any of the key personnel unless the Department's Contracting Officer approves the proposed reassignment and the proposed replacement. When submitting a Task Order proposal, at a minimum, the Contractor will be required to propose and commit to one or more specific Project Managers and Field Superintendents for the particular project. To carry out the work associated with the resulting Task Order Agreement, the Contractor shall provide at least the key personnel identified in its proposal which shall be included as an exhibit to the Task Order Agreement, and indicate the function(s) each will carry out for the proposed project and indicate what percentage of each such persons time will be devoted to the Task Order Agreement's project. The Contractor shall not replace any of the key personnel without the Department's Contracting Officer prior written approval.

**Section 5.11 Work by Separate Contractors.** The Department reserves the right to perform construction or operations related to the Project with Department's own forces, and to

award separate contracts in connection with other portions of the Project or other construction or operations on the site.

### **Section 5.12 Site Safety and Clean-Up.**

The Contractor will be required to: (i) provide a safe and efficient site, with controlled access, including the installation and provision of such safety barricades, enclosures and overhead protection as may reasonably be required by the Department and as may be necessary to ensure a safe workplace or as may be required by OSHA or other applicable law, and to remove such at the end of the Work and leave the site in broom clean condition; (ii) be responsible for the security of its tools, equipment and materials that are stored at the site; (iii) provide wheel washing stations on site so as to prevent the accumulation of dirt and other refuse on the streets surrounding the Project site; (iv) be responsible for site security; and (v) be responsible for the cost of temporary power used during the construction of the Project, including, but not limited to, the cost of installing such temporary wiring as may be required. Such safety and clean-up shall include, but not limited to, the following:

**Section 5.12.1 Safety Plan.** Prior to the start of construction activities, the Contractor shall prepare a safety plan for the construction phase conforming to OSHA 29 CFR 1926 (such plan, the “**Safety Plan**”). This plan will be submitted to the Department for its review and approval prior to the commencement of construction. Once such plan has been approved, the Contractor shall comply with it at all times during construction. The Contractor shall be required to revise the plan as may be reasonably requested by the Department. The cost of revising and complying with the plan shall not entitle the Contractor to an increase in the Task Order Agreement Price.

**Section 5.12.1.1 Safety Barriers/Fences.** As part of its responsibility for Project safety, the Contractor shall install such fences and barriers as may be necessary. The Contractor shall develop a plan that describes the proposed separation and the specific nature of the fences and barriers that will be used.

**Section 5.12.1.2 Site Security.** The Contractor shall be responsible for site security and shall be required to provide such watchman as are necessary to protect the site from unwanted intrusion.

**Section 5.12.1.3 Exculpation.** The right of the Department to comment on the Safety Plan and the nature and location of the required fences and barriers shall in no way absolve the Contractor from the obligation to maintain a safe site.

**Section 5.13 Site Logistics Plan (“Site Logistics Plan”).** Prior to the start of construction activities, the Contractor shall prepare a Site Logistics Plan. The Site Logistics Plan shall address: (i) the manner in which the Contractor intends to organize the site; (ii) the location and description of site fences and other safety barricades intended to prevent the public from entering the site; (iii) the location of construction entrances and wheel washing stations; and (iv) parking restrictions and procedures that will apply to the employees of Contractor and its subcontractors.

**Section 5.14 Quality Plan (“Quality Plan”).** Prior to the start of construction activities, the Contractor shall prepare a Quality Plan. The Quality Plan shall address: (i) the processes employed by the Contractor to ensure quality assurance; (ii) to determine how items are checked for quality and which items need to be checked; (iii) list the specific quality materials used during the project including standards, guidelines, checklist, templates, procedures, user guides and processes; and how the Contractor will handle defective items.

**Section 5.15 RESERVED**

**Section 5.16 Salvaged and Stored Items.** The Contractor shall be responsible for salvaging and storing all items as identified by the Department in accordance with all applicable District laws and regulations, after notifying the Department and receiving the Department’s permission to proceed.

**Section 5.17 Sediment and Erosion Control.** The Contractor shall be responsible for installing sediment and erosion control measures, inclusive of, but not limited to: silt fencing, inlet protection, stabilized construction entrances, and other control measures.

**Section 5.18 Cutting and Patching.** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Department or separate contractors by cutting, patching or otherwise altering such construction, or by excavation.

**Section 5.19 Correction of Work.**

**Section 5.19.1** The Department shall be at liberty to object and to require the Contractor to remove forthwith from the Project site and the work and to promptly replace the superintendent, any foreman, technical assistant, laborer, agent, representative, or other person used by the Contractor in or about the execution or maintenance of the work, who in the sole opinion of the Department is misconducting himself, or is incompetent or negligent in the proper performance of his duties, or whose performance in the work is otherwise considered by the Department to be undesirable or unsatisfactory, and such person shall not be again employed upon the project without the written permission of the Department.

**Section 5.19.2** The Contractor shall promptly correct work rejected by Department for failing to conform to the requirements of the Scope of Work or any approved design document or applicable law or regulations whether observed before or after the project’s completion and whether or not fabricated, installed or completed, and shall correct any work found to be not in accordance with the requirements within a period of one (1) year from the date of Final Completion or by terms of an applicable special warranty required by the Task Order

Agreement.

**Section 5.19.3** If during the guarantee or warranty period, any material, equipment or system requires corrective Work because of defects in materials or workmanship, the Contractor shall commence corrective work within forty-eight (48) hours after receiving the notice and work diligently until corrective work is completed; provided, however, if such notice is received on the day before a weekend or a holiday, the Contractor will commence corrective work on the next business day. If Contractor does not, in accordance with the terms and provisions of the contract documents, commence all corrective work within forty-eight (48) hours or if the Contractor commences such work but does not pursue it in an expeditious manner, the Department may either notify the bonding company (if any) to have such work and/or obligations performed at no additional cost to Department or may perform such Work and/or obligations and charge the costs thereof to the Contractor.

**Section 5.20 Manufacturer's Warranties.**

**Section 5.20.1** The Contractor warrants that all manufacturers' or other warranties on all labor, materials and equipment furnished by the Contractor or a Subcontractor or supplier shall run directly to or will be specifically assigned to the Department on demand or upon Project completion without demand. In the event any issue or defect which would be covered by any warranty arises but is not addressed by the grantor of the warranty, the Contractor shall be required to act as the guarantor of the obligations under the warranty and to perform under the terms of the warranty.

**Section 5.20.2** The Contractor warrants that the installation of all materials and equipment shall be in strict accordance with the manufacturers' requirements or specifications.

**Section 5.21 Close-Out and Training.** The Contractor shall also provide the Department with a complete set of its Project files, including, but not limited to, shop drawings, product manuals, warranties, etc., prepared by the Contractor or its subcontractors along with any other documentation that may reasonably be requested by the Department or its Program Manager and/or Project Manager, at close out so as to assist the Department in operating the building. In addition, if the Project includes work on heating or cooling systems, at the beginning of the first heating and cooling season following turnover of the Project, the Contractor shall be available to assist with, and train the building engineers and staff in the start-up of the building systems for the new weather cycle.

**Section 5.22 Schedule Update.** The Contractor shall submit bi-weekly schedule updates which shall reflect actual conditions of the Project progress as of the date of the update. The update shall reflect the actual progress of construction, identify developing delays, regardless of their cause, and reflect the Contractor's best projection of the actual date by which the Substantial Completion and Final Completion of the Project will be achieved. Via a narrative

statement (not merely a critical path method schedule), the Contractor shall identify the causes of any potential delay and state what, in the Contractor's judgment, must be done to avoid or reduce that delay. The Contractor shall point out, in its narrative, changes that have occurred since the last update, including those related to major changes in the scope of work, activities modified since the last update, revised projections of durations, progress and completion, revisions to the schedule logic or assumptions, and other relevant changes. Any significant variance from the previous schedule or update shall also be identified in a narrative, together with the reasons for the variance and its impact on Project completion. All schedule updates shall be in Primavera 6 format. The Department may make reasonable requests during the Project for changes to the format or for further explanation of information provided. Submission of updates showing that Substantial Completion or Final Completion of the Project will be achieved later than the applicable scheduled completion date shall not constitute requests for extension of time and shall not operate to change the scheduled completion date. The Department's receipt of, and lack of objection to, any schedule update showing Substantial Completion or Final Completion later than the dates agreed upon in the Project Schedule shall not be regarded as the Department's agreement that the Contractor may have an extension of time, or as a waiver of any of the Department's rights, but merely as the Contractor's representation that, as a matter of fact, Substantial Completion or Final Completion of the Project may not be completed by the agreed upon date in the Project Schedule. Changes to the scheduled completion dates may be made only in the circumstances and only by the methods set forth in the Task Order Agreement.

**Section 5.23 Acceleration.** Subject to the terms of this Section, the Department shall have the right to direct the Contractor to accelerate the work if, in the reasonable judgment of Department, the Contractor fails to: (i) supply a sufficiency of workers or to deliver the materials or equipment with such promptness as to prevent the delay in the progress of the work; or (ii) the progress of the work materially falls behind the projections contained in the then currently approved Project Schedule. In the event that the Department or its Program Manager determine that either of the events specified in the preceding sentence have occurred, the Department shall provide the Contractor with written notice of such event and the Contractor shall be required to provide the Department with a corrective action plan that is reasonably designed to address the concerns raised in such notice within three (3) days after receipt of such notice. If the Department and the Contractor are unable to agree on the terms of such corrective action plan within five (5) calendar days after the issuance of the notice (i.e. with forty eight (48) hours after the receipt of the proposed corrective action plan), the Department shall have the right to direct such acceleration as the Department, in its reasonable judgment, deems necessary. Provided the notice provisions of this Section are complied with, the cost of any acceleration directed under this Section shall not justify an adjustment to the Task Order Agreement Price or the Substantial Completion Date. The Contractor hereby acknowledges that this provision is a material inducement upon which the Department has relied in entering into the Contract; and represents and warrants that it has included sufficient funding in its Task Order Agreement Price in order to comply with the requirements of this Section.

**ARTICLE 6**  
**SUBSTANTIAL AND FINAL COMPLETION/CLAIMS FOR ADDITIONAL TIME**

**Section 6.1** Time is of the essence of this Agreement.

**Section 6.2** The Contractor shall substantially complete a project no later than the date identified in each Task Order Agreement (“Substantial Completion Date”). For purposes of this requirement, the term “**Substantially Complete**” shall mean that all of the following have occurred: (1) the Work has been completed with only minor punch list items remaining to be completed; (2) any and all required permits or approvals related to the Work have been obtained; (3) all operating and maintenance manuals, training videotapes and warranties required by the Contract have been delivered to the Department; (4) any supplemental training session required by each Task Order Agreement for operating or maintenance personnel have been completed; (5) all clean-up required by each Task Order Agreement has been completed; and (6) the project is ready for the Department to use it for its intended purpose. “Minor punch list items” are defined for this purpose as items that, in the aggregate, can be completed within thirty (30) days without interfering with the Department's normal use of the Project. **Final Completion** shall mean the point at which Substantial Completion has been achieved, all punch list items noted at Substantial Completion have been completed and all documents the Contractor is required to deliver to the Department as a condition to receiving final payment have been received. **Work** is defined as the construction and services required by the Contract, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The work may constitute the whole or a part of the project. Final Completion Date is 30 days from the Substantial Completion Date or as defined in each individual Task Order Agreement.

**Section 6.3** The Contractor will perform the work so that it shall achieve Substantial Completion by the Substantial Completion Date. Unless the failure to achieve Substantial Completion by the Substantial Completion Date is a result of an Excusable Delay, as defined in Section 6.3 of this Agreement, the delay shall be deemed Non-Excusable and the Contractor shall not be entitled to an extension of the Substantial Completion Date or for further compensation. Without limiting the generality of the foregoing, delays for the following reasons shall be regarded as Non-Excusable and shall not entitle the Contractor to an extension of time:

- (1) Delays due to job site labor disputes, work stoppages, or suspensions of work;
- (2) Delays due to adverse weather, unless the Contractor establishes that the adverse weather was of a nature and duration in excess of averages established by data from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for the Project locale for the ten (10) years preceding the effective date of the Agreement;
- (3) Delays due to the failure of the Contractor or Subcontractors or material suppliers at any tier to perform in timely or proper fashion, without regard to concepts of

negligence or fault;

- (4) Delays due to Site conditions whether known or unknown as of the effective date of the Agreement, foreseeable or unforeseeable at that time, naturally occurring or man-made; provided, however, that delays due to Differing Site Conditions or hazardous materials remediation shall be deemed an Excusable Delay;
- (5) Delays in completing the preconstruction activities, unless the result of a delay by the Department or its Program Manager beyond the timeframes set forth herein or in the Task Order Agreement, or an event of force majeure; or
- (6) Delays due to design submissions as described in Section 3.4.

**Section 6.4** The Contractor shall be entitled to an adjustment in the Substantial Completion Date due to an Excusable Delay. The term "Excusable Delay" shall mean:

- (1) Delays due to adverse weather other than those that are classified as a Non-Excusable delay;
- (2) Delays due to acts of God, war, unavoidable casualties, civil unrest, and other similar causes of delay that are beyond the control of the Contractor; provided, however, that in no event shall a Non-Excusable delay or the action of the Contractor, or any of its employees, agents, Subcontractors or material suppliers be deemed an Excusable Delay; or
- (3) Delays caused by Differing Site Conditions or hazardous materials remediation.

In addition to the foregoing, a delay shall be deemed to be an Excusable Delay only to the extent that such delay: (i) warrants an extension in the Substantial or Final Completion Date; (ii) has not been caused by the Contractor or any of its employees, agents, Subcontractors or material suppliers; (iii) is of a duration of not less than three (3) days; (iv) is on Project's critical path; and is in addition to any time contingency periods set forth in the critical path.

**Section 6.5** If the Contractor wishes to make a claim for an increase in the Agreement time, written notice as provided herein shall be given. The Contractor's claim shall include an estimate of the cost and of the probable effect of delay on the progress of the Work. In the case of continuing delay, only one claim is necessary.

## **ARTICLE 7 PAYMENT PROVISIONS**

**Section 7.1 Compensation.** The Contractor shall be paid its compensation in a series of progress payments and a final payment. Progress payments shall be based on a Schedule of Values that is agreed upon by the Parties as well as the Project Manager and/or the Program

Manager's good faith estimate of the level of completion for each component of the Schedule of Values.

**Section 7.2 Schedule of Values ("Schedule of Values").** The Contractor shall prepare a Schedule of Values that breaks down the Task Order Agreement Price for the various parts of the Work. The Schedule of Values shall be maintained in such a manner to provide a breakdown of the Task Order Agreement Price in enough detail to facilitate continued evaluation of applications for payment and progress reports. Large subcontracts shall be broken into several line items where, in the opinion of the Project Manager and/or the Program Manager, such detail is necessary to properly track the progress of the Work. The proposed schedule of values shall also include separate line items for each part of the Work if so required by the Project Manager and/or the Program Manager. The Contractor and the Project Manager and/or the Program Manager shall meet as necessary to maintain the Schedule of Values for the Project in a manner acceptable to the Project Manager and/or the Program Manager. No progress payments shall be made unless the then current Schedule of Values is acceptable to the Project Manager and/or the Program Manager.

**Section 7.3 Retention.** The Department shall withhold from each progress payment an amount equal to ten percent (10%) of each progress payment. Once Substantial Completion has occurred, the Department will reduce the retention being withheld to an amount that is equal to Two Hundred percent (200%) of the Program Manager's good faith estimate of the remaining Work.

**Section 7.4 Documents Required with Application for Payment.** Each Application for Payment shall be accompanied by the Contractor's job cost ledgers in a form satisfactory to the Department, the subcontractors' and suppliers' Applications for Payment on a form acceptable to the Department, and such other supporting documentation as the Department may reasonably request.

**Section 7.5 Timely Payment of Subcontractors.** Within seven (7) days of receiving any payment from the Department including amounts attributable to Work performed, or materials or equipment supplied, by a Subcontractor or supplier, the Contractor shall either pay the Subcontractor or supplier for its proportionate share of the amount paid to the Contractor for the Subcontractor's or supplier's Work or materials or equipment, or notify the Department and the Subcontractor or supplier, in writing, of the Contractor's intention to withhold all or part of the payment and state the reason for the withholding. All monies paid to the Contractor under the Agreement shall be used first to pay amounts due to Subcontractors or suppliers supplying labor or materials for the Project and only money remaining after such payments are made may be retained by the Contractor. Monies paid by joint check shall be deemed to have been paid fully to the Subcontractor or supplier named as a joint payee, unless the Department agrees otherwise in writing. Any interest paid to Subcontractors or suppliers because the Contractor has failed to pay them in timely fashion shall not entitle the Contractor to a Change Order.

**Section 7.6 Lien Waivers.** Each Application for Payment shall be accompanied by



written waivers of the right to file a mechanic's lien and all other claims.

**Section 7.7 Submission.** On the twenty-fifth (25<sup>th</sup>) day of each month the Contractor shall submit to the Department (with a copy to the Program Manager) an Application for Payment, which Application for Payment shall cover the entire month during which the Application for Payment is submitted.

**Section 7.8 Right to Withhold Payments.** The Department will notify the Contractor within fifteen (15) days after receiving any Application for Payment of any defect in the Application for Payment or the Contractor's performance which may result in the Department's declining to pay all or a part of the requested amount. The Department may withhold payment from the Contractor, in whole or part, as appropriate, if:

1. the Work is defective and such defects have not been remedied; or
2. the Department has determined that the Contractor's progress has fallen behind the Project Schedule, and the Contractor fails, within ten (10) calendar days of the Department's written demand, to provide the Department with a realistic and acceptable plan to recover the delays; or
3. the Contractor has failed to pay Subcontractors or suppliers promptly or has made false or inaccurate certifications that payments to Subcontractors or suppliers are due or have been made; or
4. any mechanic's lien has been filed against the Department, the site or any portion thereof or interest therein, or any improvements on the site, even though the Department has paid all undisputed amounts due to the Contractor, and the Contractor, upon notice, has failed to remove the lien, by bonding it off or otherwise, within ten (10) calendar days; or
5. the Contractor is otherwise in substantial breach of this Agreement.

**Section 7.9 Payment Not Acceptance.** Payment of any progress payment or final payment shall not constitute acceptance of Work that is defective or otherwise fails to conform to the Agreement, or a waiver of any rights or remedies the Department may have with respect to defective or nonconforming Work.

## **ARTICLE 8 INDEMNIFICATION**

**Section 8.1** Indemnification shall be governed by the terms of the Department's Standard Contract Provisions (Construction Contract) attached as **Exhibit A.**

## **ARTICLE 9 CHANGES CLAUSE**

**Section 9.1 Changes Authorized.** The Department may, without invalidating this

Agreement or any Task Order Agreement issued pursuant to this Agreement, and without notice to or approval of any surety, order changes in the Work released through any Task Order Agreement, including additions, deletions or modifications. Any such change must be conveyed by the Department to the Contractor via written Change Directive or Change Order.

**Section 9.2 Executed Change Directive/Change Order Required.** Only a written Change Directive or Change Order, executed by the Department's Contracting Officer, 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 Date, or the Contract Sum.

**Section 9.3 Department-Initiated Changes.** If the Department wishes to make a change in the Work or to accelerate the Work, it will execute and issue to the Contractor a written Change Directive, either directing the Contractor 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 Contractor believes that Substantial or Final Completion Date and/or the Contract Sum should be adjusted to take the Change Order or Change Directive into account.

**Section 9.4 Notice of Change Event.** The Contractor must give the Department written notice of any Change Event within ten (10) calendar days of the date on which the Contractor 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 Contract to which the Contractor believes it is entitled. Such notice is an express condition precedent to any claim or request for adjustment to the Substantial or Final Completion Date, or the Contract Sum arising from the Change Event and, if the notice is not given within the required time, the Contractor will have waived the right to any adjustment to the Substantial or Final Completion Date or the Contract Sum arising from the Change Event.

**Section 9.5 Detailed Change Request.** Within twenty (20) days after giving notice of a change event, the Contractor shall submit a written change request describing, in reasonable detail, all adjustments it seeks to the Substantial or Final Completion Date or the Contract Sum as a result of the Change Event. The change request shall include the same information as described in Section 9.4 with respect to any Contract changes the Contractor seeks due to the Change Event, and the amount of any requested adjustment to the Contract Sum shall be limited in accordance with Section 9.4.

**Section 9.6 Reserved**

**Section 9.7 Failure to Agree.** If the Contractor 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 to be appropriate pursuant to the Agreement. The Contractor

shall proceed with the Work and the Department's directives, without interruption or delay, and shall make a claim as provided in Article 13 of this Agreement, if needed. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Agreement and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

**Section 9.8 Department's Designated Representative.** The Department designates the individual(s) identified in **Exhibit B** as its representative with express authority to bind the Department with respect to all matters requiring the Department's approval or authorization. Subject to the limitations on their authority specified in **Exhibit B**, these representative(s) shall have the exclusive authority to make decisions on behalf of the Department concerning estimates and schedules, construction budgets, changes in the Work, and execution of Change Orders or Change Directives, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or performance of the Work by the Contractor. In order for the Department to effectively manage the Project and assure that the Contractor does not receive conflicting instructions regarding the Work, the Design-Builder shall promptly notify the Department's representative upon receiving any instructions or other communication in connection with the Contractor's work from any employee of the Department or other purported agent of the Department other than the Department's designated representative.

## **ARTICLE 10 LIQUIDATED DAMAGES**

**Section 10.1** If the Contractor fails to achieve Substantial Completion by the Substantial Completion Date as specified in each Task Order Agreement, the Parties acknowledge and agree that the actual damage to the Department for the delay will be impossible to determine, and in lieu thereof, the Contractor shall pay to the Department, as fixed and liquidated delay damages in the amount specified in the Task Order Agreement for failure to meet the Substantial Completion Date. The Contractor and the Department agree that the liquidated damages do not constitute, and shall not be deemed, a penalty but represent a reasonable approximation of the damages to the Department associated with a delay in the Project. In the event the Contractor fails to meet the Substantial Completion Date as defined in each individual Task Order Agreement, the Contractor consents to a termination for default.

## **ARTICLE 11 INSURANCE AND BONDS**

**Section 11.1** Insurance Requirements shall be obtained from the Office of Risk Management (“ORM”) and incorporated in within each RFTOP.

### **Section 11.2 Performance Bond and Payment Bond.**

#### **Section 11.2.1 Trade Subcontractor Bonds**

All trade subcontractors shall provide a payment and performance bond having a penal value equal to One Hundred Percent (100%) of the cost of the trade subcontract for any subcontract valued at One Hundred Thousand Dollars (\$100,000) or more. All such bonds shall be written on a dual-oblige basis.

#### **Section 11.2.2 Contractor’s Payment and Performance Bond**

For each Task Order Agreement valued at One Hundred Thousand Dollars (\$100,000) or more, the Contractor shall, before the Task Order Agreement is executed, as applicable, provide to the Department a payment bond and performance bond, each with a penal sum equal to the Contract Sum of the Task Order Agreement. Such bond shall remain in full force and effect until Final Completion is achieved and the Department shall be able to draw upon such bond regardless of the amount paid by the Department to the Contractor, even if such amount exceeds the penal value of such bond.

**ARTICLE 12**  
**ECONOMIC INCLUSION AND COMPLIANCE**

**12.0 Preference for Small, Local, and Disadvantaged Business Enterprises**

**LSDBE Utilization:** Under the provisions of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, D.C. Law 16-33 (codified at D.C. Code § 2-218.01 et seq.), preferences shall be given to Offerors that are certified by the Department of Small and Local Business Development as being a small business enterprise (“SBE”), having resident business ownership, having a longtime resident business, being a local business enterprise, being a disadvantaged business enterprise, being a local business enterprise with its principal office located in an enterprise zone, being a veteran-owned business enterprise, or being a local manufacturing business enterprise. In accordance with these laws, the following preferences shall be awarded in evaluating an Offeror’s Proposal:

- a) Three (3) preference points shall be awarded if the Offeror is certified as a small business enterprise.
- b) Five (5) preference points shall be awarded if the Offeror is certified as having a resident business ownership.
- c) Five (5) points shall be awarded if the Offeror is certified as having a longtime resident business.
- d) Two (2) preference points shall be awarded if the Offeror is certified as a local business enterprise.
- e) Two (2) preference points shall be awarded if the Offeror is certified as being a local business enterprise with its principal office located in an enterprise zone.
- f) Two (2) preference points shall be awarded if the Offeror is certified as a disadvantaged business enterprise.
- g) Two (2) preference points shall be awarded if the Offeror is certified as a veteran-owned business enterprise.
- h) Two (2) preference points shall be awarded if the Offeror is certified as a local manufacturing business enterprise.

A certified business enterprise (“CBE”) shall be entitled to any or all of the preferences provided in this section, but in no case shall a CBE be entitled to a preference of more than 12 points.

**Section 12.1 Mandatory Subcontracting Plan and Requirements.**

**DC. Code § 2–218.91. Certified Business Enterprise assistance**

- (a) Notwithstanding subchapter IX-A of this chapter, or any other provision of District law or regulation, during the period from March 11, 2020, until November 5, 2021, any contract for a government-assisted project in excess of \$250,000 that is unrelated to the District's response to the COVID-19 emergency but entered into during the COVID-19 emergency, absent a waiver pursuant to § 2-218.51, shall provide that:

(1) At least 50% of the dollar volume of the contract be subcontracted to small business enterprises;  
or

(2) If there are insufficient qualified small business enterprises to meet the requirement of paragraph (1) of this subsection, the subcontracting requirement may be satisfied by subcontracting 50% of the dollar volume ("CBE minimum expenditure") to any qualified certified business enterprises; provided, that best efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.

(b) Notwithstanding subsection (a) of this section, a certified business enterprise awarded a contract for a government-assisted project in excess of \$250,000 that is unrelated to the District's response to the COVID-19 emergency but entered into during the COVID-19 emergency shall:

(1) Perform at least 35% of the contracting effort with its own organization and resources if the certified business enterprise is granted points or a price reduction pursuant to § 2-218.43 or selected through a set-aside program; and

(2) If the certified business enterprise subcontracts, ensure that 50% of the dollar volume of the subcontracted effort be with certified business enterprises unless a waiver is granted pursuant to § 2-218.51.

(c) Notwithstanding subsection (a) of this section, a certified joint venture awarded a contract for a government-assisted project in excess of \$250,000 that is unrelated to the District's response to the COVID-19 emergency but entered into during the COVID-19 emergency shall:

(1) Perform at least 50% of the contracting effort with its own organization and resources if the certified joint venture is granted points or a price reduction pursuant to § 2-218.43 or selected through a set-aside program; and

(2) If the certified joint venture subcontracts, 50% of the dollar volume of the subcontracted effort shall be with certified business enterprises unless a waiver is granted pursuant to § 2-218.51.

(d) (1) For every dollar expended by a beneficiary with a resident-owned business, the beneficiary shall receive a credit for \$1.10 against the CBE minimum expenditure.

(2) For every dollar expended by a beneficiary with a disadvantaged business enterprise, the beneficiary shall receive a credit for \$1.25 against the CBE minimum expenditure.

(3) For every dollar expended by a beneficiary that uses a company designated as both a disadvantaged business enterprise under § 2-218.33 and as a resident-owned business under § 2-218.02(15), the beneficiary shall receive a credit for \$1.30 against the CBE minimum expenditure.

(e) For the purposes of this section, the term:

(1) "Beneficiary" has the same meaning as set forth in § 2-218.02(1B).

- (2) "Best efforts" means that a beneficiary is obligated to make its best attempt to accomplish the agreed-to goal, even when there is uncertainty or difficulty.
- (3) "COVID-19 emergency" means the emergencies declared in the Declaration of Public Emergency (Mayor's Order 2020-045) together with the Declaration of Public Health Emergency (Mayor's Order 2020-046), declared on March 11, 2020, including any extension of those declared emergencies.
- (4) "Disadvantaged business enterprise" has the same meaning as set forth in § 2-218.33.
- (5) "Government-assisted project" has the same meaning as set forth in § 2-218.02(9A).
- (6) "Longtime resident business" has the same meaning as set forth in § 2-218.02(13).
- (7) "Resident-owned business" has the same meaning as set forth in § 2-218.02(15).
- (8) "Small Business Enterprises" has the same meaning as set forth in § 2-218.32.
- (f) Contracts entered into on an emergency basis or that are made in furtherance of, or that are related to, the District's response to the COVID-19 emergency shall not be subject to the requirements of subchapter IX-A of this chapter or subchapter X of this chapter.

## **Section 12.2 Subcontracting Plan Requirements**

**Section 12.2.1** If the Prime Contractor is required by law to subcontract under the Task Order, it must submit a subcontracting plan for at least (50%) of the dollar volume of the contract in accordance with D.C. Official Code § 2–218.91. The subcontracting plan shall be submitted as part of the Proposal. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the plan shall inure to the benefit of the District and the Department. Each subcontracting plan shall include the following:

- (a) The name and address of each subcontractor;
- (b) A current certification number of the small or certified business enterprise;
- (c) The scope of work to be performed by each subcontractor; and
- (d) The price that the Prime contractor will pay each subcontractor.

### **Section 12.2.2 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 to the Contracting Officer, Project Manager, District of Columbia Auditor, and the Director of Department of Small and Local Business Development.

### **Section 12.2.3 Subcontracting Plan Compliance Reporting**

- a) The Prime Contractor has a subcontracting plan required by law for this Agreement; the Prime Contractor shall submit a quarterly report to the CO, 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:
  1. The price that the Prime Contractor will pay each subcontractor under the subcontract;
  2. A description of the goods procured, or the services subcontracted for;
  3. The amount paid by the Prime Contractor under the subcontract;
  4. A copy of the fully executed subcontract, if it was not provided with an earlier quarterly report.
- b) 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 12.2.4 Annual Meetings**

Upon at least 30-days written notice provided by DSLBD, the Contractor shall meet annually with the CO, contract administrator (“CA”), District of Columbia Auditor and the Director of Department of Small and Local Business Development to provide an update on its subcontracting plan.

#### **Section 12.2.5 DSLBD Notices**

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

#### **Section 12.2.6 Enforcement and Penalties for Breach of Subcontracting Plan**

A Prime Contractor shall be deemed to have breached a subcontracting plan required by law, if the Prime 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. A Prime Contractor that is found to have breached its subcontracting plan for utilization of Certified Business Enterprises (“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. If the CO determines the Prime Contractor’s failure to be a material breach of the Agreement, the CO shall have cause to terminate the Agreement under the default provisions in the Standard Contract Provisions. Neither the Prime Contractor nor its subcontractor may remove a subcontractor or tier-subcontractor if such subcontractor or tier-subcontractor is certified as a Local Small Disadvantaged Business Enterprise (“LSDBE”) business unless the Department approves of such removal, in writing. The Department may condition its approval upon the Prime Contractor 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 12.2.7 Residency Hiring Requirements for Contractors and Subcontractors**

**Section 12.2.7.1** For Task Order Agreements for services in the amount of \$300,000 or more, the Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code § 2-219.01 et seq. (“First Source Act”).

**Section 12.2.7.2** The Contractor shall enter into and maintain during the term of the Agreement and subsequent Task Order Agreements, a First Source Employment Agreement (Employment Agreement) with the District of Columbia Department of Employment Services (“DOES”), in which the Contractor shall agree that: (a) The first source for finding employees to fill all jobs created in

order to perform the contract shall be the First Source Register; and (b) The first source for finding employees to fill any vacancy occurring in all jobs covered by the Employment Agreement shall be the First Source Register.

**Section 12.2.7.3** If applicable, the Contractor shall comply with subchapter X of Chapter II of Title 2, 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, including, but not limited to the following requirements:

- a) At least twenty percent (20%) of journey worker hours by trade shall be performed by District residents;
- b) At least sixty percent (60%) of apprentice hours by trade shall be performed by District residents;
- c) At least fifty one percent (51%) of the skilled laborer hours by trade shall be performed by District residents; and
- d) At least seventy percent (70%) of common laborer hours shall be performed by District residents.

**Section 12.2.7.4** The Contractor shall not begin performance of the Task Order Agreements until its Employment Agreement has been accepted by DOES. Once approved, the Employment Agreement shall not be amended except with the approval of DOES.

**Section 12.2.7.5** The Contractor agrees that at least 51% of the new employees hired to perform the contracts shall be District residents. The Contractor shall ensure that at least fifty-one percent (51%) of the Contractor'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 Contractor, to work on projects shall be residents of the District of Columbia. This percentage shall be applied in the aggregate, and not trade by trade.

**Section 12.2.7.6** The Contractor's hiring and reporting requirements under the First Source Act and any rules promulgated thereunder shall continue for the term of the Agreement and any subsequent Task Order Agreements.

**Section 12.2.7.7** The CO may impose penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract, for a willful breach of the Employment Agreement, failure to submit the required hiring compliance reports, or deliberate submission of falsified data.

**Section 12.2.7.8** If the Contractor does not receive a good faith waiver, the CO may also impose an additional penalty equal to 1/8 of 1% of the total amount of the direct and indirect labor costs of the contract for each percentage by which the Contractor fails to meet its hiring requirements.

**Section 12.2.7.9** Any contractor which violates, more than once within a 10-year timeframe, the hiring or reporting requirements of the First Source Act shall be referred for debarment for not more

than five (5) years.

**Section 12.2.7.10** The Contractor may appeal any decision of the CO pursuant to this clause to the D.C. Contract Appeals Board located at 441 4<sup>th</sup> Street, N.W., Suite 350N, Washington, D.C. 20001.

**Section 12.2.7.11** The provisions of the First Source Act do not apply to nonprofit organizations which employ 50 employees or less.

### **Section 12.2.8 Apprenticeship Act**

The District of Columbia Apprenticeship Act of 1946, D.C. Official Code §§ 32-1401 *et seq.* (“Apprenticeship Act”), as amended, may apply to the project. All subcontractors selected to perform work on the project on a craft-by-craft basis shall be required to comply with this Apprenticeship Act. All terms and conditions of the Apprenticeship Act, D.C. Apprenticeship Council Rules and Regulations, as well as any federal requirements, shall be implemented. The Prime Contractor shall be liable for any subcontractor non-compliance.

**Section 12.3.1** The Contractor shall maintain detailed records relating to the general hiring of District of Columbia and community residents

**Section 12.3.2** The Contractor shall be responsible for: (i) including the provisions of this Section 12.3 in all subcontracts; (ii) collecting the information required in this Section 12.3 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in any reports required to be submitted by the Contractor pursuant to this Section 12.3.

### **Section 12.4**

**Section 12.4 Equal Employment Opportunity and Hiring of District Residents** In accordance with the District of Columbia Administrative Issuance System, Mayor’s Order 85-85 dated June 10, 1985, “on compliance with Equal Opportunity Requirements in District government contracts,” each contracting shall submit the forms for completion of the Equal Employment Opportunity Information Report incorporated herein as Exhibit C. An award cannot be made to any contractor who has not satisfied the Equal Employment Requirements.

**ARTICLE 13**  
**CLAIMS & DISPUTE RESOLUTION**

**Section 13.1** All claims or disputes arising out of this Agreement shall be governed by the terms of the Department's Standard Contract Provisions (Construction Contract and Architectural and Engineering, as applicable) attached as **Exhibit A**.

**ARTICLE 14**

## MISCELLANEOUS PROVISIONS

**Section 14.1 Extent of Contract.** The Agreement, which includes this Contract and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Department and Contractor and supersedes all prior negotiations representations or agreements, either written or oral. The Agreement may be amended only by written instrument signed by both the Department and Contractor. All of the documents comprising the Agreement should be read as complementary, so that what is called for by one is called for by all. Ambiguities shall be construed in favor of a broader scope of work, as the intent of the Agreement is, with specific identified exceptions, to require the Contractor to assume entire responsibility for the Project. If there is any inconsistency among the documents comprising the Agreement, the order of precedence among them is as follows, with the first listed document having the highest priority: the Agreement and its Modifications; Change Orders and Exhibits (any Change Order issued and executed by the Department shall supersede those portions of earlier dated contract documents to which it pertains); Task Order Agreements and Exhibits; Standard Contract Provisions (any missing term in the Agreement, however, shall be addressed in accordance with the Standard Contract Provisions); Contractor's Offer/Award Form; and Sections A & B of the RFQ.

**Section 14.2 Ownership And Use of Documents.** The drawings, specifications and other documents prepared by the Contractor's architect/engineer, and copies thereof furnished to the Contractor, are for use solely with respect to Task Order Agreement's project. They are not to be used by the Contractor, subcontractors, sub-subcontractors or suppliers on other projects, or for additions to the Task Order Agreement's project outside the Task Order Agreement's scope of the work, without the specific written consent of the Department and the architect/engineer.

**Section 14.3 Governing Law.** The Contract shall be governed by and construed in accordance with the laws of the District of Columbia, without regard to its conflict of laws principles.

**Section 14.4 Buy American Act Provision.** The Contractor shall comply with the provisions of the Buy American Act (41 U.S.C. § 10a), including, but not limited to, the purchase of steel.

**Section 14.4.1** 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 Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, material men and suppliers 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 Contractor shall deliver only domestic end products, except those:

1. For use outside the United States;
2. 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;
3. For which the District determines that domestic preference would be inconsistent with the public interest; or
4. For which the District determines the cost to be unreasonable.

**Section 14.4.2 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 14.4.3 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 14.4.4 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 14.5 Davis-Bacon Act Provision.** The Contractor agrees that the construction

work performed under Task Order Agreement shall be subject to the Davis-Bacon Act (40 U.S.C. §§ 276a- 276a-7), which will be in effect on the date the Task Order Agreement is executed by an authorized Contracting Officer, as applicable. The wage rates applicable to a given Task Order Agreement shall be attached thereto. The Contractor further agrees that it and all of its subcontractors shall comply with the regulations implementing the Davis-Bacon Act and such regulations are hereby incorporated by reference.

**Section 14.6 Service Contract Act.** The Contractor agrees that the work performed under this Contract shall be subject to the Service Contract Act Wage Determination, which will be in effect on the date the Task Order Agreement is executed by an authorized Contracting Officer, as applicable. The wage rates applicable to a given Task Order Agreement shall be attached thereto. The Contractor further agrees that it and all of its subcontractors shall comply with the regulations implementing the Service Contract Act Wage Determination and such regulations are hereby incorporated by reference.

#### **Section 14.7 WAY TO WORK AMENDMENT ACT OF 2006**

**14.7.1.** Except as described in **Section 14.7.8** below, the Contractor shall comply with Title I of the Way to Work Amendment Act of 2006, effective June 8, 2006 (DC Law 16-118, DC Official Code §2-220.01 et seq.) ("Living Wage Act of 2006"), for contracts for services in the amount of \$100,000 or more in a 12-month period.

**14.7.2** The Contractor shall pay its employees and subcontractors who perform services under the Contract no less than the current living wage.

**14.7.3** The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to pay its employees who perform services under the Contract no less than the current living wage rate.

**14.7.4** The DOES may adjust the living wage annually, and the Contractor will find the current living wage rate on its website at [www.does.dc.gov](http://www.does.dc.gov).

**14.7.5** The Contractor shall provide a copy of the Fact Sheet attached as **Exhibit C** to each employee and subcontractor who performs services under the Contract. The Contractor shall also post the Notice attached as **Exhibit C** in a conspicuous place in its place of business. The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to post the Notice in a conspicuous place in its place of business.

**14.7.6** The Contractor shall maintain its payroll records under the Contract in the regular course of business for a period of at least three (3) years from the payroll date, and shall include this requirement in its subcontracts for \$15,000 or more under the Contract.

**14.7.7** The payment of wages required under the Living Wage Act of 2006 shall be consistent

with and subject to the provisions of DC Official Code §32-1301 et seq.

**14.7.8** The requirements of the Living Wage Act of 2006 do not apply to:

- (1) Contracts or other
- (2) s that are subject to higher wage level determinations required by federal law;
- (2) Existing and future collective bargaining agreements, provided that the future collective bargaining agreement results in the employee being paid no less than the established living wage;
- (3) Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;
- (4) Contracts for services needed immediately to prevent or respond to a disaster or imminent threat to public health or safety declared by the Mayor;
- (5) Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services; provided that the trainees do not replace employees subject to the Living Wage Act of 2006;
- (6) An employee under 22 years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than 25 hours per week; provided that he or she does not replace employees subject to the Living Wage Act of 2006;
- (7) Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District;
- (8) Employees of nonprofit organizations that employ not more than 50 individuals and qualify for taxation exemption pursuant to section 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3));
- (9) Medicaid provider agreements for direct care services to Medicaid recipients, provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (DC Law 5-48; DC Official Code § 44-501); and
- (10) Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

**14.7.9** The Mayor may exempt a contractor from the requirements of the Living Wage Act of 2006, subject to the approval of Council, in accordance with the provisions of Section 109 of the Living Wage Act of 2006.

**Section 14.8 False Claims Act.** The Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to DC government,



including the prescriptions set forth in D.C. Official Code §§ 22-2405 and 2-381.02 et seq. In the event that it is discovered that the Contractor has made a false, fraudulent or unsupported statement or claim to the District or the Department, the Department may terminate this Agreement and any Task Order Agreements without liability.

**Section 14.9 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 14.10 Limitations.** The Contractor 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.

**Section 14.11 Binding Effect; Assignment.** The Agreement shall inure to the benefit of, and be binding upon and enforceable by, the Parties and their respective successors and permitted assigns. The Contractor shall not assign its rights under the Agreement, 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 14.12 Survival.** All warranties, and representations of the Contractor contained in the Contract or in any certificate or document furnished pursuant to the Agreement shall survive termination or expiration of the Agreement.

**Section 14.13 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 14.14 Remedies Cumulative.** Unless specifically provided to the contrary in the Agreement, all remedies set forth in the Agreement 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 Contractor or any other person or entity.

**Section 14.15 Entire Agreement; Modification.** The Agreement supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either

written or oral. No modifications to the Agreement 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 14.16 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 14.17 Anti-Deficiency Act.** The Department's obligations and responsibilities under the terms of the Contract and 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.. **IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE CONTRACT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.**

**Section 14.17.1** The Department agrees to exercise all lawful authority available to it to satisfy the financial obligations of the Department that may arise under this. 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 14.17.2** 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 14.17.3** 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 14.18 Termination for Default.** The Department may terminate the Agreement for default if the Contractor fails to perform any of its duties or obligations under the Agreement. The Department must provide the Contractor with written notice of its intent to terminate the Agreement under this provision. If the Contractor has begun its curative action and has made progress satisfactory to the Department within the seven days, the Department may so notify the Contractor and the termination will not take effect. Otherwise, the termination shall take effect without further notice or opportunity to cure.

**Section 14.19 Termination for Convenience.** The Department may terminate the Agreement in whole or specified part, for its convenience, whether the Contractor is in breach of Contract or not. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions. The Contractor shall be entitled to receive only the following with respect to the terminated portion of the Project: (1) Cost of Work performed up to the date of termination; (2) reasonable costs of terminating outstanding subcontracts and supply agreements and other similar wind-up costs in a reasonable amount; (3) a fair and reasonable portion of the overhead and profit attributable to the Work performed on the terminated portion of the Project, up to the time of termination. In the event of a termination for convenience, the Contractor shall not be entitled to profit on unperformed elements of the Work.

**Section 14.20 Anti-Competitive Practices and Anti-Kickback Provisions.**

**Section 14.20.1** The Contractor recognizes the need for markets to operate competitively and shall observe and shall comply with all applicable law, rules, and regulations prohibiting anti-competitive practices. The Contractor shall not engage, directly or indirectly, in collusion or other anti-competitive practices that reduces or eliminates competition or restrains trade. The Department shall report to the appropriate authority any activity that evidences a violation of the antitrust laws, and take such other further action to which it is entitled or obligated under the law.

**Section 14.20.2** The Contractor shall observe and comply with all applicable law, rules,

and regulations prohibiting kickbacks and, without limiting the foregoing, the Contractor shall not: (i) provide or attempt to provide or offer to provide any kickback; (ii) solicit, accept, or attempt to accept any kickback; or (iii) include, directly or indirectly, the amount of any kickback in the contract price charged by Contractor or a Subcontractor of the Contractor to the Department. The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in this subparagraph in its own operations and direct business relationships. The Department may take any recourse available to it under the law for violations of this anti-kickback provision.

**Section 14.20.3** The Contractor represents and warrants that it did not, directly or indirectly, engage in any collusive or other anti-competitive behavior in connection with the bid, negotiation or award of the Agreement.

**Section 14.21 Ethical Standards for the Department's Employees and Former Employees.**

**Section 14.20.2** The Department expects the Contractor 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 Department not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed under the Agreement. The Contractor may not assign to any former Department or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Subcontractor or vendor.

**Section 14.21 Gratuities and Officers Not To Benefit Provisions.**

**Section 14.21.1** If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, 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 Agreement, the Department may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Agreement and may pursue such other rights and remedies provided by law and under the Agreement.

**Section 14.21.2** In the event the Agreement is terminated as provided in Section 14.21.1, the Department shall be entitled:

- .1 To pursue the same remedies against the Contractor 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 Department) which shall be not less than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

**Section 14.21.3** No member of, nor delegate to Congress, Mayor or City Council Member, nor officer nor employee of the District, nor officer nor employee of the Department shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom, and all agreements entered into by the authorized representative of the Department in which he or any officer or employee of the Department shall be personally interested as well as all agreements made by the Department in which the Mayor or City Council Member or officer or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department or by any officer thereof; but this provision shall not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or officer or employee of the District is de minimus.

**Section 14.22 Covenant Against Contingent Fees Provisions.**

**Section 14.22.1** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement 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 Contractor 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 14.23 Conformance with Laws.** It shall be the responsibility of the Contractor to perform the Contract in conformance with the Department's Procurement Regulations (27 DCMR § 4700 *et seq.*) 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 Contractor to determine the Procurement Regulations, statutes, laws, codes, ordinances, regulations, rules, requirements and orders that apply and their effect on the Contractor's obligations thereunder. This Section 14.23 shall apply during both the design and preconstruction phase and the construction phase.

**Section 14.24 Retention of Records: Inspections and Audits.**

**Section 14.24.1** As used in this clause, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

**Section 14.24.2 Examination of Costs.** If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price re-determinable contract, or any combination of these, the Contractor shall maintain and the CO, or an authorized representative of the CO, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Contract and the Task Order Agreements. This right of examination shall include inspection at all reasonable times of the Contractor’s plants, or parts of them, engaged in performing the Contract and the Task Order Agreements.

**Section 14.24.3 Cost or pricing data.** If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this Contract or the Task Order Agreements, the CO, or an authorized representative of the CO, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor’s records, including computations and projections, related to:

- a. The proposal for the contract, subcontract, or modification;
- b. The discussions conducted on the proposal(s), including those related to negotiating;
- c. Pricing of the contract, subcontract, or modification; or
- d. Performance of the contract, subcontract or modification.

**Section 14.24.4 Comptroller General**

- a. The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor’s directly pertinent records involving transactions related to this Contract, Task Order Agreements, or a subcontract.
- b. This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

**Section 14.24.5 Reports.** If the Contractor is required to furnish cost, funding, or performance reports, the CO or an authorized representative of the CO shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating:

- a. The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and
- b. the data reported.

**Section 14.24.6 Availability.** The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in **Section 14.24**, for examination, audit, or reproduction, until three (3) years after final payment under this Agreement, any subsequent Task Order Agreement, or for any shorter period specified in the RFQ, or for any longer period required by statute or by other section of this Contract. In addition:

- a. If this Contract or the Task Order Agreement is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until three (3) years after any resulting final termination settlement; and
- b. The Contractor shall make available records relating to appeals under Article 13 of this Contract (Disputes and Claims) or to litigation or the settlement of claims arising under or relating to this Contract until such appeals, litigation, or claims are finally resolved.

**Section 14.24.7** The Contractor shall insert a clause containing all the terms of this **Section 14.24**, including this **Section 14.24.7** in all subcontracts under this Contract that exceed the small purchase threshold of \$100,000.00 and:

- a. That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price re-determinable type or any combination of these;
- b. For which cost or pricing data are required; or
- c. That requires the subcontractor to furnish reports as discussed in **Section 14.24.5** of this Contract.

**Section 14.24.8** The Inspector General, District of Columbia Auditor, or Director shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract, other than a firm fixed-price contract, to the extent that the books and records relate to the performance of the contract or subcontract. Books and records shall be maintained by the Contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing. The Inspector General, District of Columbia Auditor, or Director may, at reasonable times, inspect the part of the place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the District.

## **Section 14.25 Warranties and Representations**

**Section 14.25.1** All disclosures, representations, warranties, and certifications the Contractor makes in its proposal in response to the RFQ shall remain binding and in effect throughout the term of the Contract. The Contractor reaffirms that all such disclosures, representations, warranties, and certifications are true and correct.

**Section 14.25.2** If any disclosure, representation, warranty or certification the Contractor has made or makes pursuant to the RFQ or the Contract, including, without limitation, representations concerning the Contractor's construction or design experience and qualifications, claims or litigation history or financial condition, is materially inaccurate, that shall constitute a material breach of the Contract, entitling the Department to all available remedies.

**Section 14.25.3** The terms and conditions of Section 14.25 shall apply during both the preconstruction and construction and design management phases.

**Section 14.26 Responsibility for Agents and Contractors.** At all times and during both the preconstruction and construction phases, the Contractor shall be responsible to the Department for any and all acts and omissions of the Contractor's agents, employees, Subcontractors, Sub-Subcontractors, material suppliers, and laborers, and the agents and employees of the Subcontractors, Sub-Subcontractors, material suppliers, and laborers performing or supplying Work in connection with the Project. This Section 14.26 shall apply during both the preconstruction and construction phases.

**Section 14.27 Independent Contractor.** The Contractor and the Contractor's employees: (1) shall perform the services specified herein as independent contractors, not as employees or agent of the District, or joint venture or partner with the District; (2) shall be responsible for their own management and administration of the work required and bear sole responsibility for complying with any and all technical, schedule, financial requirements or constraints attendant to the performance of this Agreement and any subsequent Task Order Agreement; (3) shall be free from supervision or control by any government employee with respect to the manner or method of performance of the service specified; but (4) shall, pursuant to the government's right and obligation to inspect, accept or reject work, comply with such general direction of the CO, or the duly authorized representative of the CO as is necessary to ensure accomplishment of the objectives of this Agreement and any Task Order Agreement. The Contractor 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 14.28 Non-Discrimination in Employment Provisions.**

### **14.28.1 District of Columbia Human Rights Act**



a. The Contractor shall not discriminate in any manner against any employee or applicant for employment that would constitute a violation of the District of Columbia Human Rights Act, effective December 13, 1977, as amended (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*) (“Act”, as used in this clause). The Contractor shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. In addition, the Contractor agrees, and any subcontractor shall agree, to post in conspicuous places, available to employees and applicants for employment, a notice setting forth the provisions of this non-discrimination clause as provided in section 251 of the Act.

b. Pursuant to Mayor’s Order 85-85, (6/10/85), Mayor’s Order 2002-175 (10/23/02), Mayor’s Order 2011-155 (9/9/11) and the rules of the Office of Human Rights, Chapter 11 of Title 4 of the D.C. Municipal Regulations, the following clauses apply to the Agreement:

1. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap.
2. The Contractor 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:
  - i. Employment, upgrading, or transfer;
  - ii. Recruitment or recruitment advertising;
  - iii. Demotion, layoff, or termination;
  - iv. Rates of pay, or other forms of compensation; and
  - v. Selection for training and apprenticeship.
3. Unless otherwise permitted by law and directed by the Department, the Contractor 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 paragraphs 1 and 2 of Section 14.28.1(b) of this Agreement, concerning non-discrimination and affirmative action.
4. The Contractor 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 **Section 14.28.1**.
5. The Contractor 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 14.28.1**, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

6. The Contractor 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 14.28.1**, and to require under terms of any subcontractor agreement each subcontractor to permit access of the subcontractors, books, records, and accounts for such purposes.
7. The Contractor shall include in every subcontract this **Section 14.28.1**, so that such provisions shall be binding upon each subcontractor or vendor.
8. The Contractor shall take such action with respect to any subcontract as the CO may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the Contractor may request the District to enter into such litigation to protect the interest of the District.

### **Section 14.28.2 PREGNANT WORKERS FAIRNESS**

- a. The Contractor shall comply with the Protecting Pregnant Workers Fairness Act of 2016, D.C. Official Code § 32-1231.01 *et seq.* (PPWF Act).
- b. The Contractor shall not:
  1. Refuse to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding for an employee, unless the Contractor can demonstrate that the accommodation would impose an undue hardship;
  2. Take an adverse action against an employee who requests or uses a reasonable accommodation in regard to the employee's conditions or privileges of employment, including failing to reinstate the employee when the need for reasonable accommodations ceases to the employee's original job or to an equivalent position with equivalent:
    - i. Pay;
    - ii. Accumulated seniority and retirement;
    - iii. Benefits; and
    - iv. Other applicable service credits;
  3. Deny employment opportunities to an employee, or a job applicant, if the denial is based on the need of the employer to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding;
  4. Require an employee affected by pregnancy, childbirth, related medical conditions, or breastfeeding to accept an accommodation that the employee chooses not to accept if the employee does not have a known limitation related to pregnancy, childbirth, related medical conditions, or breastfeeding or the accommodation is not necessary for the employee to perform her duties;
  5. Require an employee to take leave if a reasonable accommodation can be provided; or

6. Take adverse action against an employee who has been absent from work as a result of a pregnancy-related condition, including a pre-birth complication.
- c. The Contractor shall post and maintain in a conspicuous place a notice of rights in both English and Spanish and provide written notice of an employee's right to a needed reasonable accommodation related to pregnancy, childbirth, related medical conditions, or breastfeeding pursuant to the PPWF Act to:
  - a. New employees at the commencement of employment;
  - b. Existing employees; and
  - c. An employee who notifies the employer of her pregnancy, or other condition covered by the PPWF Act, within 10 days of the notification.
- d. The Contractor shall provide an accurate written translation of the notice of rights to any non-English or non-Spanish speaking employee.
- e. Violations of the PPWF Act shall be subject to civil penalties as described in the PPWF Act.

#### **4.28.3 UNEMPLOYED ANTI-DISCRIMINATION**

- a. The Contractor shall comply with the Unemployed Anti-Discrimination Act of 2012, D.C. Official Code § 32-1361 *et seq.* ("Anti- Discrimination Act").
- b. The Contractor shall not:
  1. Fail or refuse to consider for employment, or fail or refuse to hire, an individual as an employee because of the individual's status as unemployed; or
  2. Publish, in print, on the Internet, or in any other medium, an advertisement or announcement for any vacancy in a job for employment that includes:
    - i. Any provision stating or indicating that an individual's status as unemployed disqualifies the individual for the job; or
    - ii. Any provision stating or indicating that an employment agency will not consider or hire an individual for employment based on that individual's status as unemployed.
- c. Violations of the Unemployed Anti-Discrimination Act shall be subject to civil penalties as described in the Anti- Discrimination Act.

### **Section 14.29 The Quick Payment Act**

#### **Section 14.29.1 Interest Penalties to Contractors**

**Section 14.29.1.1** The District will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code §2-221.01 *et seq.*, as amended, 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 1.5% 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 the required payment date. The required payment date shall be:

- a. The date on which payment is due under the terms of the Contract;
- b. Not later than 7 calendar days, excluding legal holidays, after the date of delivery of meat or meat food products;
- c. Not later than 10 calendar days, excluding legal holidays, after the date of delivery of a perishable agricultural commodity; or
- d. 30 calendar days, excluding legal holidays, after receipt of a proper invoice for the amount of the payment due, if a specific date on which payment is due is not established by contract;

**Section 14.29.1.2** 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 14.29.1.3** No interest penalty shall be due to the Contractor if payment for the completed delivery of goods or services is made on or after:

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

#### **Section 14.29.2 Payments to Subcontractors**

**Section 14.29.2.1** The Contractor must take one of the following actions within seven (7) days of receipt of any amount paid to the Contractor 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 Contracting Officer and the subcontractor, in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

**Section 14.29.2.2** The Contractor 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 1.5% 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 3<sup>rd</sup> 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 14.29.2.3** Any amount of an interest penalty which remains unpaid by the Contractor 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 14.29.2.4** A dispute between the Contractor 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 may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

### **Section 14.29.3 Subcontractor Quick Payment Clause Flow-Down Requirements**

**Section 14.29.3.1** The Contractor 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 14.30 Confidentiality of Information.** The Contractor shall keep all information relating to any employee or customer of the District in absolute confidence and shall not use the information in connection with any other matters; nor shall it disclose any such information to any other person, firm or corporation, in accordance with the District and federal laws governing the confidentiality of records. In the course of the Contractor's performance of the work, the Department may make available to the Contractor 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 Contractor 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 Contractor to carry out the projects. The Contractor shall similarly obligate any and all persons to whom such information is necessarily disclosed to maintain the information in strict confidence. The Contractor 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 14.31 FREEDOM OF INFORMATION ACT ("FOIA")**

The District of Columbia Freedom of Information Act, at *D.C. Official Code § 2-532 (a-3)*, requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the PM designated in each Task Order Agreement who will provide the request to the FOIA Officer for the

agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the Contract, the PM will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the PM within the timeframe designated by the PM. The FOIA Officer for the agency with programmatic responsibility will determine the releasability of the records. The District will reimburse the Contractor for the costs of searching and copying the records in accordance with *D.C. Official Code §2-532* and Chapter 4 of Title 1 of the *D.C. Municipal Regulations*.

### **Section 14.32 AMERICANS WITH DISABILITIES ACT OF 1990 (“ADA”)**

During the performance under this Agreement, the Contractor and any of its subcontractors shall comply with the ADA. The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability. See *42 U.S.C. §12101 et seq.*

### **Section 14.33 CONTRACTS IN EXCESS OF ONE MILLION DOLLARS**

Any contract in excess of \$1,000,000 shall not be binding or give rise to any claim or demand against the District until approved by the Council of the District of Columbia and signed by the Contracting Officer.

### **Section 14.34 COVID-19 Vaccination Certification Requirement For District Contractors And Grantees In Accordance With Mayor’s Order 2021-099 (“Order”)**

**14.34.1.** All District government contractors and grantees shall ensure that each of their employees, agents, and subcontractors who provide goods or perform services in person in District of Columbia facilities or worksites, or who have in-person contact with other persons in order to complete their work under the contract or grant have been either: (i) fully vaccinated against COVID-19, or (ii) granted one of the exemptions identified this Order by the contractor or grantee, are undergoing weekly COVID-19 testing and only reporting to the workplace when such test result is negative, and are wearing masks while working.

**14.34.2** Each District government agency under the administrative control of the Mayor with procurement authority independent of the Chief Procurement Officer, and each grant-making agency may issue change orders, enter into amendments to grant agreements or grant award notifications, and include terms in new contracts, grant agreements, or grant award notifications that include the requirement set forth in **Section 14.34.1**.

**14.34.3** Contractors and grantees shall be responsible for ensuring compliance with this Order by their employees, agents, and subcontractors, and failure to do so may result in adverse consequences. Each District government contractor and grantee shall, at the request of the District government, provide to the District government a certification of its compliance with this requirement.

**14.34.4** Nothing in this Order shall be deemed to prevent contractors or grantees from imposing stronger vaccination requirements on their employees, agents, or subcontractors, subject to applicable federal and local laws and regulations.

**14.34.5** Contractors or grantees may be required to demonstrate further proof of vaccination, exemption documentation, and/or COVID-19 test results upon request of the City Administrator, the relevant agency’s contracting office, or other investigative authorities.

**14.34.6** Limitation. This Order does not vest any rights in constituents to have government services delivered by fully vaccinated employees, contractors, interns, or grantees, nor does it vest any rights in employees, contractors, interns, or grantees to interact only with fully vaccinated colleagues. Employees, contractors, interns, grantees, colleagues, and constituents are not entitled to know whether someone is at work because they have certified that they have been fully vaccinated or because they have obtained an exemption from the vaccination requirement imposed by this Order.

**14.34.7** Privacy. Completed vaccination certification forms and exemption requests shall be treated as private records exempt from disclosure under section 204(a)(2) of the Freedom of Information Act of 1976, effective March 29, 1977, D.C. Law 1-96; D.C. Official Code § 2-534(a)(2); however, the information included on those forms and requests may be used internally for verification, staffing, payroll, and assignments, and as any other operational needs may require, consistent with local and federal laws and regulations.

**Section 14.35 Media Releases.** Neither the Contractor, its employees, agents or subcontractors or material suppliers shall make any press release or similar media release related to any project unless such press release have been discussed with the Department prior to its issuance.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement for On-call General Construction Projects (Solicitation Number DCAM-21-CS-RFQ-0001) as of the date last written below.

**DEPARTMENT OF GENERAL SERVICES,**  
executive branch  
of the Government of the District of Columbia)

**CONTRACTOR** (An agency within the

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit A**

The Department's Standard Contract Provisions  
(Construction Contract) and (Architectural Engineering)



## District of Columbia Department of General Services Standard Contract Provisions

### GENERAL PROVISIONS (Construction Contract)

#### ARTICLE 1. DEFINITIONS

- A. “Government” as used herein means the District of Columbia Department of General Services, (DGS) that is a party to a contract.
- B. “Executive” as used herein means the elected head of the Government as set forth in [Public Law 93-198 dated December 24, 1973, Title 4, Part B, Section 422(1)] (Or relevant local law).
- C. “Contracting Officer” as used herein means the Government official authorized to execute and administrate the Contract on behalf of the Government. Within DGS, the Director is the Chief Contracting Officer. The Director may make delegations of procurement authority to additional contracting officers within DGS.
- D. “Contract Documents” or “Contract” as used herein means Addenda, Contract Form, Standard Contract Provisions, Instructions to Bidders, General Provisions, Labor Provisions, Performance and Payment Bonds, Specifications, Special Provisions, Contract Drawings, approved written Change Orders and Agreements required to acceptably complete the Contract, including authorized extensions thereof.

**ARTICLE 2. SPECIFICATIONS AND DRAWINGS**—The Contractor shall keep on the work site a copy of Contract drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the Contract drawings, or shown on the Contract drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

There shall be no change orders or equitable adjustments for work related to items appearing in either the Contract drawing or specifications.

All Contract requirements are equally binding. Each Contract requirement, whether or not omitted elsewhere in the Contract, is binding as though occurring in any or all parts of the Contract. In case of discrepancy:

1. The Contracting Officer shall be promptly notified in writing of any error, discrepancy or omission, apparent or otherwise.
2. Applicable Federal, State, and Municipal Code requirements have priority over: the Contract form, General Provisions, Change Orders, Addenda, Contract drawings, Special Provisions and Specifications.
3. The Contract form, Standard Contract Provisions, General Provisions and

Labor Provisions have priority over: Change Orders, Addenda, Contract drawings, Special Provisions and Specifications.

4. Change Orders have priority over: Addenda, Contract drawings and Specifications.
5. Addenda have priority over: Contract drawings, Special Provisions and Specifications. A later dated Addendum has priority over earlier dated Addenda.
6. Special Provisions have priority over: Contract drawings and other specifications.

7. Shown and indicated dimensions have priority over scaled dimensions.
8. Original scale drawings and details have priority over any other different scale drawings and details.
9. Large scale drawings and details have priority over small scale drawings and details.
10. Any adjustment by the Contractor without a prior determination by the Contracting Officer shall be at his own risk and expense. The Contracting Officer will furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.

### **ARTICLE 3. CHANGES**

- A. DESIGNATED CHANGE ORDERS**—The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract, including but not limited to changes
1. In the Contract drawings and specifications;
  2. In the method or manner of performance of the work;
  3. In the Government furnished facilities, equipment, materials or services; or
  4. Directing acceleration in the performance of the work.

Nothing provided in this Article shall excuse the Contractor from proceeding with the prosecution of the work so changed.

- B. OTHER CHANGE ORDERS**—Any other written order or an oral order (which term as used in this Section (B) shall include direction, instruction, interpretation, or determination) from the Contracting Officer which causes any such change, shall be treated as a Change Order under this Article, provided that the Contractor gives the Contracting Officer written notice stating the date, circumstances and sources of the order and that the Contractor regards the order as a Change Order.
- C. GENERAL REQUIREMENTS**—Except as herein provided, no order, statement or conduct of the Contracting Officer shall be treated as a change under this Article or entitle the Contractor to an equitable adjustment hereunder. If any change under this Article causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this Contract whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any change under (B) above shall be allowed for any cost

incurred more than 20 days before the Contractor gives written notice as therein required unless this 20 days is extended by the Contracting Officer and provided further, that in case of defective drawings and specifications, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective drawings and specifications.

If the Contractor intends to assert a claim for an equitable adjustment under this Article, he must, within 30 days after receipt of a written Change Order under (A) above or the furnishing of a written notice under (B) above, submit to the Contracting Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Contracting Officer. The statement of claim hereunder may be included in the notice under (B) above.

With respect to the notification requirements hereunder, time is of the essence. A failure to provide timely notice constitutes waiver of the claim. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under the Contract.

- D. CHANGE ORDER BREAKDOWN**—Contract prices shall be used for Change Order work where work is of similar nature; no other costs, overhead or profit will be allowed.

Where Contract prices are not appropriate and the nature of the change is known in advance of construction, the parties shall attempt to agree on a fully justifiable price adjustment and/or adjustment of completion time.

When Contract prices are not appropriate, or the parties fail to agree on equitable adjustment, or in processing claims, equitable adjustment for Change Order work shall be per this Article and Article 4 and shall be based upon the breakdown shown in following subsections 1. through 7. The Contractor shall assemble a complete cost breakdown that lists and substantiates each item of work and each item of cost.

1. **Labor**—Payment will be made for direct labor cost plus indirect labor cost such as insurance, taxes, fringe benefits and welfare provided such costs are considered reasonable. Indirect costs shall be itemized and verified by receipted invoices. If verification is not possible, up to 18 percent of direct labor costs may be allowed. In addition, up to 20 percent of direct plus indirect labor costs may be allowed for overhead and profit.
2. **Bond**—Payment for additional bond cost will be made per bond rate schedule submitted to the Office of Contracting and Procurement with the executed Contract.
3. **Materials**—Payment for cost of required materials will be F.O.B. destination (the job site) with an allowance for overhead and profit.
4. **Rented Equipment**—Payment for required equipment rented from an outside company that is neither an affiliate of, nor a subsidiary of, the Contractor will be based on receipted invoices which shall not exceed rates given in the current edition of the Rental Rate Blue Book for Construction Equipment published by Data Quest. If actual rental rates exceed manual rates, written justification shall be furnished to the Contracting Officer for consideration. No additional allowance will be made for overhead and profit. The Contractor shall submit written certification to the Contracting Officer that any required rented equipment is neither owned by nor rented from the Contractor or an affiliate of or subsidiary of the Contractor.
5. **Contractor's Equipment**— Payment for required equipment owned by the

Contractor or an affiliate of the Contractor will be based solely on an hourly rate derived by dividing the current appropriate monthly rate by 176 hours. No payment will be made under any circumstances for repair costs, freight and transportation charges, fuel, lubricants, insurance, any other costs and expenses, or overhead and profit. Payment for such equipment made idle by delays attributable to the Government will be based on one-half the derived hourly rate under this subsection.

6. **Miscellaneous**—No additional allowance will be made for general superintendence, use of small tools and other costs for which no specific allowance is herein provided.

7. **Subcontract Work**—Payment for additional necessary subcontract work will be based on applicable procedures in 1. through 6., to which total additional subcontract work up to an additional 10 percent may be allowed for the Contractor's overhead and profit.

#### **ARTICLE 4. EQUITABLE ADJUSTMENT OF CONTRACT TERMS**

The Contractor is entitled to an equitable adjustment of the contract terms whenever the following situations develop:

##### **A. DIFFERING SITE CONDITIONS:**

1. During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the Contractor, upon discovering such conditions, shall promptly notify the Contracting Officer in writing of the specific differing conditions before they are disturbed and before the affected work is performed.
2. Upon written notification, the Contracting Officer will investigate the conditions, and if he/she determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding loss of anticipated profits, will be made and the contract modified in writing accordingly. The Contracting Officer will notify the Contractor of his/her determination whether or not an adjustment of the contract is warranted.
3. No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice; a failure to notify the Contracting Officer of the changed conditions prior to work being disturbed by said conditions shall constitute a permanent waiver of all right to compensation related to the changed conditions by the Contractor.
4. No contract adjustment will be allowed under this clause for any effects caused on unchanged work.

##### **B. SUSPENSION OF WORK ORDERED BY THE CONTRACTING OFFICER:**

1. If the performance of all or any portion of the work is suspended or delayed by the Contracting Officer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the Contractor shall submit to the Contracting Officer in writing a request for equitable adjustment within seven (7) calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for

such adjustment.

2. Upon receipt, the Contracting Officer will evaluate the Contractor's request. If the Contracting Officer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control or and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Contracting Officer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Contracting Officer will notify the Contractor of his/her determination whether or not an adjustment of the contract is warranted.
3. No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed; a failure to submit a request for adjustment in the time



prescribed shall constitute waiver of all right to compensation related to the suspension of work by the Contractor.

4. No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term of condition of this contract.

**c. SIGNIFICANT CHANGES IN THE CHARACTER OF WORK:**

1. The Contracting Officer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the Contractor agrees to perform the work as altered.
2. If the alterations or changes in quantities significantly change the character of the work under the contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Contracting Officer may determine to be fair and reasonable.
3. If the alterations or changes in quantities significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.
4. The term “significant change” shall be construed to apply only to the following circumstances:
  - a. When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
  - b. When an item of work is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in the case of a decrease below 75 percent, to the actual amount of work performed.

**ARTICLE 5. TERMINATION**

**TERMINATION GENERALLY**-Termination, whether for default or convenience, is not a Government claim. The Contracting Officer may terminate a contract for default, in whole or in part, if the termination is in the best interests of the Government, and the Contractor does any of the following:

- (a) Fails to deliver the goods or complete the work or services within the time specified in the contract or any modification;
- (b) Fails to make sufficient progress on contract performance so as to endanger performance of the contract within the time specified or in the manner specified in the contract;
- (c) Fails or refuses to go forward with the work in accordance with the direction of the Contracting Officer;
- (d) Expresses through word or conduct an intention not to complete the work in accordance with the directions of the Contracting Officer;
- (e) Fails to perform any of the other provisions of the contract;
- (f) Materially deviates from the representations and capabilities set forth in the Contractor's response to the solicitation.

A termination for default is a final decision of a Contracting Officer. In order to contest a termination for default, the Contractor must submit a certified request to convert the termination for default to a termination for convenience with all documents supporting such conversion and comply with all contract

provisions and laws relating to terminations for convenience, including the submission of a certified termination for convenience settlement proposal. The submission of the certified request for conversion to a termination for convenience and certified termination settlement proposal to the Contracting Officer must occur prior to 90 days from the date of the Contracting Officer's final decision.

**DELAYS**—If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in the Contract, or any extension thereof, or fails to complete said work within specified time, the Government may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work involving the delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may have been paid for by the Government or may be on the site of the work and necessary therefore. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any liability to the Government resulting from his refusal or failure to complete the work within the specified time.

If fixed and agreed liquidated damages are provided in the Contract and if the Government does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed and accepted.

The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

1. The delay in the completion the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, climatic conditions beyond the normal which could be anticipated, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers (the term subcontractors or suppliers shall mean subcontractors or suppliers at any tier); and
2. The Contractor, within 72 hours from the beginning of any such delay, (unless the Contracting Officer grants a further period of time before the date of final payment under the Contract) notifies the Contracting Officer in writing of the causes of delay.

The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time far completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in Article 7 herein.

If, after notice of termination of the Contractor's right to proceed under the provisions of this Article, it is determined for any reason that the Contractor was not in default under the provisions

of this Article, or that the delay was excusable under the provisions of this Article, the rights and obligations of the parties shall be in accordance with Article 6 herein. Failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of Article 7 herein.

The rights and remedies of the Government provided in this Article are in addition to any other rights and remedies provided by law or under the Contract.

The Government may, by written notice, terminate the Contract or a portion thereof as a result of an Executive Order of the President of the United States with respect to the prosecution of war or in the interest of national defense. When the Contract is so terminated, no claim for loss of anticipated profits will be permitted.

#### **ARTICLE 6. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT**

- A.** The performance of work under the Contract may be terminated by the Government in accordance with this Article in whole, or in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.
- B.** After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:
1. Stop work under the Contract on the date and to the extent specified in the Notice of Termination.
  2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract as is not terminated.
  3. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.
  4. Assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
  5. Settle all outstanding liabilities and all claims arising out of such termination of orders or subcontracts, with the approval or ratification of the Contracting Officer to the extent he may require, which approval or ratification shall be final for all purposes of this Article.
  6. Transfer title to the Government and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer:
    - a. The fabricated or unfabricated parts, work in progress, completed work, supplies, and other material procured as a part of, or acquired in connection with, the performance of the work terminated by the Notice of Termination, and
    - b. The completed, or partially completed plans, drawings information and other property which, if the Contract had been completed, would have been required to be furnished to the Government.
  7. Use his best efforts to sell, in the manner, at the terms, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in 6 above provided, however, that the

Contractor:

- a. Shall not be required to extend credit to any purchaser, and
- b. May acquire any property under the conditions prescribed and at a price or prices approved by the Contracting Officer, and
- c. Provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under the Contract or shall otherwise be credited to the price or cost of the work covered by the Contract or paid in such other manner as the Contracting Officer may direct.

8. Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.
9. Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

10. The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the cost, or any item of reimbursable cost, under this Article.

11. "Plant clearance period" means, for each particular property classification (such as raw materials, purchased parts and work in progress) at any one plant or location, a period beginning with the effective date of the termination for convenience and ending 90 days after receipt by the Contracting Officer of acceptable inventory schedules covering all items of that particular property classification in the termination inventory at that plant or location, or ending on such later date as may be agreed to by the Contracting Officer and the Contractor. Final phase of a plant clearance period means that part of a plant clearance period which occurs after the receipt of acceptable inventory schedules covering all items of the particular property classification at the plant or location.

At any time after expiration of the plant clearance period, as defined above, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items or, if the items are stored, within 45 days from the date of submission of the list, and any necessary adjustments to correct the list as submitted, shall be made prior to final settlement.

- C. After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than 90 days from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such 90 day period or authorized extension thereof. In the event the Contractor was terminated for default and it asserts that it is entitled to a termination for convenience, its certified request for the conversion of the default termination to one for convenience and its certified termination settlement proposal must be submitted to the Contracting Officer prior to the expiration of 90 days from the date of the default termination. With respect to a termination for convenience, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 90 day period or extension thereof. Nothing herein shall be construed to extend the time for

the submission of a claim hereunder for a defaulted Contractor beyond 90 days from the date of the default termination. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the Government's procedures in effect as of the date of execution of the Contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

- D. Subject to the provisions of C above, and subject to any review required by the Government's procedures in effect as of the date of execution of the Contract, the Contractor and Contracting



Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this Article, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in E below prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Article, shall be deemed to limit, restrict or otherwise determine or effect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.

**E.** In the event of the failure of the Contractor and the Contracting Officer to agree as provided in D above upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Article, the Contracting Officer shall, subject to any review required by the Government's procedures in effect as of the date of execution of the Contract, determine, on the basis of information available to him, the amount, if any, due the Contractor by reason of the termination and shall pay to the Contractor the amounts determined by the Contracting Officer, as follows, but without duplication of any amounts agreed upon in accordance with D above:

1. With respect to all Contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:
  - a. The cost of such work;
  - b. The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in B 5. above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under the Contract, which amounts shall be included in the cost on account of which payment is made under E1.a. above; and
  - c. A sum, as profit on E.1.a. above, determined by the Contracting
  - d. Officer to be fair and reasonable; provided however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subparagraph and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and provided further that profit shall be allowed only on preparations made and work done by the Contractor for the terminated portion of the Contract but may not be allowed on the Contractor's settlement expenses. Anticipatory profits and consequential damages will not be allowed. Any

reasonable method may be used to arrive at a fair profit, separately or as part of the whole settlement.

- 2.** The reasonable cost of the preservation and protection of property incurred pursuant to B.9; and any other reasonable cost incidental to termination of work under the Contract including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under the Contract.
- F.** The total sum to be paid to me Contractor under E.1. above shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further

reduced by the Contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under E.1. above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Government, or to a buyer pursuant to B.7 above.

**G.** The Contractor shall have the right of appeal, under Article 7 herein, from any determination made by the Contracting Officer under C. or E. above, except that, if the Contractor has failed to submit his claim within the time provided in C above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under C. or E. above, the Government shall pay to the Contractor the following:

1. If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or
2. If an appeal had been taken, the amount finally determined on such appeal.

**H.** In arriving at the amount due the Contractor under this Article there shall be deducted:

1. all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of the Contract;
2. any claim which the Government may have against the Contractor in connection with the Contract; and
3. the agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by the Contractor or sold, pursuant to the provisions of this Article and not otherwise recovered by or credited to the Government.

**I.** If the termination hereunder be partial, prior to the settlement of the terminated portion of the Contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made at such price or prices; however, nothing contained herein shall limit the right of the Government and the Contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the continued portion of the Contract when said Contract does not contain an established Contract price for such continued portion.

**J.** The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of the Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such

payments is in excess of the amount finally agreed or determined to be due under this Article, such excess Shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum for the period from the date such excess is received by the Contractor to the date on which such excess is repaid to the Government; provided however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

- K. Unless otherwise provided in the Contract or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under the Contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor, but without direct charge to the Government, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under the Contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs and other authentic reproductions thereof.

## **ARTICLE 7. DISPUTES**

A. All disputes arising under or relating to this contract shall be resolved as provided herein.

B. Claims by a Contractor against the Government.

(1) Claim, as used in Section B of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

- (a) All claims by a Contractor against the Government arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision.
- (b) Within 120 days after receipt of a claim, the Contracting Officer shall issue a decision, whenever possible taking into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.
- (c) Any failure by the Contracting Officer to issue a decision on a contract claim within the required time period shall be deemed to be a denial of the claim and shall authorize the commencement of an appeal on the claim as otherwise provided.
- (d) (1) If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the Government for an amount equal to the unsupported part of the claim in addition to all costs to the Government attributable to the cost of reviewing that part of the Contractor's claim.  
(2) Liability under this section shall be determined within 6 years of the commission of the misrepresentation of fact or fraud.
- (e) All cost data, pricing data, and task data of claims hereunder must be certified as accurate, complete, required, and necessary to the best of the Contractor's knowledge and belief. Further, all task or work data in the claim must be described therein to the smallest unit of work or task. The Contracting Officer may require any additional certifications, descriptions or explanations of the claim.
- (f) The parties agree that time is of the essence and all claims hereunder must be presented to the Contracting Officer for a final decision within thirty (30) days of the occurrence of the circumstances giving rise to such claim or within thirty (30) days of when the Contractor knew or should have known of the circumstances giving rise to such claim, otherwise compensation for that claim is waived.
- (g) The parties agree that there shall be no claims for unabsorbed home office overhead.

(2) The Contractor's claim shall contain at least the following:

- (a) A description of the claim and the amount in dispute;

- (b) Any data or other information in support of the claim;
- (c) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and
- (d) The Contractor's request for relief or other action by the Contracting Officer.
- (e) The certification of the accuracy, completeness, requirement, and necessity of all aspects of the claim.

(3) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor.

(4) Pending final decision of an appeal, action, or final settlement, a Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

C. Claims by the Government against a Contractor

(a) Claim as used in Section C of this clause, means a written demand or written assertion by the Government, including the Contracting Officer, seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. Nothing herein shall be construed to require the Government to notify the Contractor prior to the issuance of the Contracting Officer's final decision.

(b) (1) All claims by the Government against a Contractor arising under or relating to a contract shall be decided by the Contracting Officer, who shall issue a decision in writing and furnish a copy of the decision to the Contractor.

(2) The decision shall be supported by reasons and shall inform the Contractor of his or her rights. Specific findings of fact shall not be required.

(3) This clause shall not authorize the Contracting Officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(4) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor.

(5) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

**ARTICLE 8. PAYMENTS TO CONTRACTOR**—Unless otherwise provided in the Contract, the Government will pay the contract price or prices as hereinafter provided in accordance with Government regulations.

The Government will make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer, at his discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration:

1. If such consideration is specifically authorized by the Contract;
2. If the Contractor furnishes satisfactory evidence that he has acquired title to such material, that it meets Contract requirements and that it will be utilized on the work covered by the Contract; and
3. If the Contractor furnishes to the Contracting Officer an itemized list.

The Contracting Officer at his/her discretion shall cause to be withheld retention in an amount sufficient to protect the interest of the Government. Unless otherwise agreed, the amount shall not exceed ten percent (10%) of the partial payment. However, if the Contracting Officer, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, he may authorize any of the remaining progress payments to be made in full or may retain from such remaining partial payments less than 10 percent thereof. Also, whenever work is

substantially complete, the Contracting Officer, if he considers the amount retained to be in excess of the amount adequate for the protection of the Government, at his discretion, may release to the Contractor all or a portion of such excess amount. Furthermore, on completion and acceptance of each separate building, public work, or other division of the Contract, on which the price is stated separately in the Contract, payment may be made therefore without retention of a percentage, less authorized deductions.

All material and work covered by progress payments made shall thereupon become the sole property of the Government, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the Government to require the fulfillment of all of the terms of the Contract.



Upon completion and acceptance of all work, the amount due the Contractor under the Contract shall be paid upon presentation at a properly executed voucher and after the Contractor shall have furnished the Government with a release, if required, of all claims against the Government arising by virtue of the Contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release.

**ARTICLE 9. TRANSFER OR ASSIGNMENT**—Unless otherwise provided by law, neither the Contract nor any interest therein may be transferred or assigned by the Contractor to any other party without the written consent of the Contracting Officer nor without the written acceptance by the surety on the performance and payment bond securing the Contract of the assignee as the Contractor and the principal on such bond; and any attempted transfer or assignment not authorized by this Article shall constitute a breach of the Contract and the Government may for such cause terminate the right of the Contractor to proceed in the same manner as provided in Article 5 herein, and the Contractor and his sureties shall be liable to the Government for any excess cost occasioned the Government thereby.

#### **ARTICLE 10. MATERIAL AND WORKMANSHIP**

**A. GENERAL**—Unless otherwise specifically provided in the Contract, all equipment, material and articles incorporated in the work covered by the Contract shall be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in the Contract, reference to any equipment, material, article or patented process, by trade name, make or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition., and the Contractor may use any equipment, material, article or process which, in the judgment of the Contracting Officer, is equivalent to that named unless otherwise specified. The Contractor shall furnish to the Contracting Officer for his approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature and rating of the mechanical and other equipment which the Contractor contemplates incorporating in the work. Machinery and equipment shall be in proper condition. When required by the Contract or when called for by the Contracting Officer, the Contractor shall furnish to the Contracting Officer for approval full information concerning the material or articles which he contemplates incorporating in the work. When so directed, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles installed or used without required approval shall be at the risk of subsequent rejection and subject to satisfactory replacement at Contractor's expense.

**B. SURPLUS MATERIALS USE**—Whenever specified in the Contract or authorized by the Contracting Officer that materials become the property of the Contractor, which by reference or otherwise shall include disposal of materials, it is understood that the

Contractor accepts such materials "as is" with no further expense or liability to the Government. If such material specified in the Contract will have a potential or real interest of value, the Contractor shall make allowance in the Contract to show such value.

- C. GOVERNMENT MATERIAL**—No materials furnished by the Government shall be applied to any other use, public or private, than that for which they are issued to the Contractor. The full amount of the cost to the Government of all materials furnished by the Government to the Contractor and for which no charge is made, which are not accounted for by the Contractor to the satisfaction of the Contracting Officer, will be charged against the Contractor and his sureties and may be deducted from any monies due the Contractor, and this charge shall be in addition to and not in lieu of any other liabilities of the Contractor whether civil or criminal. Materials furnished by the Government for which a charge is made at a rate mentioned in the specifications will be delivered to the Contractor upon proper requisitions therefore and will be charged to his account.
- D. Plant** —The Contractor shall at all times employ sufficient tools and equipment for prosecuting the various classes of work to full completion in the manner and time required. The Contractor shall at all times perform work in sufficient light and shall provide proper illumination, including

lighting required for night work as directed, as a Contract requirement. All equipment, tools, formwork and staging used on the project shall be of sufficient size and in proper mechanical and safe condition to meet work requirements, to produce satisfactory work quality and to prevent injury to persons, the project or adjacent property. When methods and equipment are not prescribed in the Contract, the Contractor is free to use tools, methods and equipment that he satisfactorily demonstrates will accomplish the work in conformity with Contract requirements.

If the Contractor desires to use a method or type of tool or equipment other than specified in the Contract, he shall request approval to do so; the request shall be in writing and shall include a full description of proposed methods, tools and equipment and reason for the change or substitution. Approval of substitutions and changed methods will be on condition that the Contractor will be fully responsible for producing work meeting Contract requirements. If after trial use of the substituted methods, tools and equipment, the Contracting Officer determines that work produced does not meet Contract requirements, the Contractor shall complete remaining work with specified methods, tools and equipment.

**E. CAPABILITY OF WORKERS-** All work under the Contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require the Contractor to remove from the work any such employees as the Contracting Officer deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed by the Contracting Officer to be contrary to the public interest. Such request will be in writing:

**F. CONFORMITY OF WORK AND MATERIALS**—All work performed and materials and products furnished shall be in conformity, within indicated tolerances, with lines, grades, cross sections, details, dimensions, material and construction requirements shown or intended by the drawings and specifications.

When materials, products or work cannot be corrected, written notice of rejection will be issued. Rejected materials, products and work shall be eliminated from the project and acceptably replaced at Contractor's expense. The Contracting Officer's failure to reject any portion of the project shall not constitute implied acceptance nor in any way release the Contractor from Contract requirements.

**G. UNAUTHORIZED WORK AND MATERIALS**—Work performed or materials ordered or furnished for the project deviating from requirements and specifications without written authority, will be considered unauthorized and at Contractor's expense. The Government is not obligated to pay for unauthorized work. Unauthorized work and materials may be ordered removed and replaced at Contractor's expense.

**ARTICLE 11. INSPECTION AND ACCEPTANCE**—Except as otherwise provided in the Contract, inspection and test by the Government of material and workmanship required by the Contract shall be made at reasonable times and at the site of the work, unless the Contracting Officer determines that such inspection or test of material which is to be incorporated in the work shall be made at the place of production, manufacture or shipment of such material. To the extent specified by the Contracting Officer at the time of determining to make off-site

inspection or test, such inspection or test shall be conclusive as to whether the material involved conforms to Contract requirements. Such off-site inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Government after acceptance of the completed work under the terms of the last paragraph of this Article, except as herein above provided.

The Contractor shall, without charge, replace any material and correct any workmanship found by the Government not to conform to Contract requirements and specifications, unless in the public interest the Government consents to accept such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises at Contractor's expense.

If the Contractor does not promptly replace rejected material or correct rejected workmanship, the Government:

1. May, by contract or otherwise, replace such material and correct such workmanship and charge the cost thereof to the Contractor, or
2. May terminate the Contractor's right to proceed in accordance with Article 5 herein.

The Contractor shall furnish promptly, without additional cost to the Government, all facilities, labor and material reasonably needed for performing such safe and convenient inspection and test as may be required by the Contracting Officer. All inspections and tests by the Government shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be performed as described in the Contract. The Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready for inspection at the time specified by the Contractor.

Should it be considered necessary or advisable by the Contracting Officer at any time before acceptance of the work, either in part or in its entirety, to make an examination of work completed, by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor and material to do same. If such work is found to be defective or nonconforming in any material respect, due to the fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, an equitable adjustment shall be made in the Contract price to compensate the Contractor for the additional services involved in such examination and reconstruction and, if completion of the work has been delayed thereby, he shall, in addition, be granted an equitable extension of time.

Unless otherwise provided in the Contract, acceptance by the Government will be made as promptly as practicable after completion and inspection of all work required by the Contract. Acceptance shall be final and conclusive except as regards to latent defects, deficiencies, nonconforming work, fraud, or such gross mistakes as may amount to fraud, or as regards the Government's rights under any warranty or guaranty, or as otherwise provided herein.

**ARTICLE 12. SUPERINTENDENCE BY CONTRACTOR**—The Contractor shall give his personal superintendence to the performance of the work or have a competent foreman or superintendent, satisfactory to the Contracting Officer, on the work site at all times during progress, with authority to act for him.

**ARTICLE 13. PERMITS AND RESPONSIBILITIES**—The Contractor shall, without expense to the Government, be responsible for obtaining any necessary licenses, certificates and permits, and for complying with any applicable Federal, State, and Municipal laws, codes and regulations, in connection with the prosecution of the work. He shall be similarly responsible for all damages to persons or property that occurs as a result of his fault or negligence. He shall take proper safety, health and environmental precautions to protect the work, the workers, the public, and the property of others. He shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any

completed unit of construction thereof which theretofore may have been accepted.

**ARTICLE 14. INDEMNIFICATION—**

- A.** The Contractor shall indemnify and save harmless the Government and all of its officers, agents and servants against any and all claims or liability arising from or based on, or as a consequence or result of, any act, omission or default of the Contractor, his employees, or his subcontractors, in the performance of, or in connection with, any work required, contemplated or performed under the Contract.

- B.** Disputes between the Contractor and any subcontractors, material suppliers, or any other third parties over payments allegedly owed by the Contractor to a third party shall be resolved exclusively between the Contractor and the third party; the Contractor shall permit no pass-through suits to be brought against the Government by a third party in the Contractor's name. However, nothing herein shall be construed to prevent the Contractor from paying a subcontractor's claim and seeking a timely equitable adjustment hereunder.

**ARTICLE 15. PROTECTION AGAINST TRESPASS**—Except as otherwise expressly provided in the Contract, the Contractor is authorized to refuse admission either to the premises or to the working space covered by the Contract to any person whose admission is not specifically authorized in writing by the Contracting Officer.

#### **ARTICLE 16. CONDITIONS AFFECTING THE WORK**

**A. GENERAL**—The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work and the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the work as specified without additional expense to the Government. The Government assumes no responsibility for any understanding or representation concerning conditions made by any of its officers or agents prior to the execution of the Contract, unless such understanding or representation by the Government is expressly stated in the Contract.

**B. WORK AND STORAGE SPACE**—Available work and storage space designated by the Government shall be developed as required by the Contract or restored at completion of the project by the Contractor to a condition equivalent to that existing prior to construction. No payment will be made for furnishing or restoration of any work and storage space. If no area is designated or the area designated is not sufficient for the Contractor's operations, he shall obtain necessary space elsewhere at no expense or liability to the Government.

**C. WORK ON SUNDAYS, LEGAL HOLIDAYS AND AT NIGHT**—No work shall be done at any time on Sundays or legal holidays or on any other day before 7 a.m. or after 7 p.m., except with the written permission of the Contracting Officer and pursuant to the requirements of the Police Requirements of the Government.

**D. EXISTING FEATURES**—Subsurface and topographic information including borings data, utilities data and other physical data contained in the Contract or otherwise available, are not intended as representations or warranties but are furnished as available information. The Government assumes no expense or liability for the accuracy of, or interpretations made from, existing features. The Contractor shall be responsible for reasonable consideration of existing features above and below ground which may affect the project.

**E. UTILITIES AND VAULTS**—The Contractor shall take necessary measures to prevent

interruption of service or damage to existing utilities within or adjacent to the project. It shall be the Contractor's responsibility to determine exact locations of all utilities in the field.

For any underground utility or vault encountered, the Contractor shall immediately notify the Contracting Officer and take necessary measures to protect the utility or vault and maintain the service until relocation by owner is accomplished. No additional payment will be made for the encountering of these obstructions.

In case of damage to utilities by the Contractor, either above or below ground, the Contractor shall restore such utilities to a condition equivalent to that which existed prior to the damage by repairing, rebuilding or otherwise restoring as may be directed, at the Contractor's sole expense.



Damaged utilities shall be repaired by the Contractor or, when directed by the Contracting Officer, the utility owner will make needed repairs at the Contractor's expense.

No compensation, other than authorized time extensions, will be allowed the Contractor for protective measures, work interruptions, changes in construction sequence, changes in methods of handling excavation and drainage or changes in types of equipment used, made necessary by existing utilities, imprecise utility or vault information or by others performing work within or adjacent to the project.

- F. SITE MAINTENANCE**—The Contractor shall maintain the project site in a neat and presentable manner throughout the course of all operations, and shall be responsible for such maintenance until final acceptance by the Government. Trash containers shall be furnished, maintained and emptied by the Contractor to the satisfaction of the Contracting Officer. Excavated earthwork, stripped forms and all other materials and debris not scheduled for reuse in the project shall be promptly removed from the site.

The Contracting Officer may order the Contractor to clean up the project site at any stage of work at no added expense to the Government. If the Contractor fails to comply with this order, the Contracting Officer may require the work to be done by others and the costs will be charged to the Contractor.

Upon completion of all work and prior to final inspection, the Contractor shall clean up and remove from the project area and adjacent areas all excess materials, equipment, temporary structures, and refuse, and restore said areas to an acceptable condition.

- G. PRIVATE WORK**—Except as specifically authorized by the Contracting Officer, the Contractor shall not perform any private work abutting Government projects with any labor, materials, tools, equipment, supplies or supervision scheduled for the Contract until all work under the Contract has been completed. Contract materials used for any unauthorized purpose shall be subtracted from Contract amount.
- H. GOVERNMENT NOISE CONTROL ACT OF 1977**—The contractor shall be in strict compliance with [D.C. Law 2-53, Government of Columbia Noise Control Act of 1977 and all provisions thereof. Effective March 16, 1978. 24 D.C.Register 5293.] (Or relevant local law)

**ARTICLE 17. OTHER CONTRACTS**—The Government may undertake or award other contracts for additional work and the Contractor shall fully cooperate with such other contractors and Government employees and carefully coordinate his own work with such additional work as may be directed by the Contracting Officer. It is the duty of the Contractor to coordinate its activities with all third parties, including, but not limited to utilities, who may affect the Contract work hereunder. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees. The Government assumes no liability, other than authorized time extensions, for Contract delays and damages resulting from delays and lack of progress by others. The Contractor shall make no claim against the Government for delay or damages resulting from the actions of third parties, including, but limited to utilities.

**ARTICLE 18. PATENT INDEMNITY**—Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any Letters Patent of the United States (except Letters Patent issued upon an application which is now or may hereafter be, for reasons of national security, ordered by the Federal Government to be kept classified or otherwise withheld from issue) arising out of the performance of the Contract or out of the use or disposal, by or for the account of the Government, of supplies furnished or construction work performed hereunder.

**ARTICLE 19. ADDITIONAL BOND SECURITY**—If any surety upon any bond furnished in connection with the Contract becomes unacceptable to the Government, or if any such surety fails to furnish reports

as to his financial condition from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by the Contract. Provided that upon the failure of the Contractor to furnish such additional security within ten (10) days after written notice so to do, all payments under the Contract will be withheld until such additional security is furnished.

**ARTICLE 20. COVENANT AGAINST CONTINGENT FEES**—The Contractor 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 Contractor for the purpose of securing business. For breach or violation of this warranty, the Government 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 such commission, percentage, brokerage or contingent fee.

**ARTICLE 21. APPOINTMENT OF ATTORNEY**—The Contractor does hereby irrevocably designate and appoint the Clerk of the Superior Court of the Government and his successors in office as the true and lawful attorney of the Contractor for the purpose of receiving service of all notices and processes issued by any court in the Government, as well as service of all pleadings and other papers, in relation to any action or legal proceeding arising out of or pertaining to the Contract or the work required or performed hereunder.

The Contractor expressly agrees that the validity of any service upon the said Clerk as herein authorized shall not be affected either by the fact that the Contractor was personally within the District of Columbia and otherwise subject to personal service at the time of such service upon the said Clerk or by the fact that the Contractor failed to receive a copy of such process, notice, pleading or other paper so served upon the said Clerk, provided that said Clerk shall have deposited in the United States mail, certified and postage prepaid, a copy of such process, notice, pleading or other papers addressed to the Contractor at the address stated in the Contract.

**ARTICLE 22. GRATUITIES AND GOVERNMENT EMPLOYEES NOT TO BENEFIT**

- A. If it is found by the Department 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 District with a view toward securing the Contract or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract without liability and may pursue such other rights and remedies provided by law and under the Contract.
- B. In the event the Contract is terminated as provided above, the Department shall be entitled:
  - 1. to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract 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 Department) which shall be not less than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.
- C. Unless a determination is made as provided herein, no officer or employee of the Government will be admitted to any share or part of this contract or to any benefit that may arise therefrom, and any contract made by the Contracting Officer or any Government employee authorized to execute contracts in which they or an employee of the Government will be personally interested shall be

void, and no payment shall be made thereon by the Government or any officer thereof, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. A Government employee shall not be a party to a contract with the Government and will not knowingly cause or allow a business concern or other organization owned or substantially owned or controlled by the employee to be a party to such a contract, unless a written determination has been made by the head of the procuring agency that there is a compelling reason for contracting with the employee, such as when the Government's needs cannot reasonably otherwise be met. [DC Procurement Practices Act of 1985, D.C. Law 6-85, D.C. Official Code, section 2-310.01, and Chapter 18 of the DC Personnel Regulations] (Or relevant local law). The Contractor represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants not to employ any person having such known interests in the performance of the contract.

**ARTICLE 23. WAIVER**—No Governmental waiver of any breach of any provision of the Contract shall operate as a waiver of such provision or of the Contract or as a waiver of subsequent or other breaches of the same or any other provision of the Contract; nor shall any action or non-action by the Contracting Officer or by the Government be construed as a waiver of any provision of the Contract or of any breach thereof unless the same has been expressly declared or recognized as a waiver by the Contracting Officer or the Government in writing.

#### **ARTICLE 24. BUY AMERICAN.**

The Contractor shall comply with the provisions of the Buy American Act (41 U.S.C. § 10a), including, but not limited to, the purchase of steel.

- A. AGREEMENT**—In accordance with the Buy American Act (41 USC 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 Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, material men and suppliers in the performance of the Contract, except for non-domestic material listed in the Contract.
- B. 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. -
- C. 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.

- D. 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.

## **ARTICLE 25. TAXES**

- A. FEDERAL EXCISE**—Materials, supplies and equipment are not subject to the Federal Manufacturer’s Excise Tax, if they are furnished or used in connection with the Contract provided that title to such materials, supplies and equipment passes to the Government under the Contract. The Contractor shall in such cases furnish his subcontractors and suppliers with a purchaser’s certificate in the form prescribed by the U.S. Internal Revenue Service.
- B. SALES AND USE TAXES**—Materials which are physically incorporated as a permanent part of real property are not subject to Government Sales and Use Tax. The Contractor shall, when purchasing such materials, furnish his suppliers with a Contractor’s Exempt Purchase Certificate in the form prescribed in the Sales and Use Tax Regulations of the Government. Where the Contractor, subcontractor or material man has already paid the Sales and Use Tax on material, as prescribed above, the Sales and Use Tax Regulations of the Government permit the Contractor, subcontractor or material man to deduct the sales or use tax on the purchase price of the same on his next monthly return as an adjustment. However, the Contractor, subcontractor or material man must satisfy the Chief Financial Officer for the Government that no sum in reimbursement of such tax was included in the Contract or else that the Government has received a credit under the Contract in an amount equal to such tax.

Government Sales and Use Tax shall be paid on any material and supplies, including equipment rentals, which do not become a physical part of the finished project. [See Government of Columbia Sales and Use Tax Administration Ruling No. 6] (Or relevant local law).

The Contractor, subcontractor, or material supplier shall provide proof of compliance with the provisions of [D.C. Law 9-260] (Or relevant local law), as amended, codified in [D.C. Code46-103] (Or relevant local law), Employer Contributions, prior to award.

The Contractor, subcontractor, or material supplier shall provide proof of compliance with the applicable tax filing and licensing requirements set forth in [D.C. Code, Title 47, Taxation and Fiscal Affairs] (Or relevant local law), prior to contract award.

**ARTICLE 26. SUSPENSION OF WORK**—The Contracting Officer may order the Contractor in writing to suspend, delay or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the Government.

If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed or interrupted by an act of the Contracting Officer in the administration of the Contract, or by his failure to act within the time specified in the Contract (or if no time is specified, within a reasonable time), an adjustment will be made for an increase in the cost of performance of the Contract (excluding profit) necessarily caused by such unreasonable suspension, delay or interruption and the Contract modified in writing accordingly. However, no adjustment will be made under this Article for any suspension, delay or interruption to the extent:

1. That performance would have been so suspended, delayed or interrupted by any

other cause, including the fault or negligence of the contractor, or

2. For which an equitable adjustment is provided or excluded under any other provision of the Contract.

No claim under this Article shall be allowed:

1. For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall no apply as to a claim resulting from a suspension order), and



2. Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the Contract.

## **ARTICLE 27. SAFETY PROGRAM**

- A. GENERAL**—In order to provide safety controls for the protection of the life and health of Government and Contract employees and the general public; prevention of damage to property, materials, supplies, and equipment; and for avoidance of work interruptions in the performance of the Contract, the Contractor shall comply with all applicable Federal and local laws governing safety, health and sanitation including the Safety Standards, Rules and Regulations issued by the American National Standards, U. S. Department of Labor, U. S. Department of Health and Human Services, [D.C. Minimum Wage and Industrial Safety Board] (Or relevant local law) and the latest edition of “Manual of Uniform Traffic Control Devices” issued by the Federal Highway Administration.

The Contractor shall also take or cause to be taken such additional safety measures as the Contracting Officer may determine to be reasonably necessary.

The Contractor shall designate one person to be responsible for carrying out the Contractor’s obligation under this Article.

The Contractor shall maintain an accurate record of all accidents resulting in death, injury, occupational disease, and/or damage to property, materials, supplies, and equipment incident to work performed under the Contract. Copies of these reports shall be furnished to the Contracting Officer within two working days after occurrence.

The Contracting Officer will notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Contractor or his representative at the site of the work, shall be deemed sufficient for the purpose. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

This Article is applicable to all subcontractors used under the Contract and compliance with these provisions by the subcontractors will be the responsibility of the Contractor.

*(In Contracts involving work of short duration or of non-hazardous character, the following Section B. will be deleted by Special Provision)*

- B. CONTRACTOR’S PROGRAM SUBMISSION**—Prior to commencement of the work, the Contractor shall:

1. Submit in writing to the Contracting Officer for his approval his program for complying with this Article for accident prevention.
2. Meet with the Contracting Officer's Safety Representative after submission of the above program to develop a mutual understanding relative to the administration of the overall safety program.

**ARTICLE 28. RETENTION OF RECORDS**—Unless otherwise provided in the Contract, or by applicable statute, the Contractor, from the effective date of Contract completion and for a period of three years after final settlement under the Contract, shall preserve and make available to the Government at all

reasonable times at the office of the Contractor but without direct charge to the Government, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under the Contract.

**ARTICLE 29. RECOVERY OF DEBTS OWED THE GOVERNMENT---**The Contractor hereby agrees that the Government may use all or any portion of any payment, consideration or refund due the Contractor under the Contract to satisfy, in whole or part, any debt due the Government.

**ARTICLE 30. ADMINISTRATIVE LIQUIDATED DAMAGES---**In addition to any other liquidated damages provided for in the Contract, the Contractor hereby agrees that the Government may assess administrative liquidated damages for the Contractor's failure to submit when due any deliverable required by the Contract. Unless otherwise prescribed by the Contracting Officer, the rate of the administrative liquidated damages shall be \$250 per day until the required deliverable is received and accepted by the Government. The Government's remedies for failure to comply with the Contract terms and conditions are cumulative and not exclusive. Nothing herein shall be construed to limit the Government's ability to terminate the Contractor for the failure to submit Contract deliverables when due.

**ARTICLE 31. ANTI-COMPETITIVE PRACTICES AND ANTI-KICKBACK PROVISIONS.**

- A. The Contractor recognizes the need for markets to operate competitively and shall observe and shall comply with all applicable law, rules, and regulations prohibiting anti-competitive practices. The Contractor shall not engage, directly or indirectly, in collusion or other anti-competitive practices that reduces or eliminates competition or restrains trade. The Department shall report to the appropriate authority any activity that evidences a violation of the antitrust laws, and take such other further action to which it is entitled or obligated under the law.
- B. The Contractor shall observe and comply with all applicable law, rules, and regulations prohibiting kickbacks and, without limiting the foregoing, Contractor shall not (i) provide or attempt to provide or offer to provide any kickback; (ii) solicit, accept, or attempt to accept any kickback; or (iii) include, directly or indirectly, the amount of any kickback in the contract price charged by Contractor or a Subcontractor of the Construction Manager to the Department. The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in this subparagraph in its own operations and direct business relationships. The Department may take any recourse available to it under the law for violations of this anti-kickback provision.
- C. The Contractor represents and warrants that it did not, directly or indirectly, engage in any collusive or other anti-competitive behavior in connection with the bid, negotiation or award of the Contract. Further, the Contractor represents and warrants that it will not either directly or indirectly, engage in any collusive or other anti-competitive behavior in connection with the performance and administration of the Contract. In the event the Department determines that there has been a violation of these provisions, it may

terminate the contract without liability.

**ARTICLE 32. NON-DISCRIMINATION IN EMPLOYMENT PROVISIONS.**

- A.** The Contractor 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:
1. Employment, upgrading, or transfer;
  2. Recruitment or recruitment advertising;
  3. Demotion, layoff, or termination;

4. Rates of pay, or other forms of compensation; and
  5. Selection for training and apprenticeship.
- B.** Unless otherwise permitted by law and directed by the Department, the Contractor 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.
- C.** The Contractor 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.
- D.** The Contractor 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.
- E.** The Contractor 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.
- F.** The Contractor shall include in every subcontract the equal opportunity clauses of this Section so that such provisions shall be binding upon each Subcontractor or vendor.
- G.** The Contractor 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.

**ARTICLE 33. ETHICAL STANDARDS FOR DEPARTMENT'S EMPLOYEES AND FORMER**

**EMPLOYEES**---The Department expects the Contractor 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 Department not in conformity with applicable law, rules or regulations. The Contractor 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 Contractor may not assign to any former Department or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each

Subcontractor or vendor.

**ARTICLE 34. CONSTRUCTION.** The Contract shall be construed fairly as to all parties and not in favor of or against any party, regardless of which party prepared the Contract.

**ARTICLE 35. SURVIVAL.** All agreements warranties, and representations of the Contractor contained in the Contract or in any certificate or document furnished pursuant to the Contract shall survive termination or expiration of the Contract.

**ARTICLE 36. 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 Government may have, including, without limitation, at law or in equity. The Government's rights and

remedies will be exercised at its sole discretion, and shall not be regarded as conferring any obligation on the Government's to exercise those rights or remedies for the benefit of the Contractor or any other person or entity.

**ARTICLE 37. 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 Contractor, unless otherwise expressly provided to the contrary in the Contract. Nothing herein shall be construed to limit the Department's right to issue unilateral modifications to the contract.

**ARTICLE 38. SEVERABILITY.** In the event any one or more of the provisions contained in this Contract 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 Contract, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Contract 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 Contract is intended to be severable.

**ARTICLE 39. FORCE MAJEURE---**If the Contractor, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Contract, the Contractor may be excused from whatever performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations under this Contract by reason of Force Majeure, within 72 hours of the occurrence or event, the Contractor must provide the Contracting Officer written notice of its inability to perform as well as a description of the force majeure and its effect on Contract performance.

The Contracting Officer will have the right to cause the inspection of the work site to determine the validity of the Contractor's assertion of its inability to perform. If the Contracting Officer agrees that the Contractor is wholly or partly unable to perform its obligations under the Contract a decision will be issued indicating the extent to which the Contractor is excused from its performance obligations. In no event will the Contractor be entitled to money damages from the Government due to force majeure.

**Exhibit B**

**Department's Designated Representatives**

George G. Lewis  
Associate Director, Contracts and Procurement Division  
Department of General Services  
Contracts and Procurement Division  
2000 14th Street, NW 4<sup>th</sup> Floor  
Washington, DC 20009

Pamela F. Dikerson  
Contracting Officer, Contracting and Procurement Division  
Department of General Services  
2000 14th St NW | 8th Floor  
Washington, DC 20009

Eric Njonjo  
Contracting Officer, Contracting and Procurement Division  
Department of General Services  
1250 U Street, NW, 2<sup>nd</sup> Floor  
Washington, DC 20009



**Exhibit C**

**Equal Employment Opportunity and Hiring of District Residents**



**Exhibit D**

**Form of Task Order Agreement**

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF GENERAL SERVICES



Contracts &  
Procurement

TASK ORDER AGREEMENT [Insert #]

CONTRACT NO. DCAM-21-CS-RFQ-0001-[ ]  
IDIQ for SMALL CONSTRUCTION PROJECTS [Insert Project Name/Title]

[DATE]

[Insert RK#]

**THIS TASK ORDER AGREEMENT NO. [ ]** is issued by the Government of the District of Columbia, acting by and through its **DEPARTMENT OF GENERAL SERVICES** (the “Department” or “DGS”) to the contractor listed below. Assuming this Task Order Agreement is signed by the Contractor without modification of any kind, it shall constitute a binding legal contract between the Department and the Contractor. The terms of Task Order Agreement are as follows:

- 1. Remaining capacity.** The remaining capacity for the Contractor under the IDIQ Contract, [Option Year] is [\$\_\_\_\_]
- 2. Contractor.** This Task Order Agreement is being issued to [Insert Contractor’s Name] “Contractor” under Contract No. DCAM-21-CS-RFQ-0001-[ ].
- 3. Scope of Work.** The Contractor shall provide all necessary services and furnish all supervision, labor, materials, and equipment necessary to [ ] located at [Insert Project Address] (“the Project”) in accordance to the Scope of Work (**Exhibit A**) and the Contractor’s Proposal (**Exhibit B**).
- 4. Task Order Price.** The Contractor will be paid a Lump Sum Price of [Insert Amount] to fully complete and deliver fully functioning Project, as described in the Contractor’s price proposal dated [ ], 20[ ] (**Exhibit B**) and the Scope of Work (**Exhibit A**). In no event shall the Contractor be paid more than [Insert Amount] unless the Contractor is authorized to exceed this limit in advance and in writing by a DGS Contracting Officer.
- 5. Notice to Proceed.** This Task Order Agreement serves as the Contractor’s Notice-to-Proceed.
- 6. Substantial Completion Date** The work in this Task Order shall be completed no later than [ \_ ], 20[ ] (“**Substantial Completion Date**”). Substantial Completion shall mean that all of the following have occurred: (1) the construction and installation work have been completed

with only minor punch list items remaining to be completed; (2) a permanent certificate of occupancy and all other required permits or approvals have been obtained; (3) all operating and maintenance materials, manuals, training recordings videos and draft warranties required by the Contract have been delivered to the Department; (4) any supplemental training session required by the Contract for operating or maintenance personnel have been completed; (5) all

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



clean-up required by the Contract has been completed; (6) the Project is ready for the Department to use it for its intended purpose; and (7) all equipment, supplies, materials and items to be installed have been installed in accordance with the manufacturer's specifications and industry standards and have undergone and passed the requisite testing and inspections. "Minor punch list items" are defined for this purpose as items that, in the aggregate, can be completed by the Final Completion Date without interfering with the Department's normal use of the Project.

7. **Final Completion Date.** The Final Completion Date of this Task Order is [ \_ \_ ], 20[ \_ ] (“**Final Completion Date**”). **Final Completion** shall mean the point at which Substantial Completion has been achieved, all punch list items noted at Substantial Completion have been completed, and all documents the Contractor is required to deliver to the Department as a condition to receiving final payment have been received. Work is defined as the construction and services required by the Contract, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.
8. **Administrative Term.** An administrative term of [ \_ \_ ], 20[ \_ ] (“**Administrative Term Date**”) is hereby established for all work that is subject of this Task Order Agreement.
9. **Davis-Bacon Act Wage Determination.** The Contractor shall comply with the U.S. Department of Labor Davis-Bacon Act Wage Determination (**Exhibit C**).

**10. Insurance Requirement.**

[Project-specific Insurance Requirements shall be obtained from the office of risk management (“ORM”) and incorporated in within each RFTOP and resulting Task Order Agreement].

11. **Project Manager.** The Project Manager for this Task Order is as follows:

[Insert PM Name]  
Project Manager  
Capital Construction Services  
Contractor- DC Department of General Services  
1250 U Street, NW / 4th Floor  
Washington, DC. 20009  
Phone: (202) \_ \_  
Email:

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DEPARTMENT OF GENERAL SERVICES



**12. Contracting Officer.** The name and contact information for the Contracting Officer for this Task Order Agreement is as follows:

[Insert CO's Name]  
Contracting Officer  
Contracts & Procurement Division  
Department of General Services  
[Address]

**Only a duly authorized Contracting Officer shall have the authority to direct the Contractor to start the project, issue change orders, contract modifications or change directives on the Department's behalf. The Program Manager shall not have the authority to modify any of the rights and obligations of the Department or the Contractor pursuant to the task order, or to issue change orders, contract modifications or change directive.**

**1. Use of Department's Electronic Project Management Information System (ProjectTeam).** Awarded vendor shall utilize the Department's ProjectTeam system to create, manage and/or submit any and all documentation required to be provided by the vendor during the course of the Project, including, but not limited to: (i) requests for information; (ii) submittals; (iii) potential change orders; (iv) meeting minutes; (v) pencil copy invoices; (vi) drawings and specifications; (vii) punchlist; and (viii) other documents as may be designated by the Department.

**13. Invoice Submittal.** The Contractor shall create and submit payment requests in an electronic format through the DC Vendor Portal, <https://vendorportal.dc.gov>. The Contractor shall submit proper invoices on a monthly basis. To constitute a proper invoice, the Contractor shall enter all required information into the Portal after selecting the applicable purchase order number which is listed on the Contractor's profile.

**14. Performance and Payment Bonds.** The Contractor shall provide to the Department payment and performance bonds, each with a penal sum equal to one hundred percent (100%) of the Task Order Agreement price, prior to commencing Work, in accordance with Article 11, Section 11.12 of the underlying Contract No. DCAM-21-CS-RFQ-0001 – [ ].

**15. Liquidated Damages.** If the Contractor fails to achieve Substantial Completion by the Substantial Completion Date, the Parties acknowledge and agree that the actual damage to the Department for the delay will be impossible to determine, and in lieu thereof, the Contractor shall pay to the Department, as fixed and liquidated delay damages in the amount specified in the Task Order Agreement for failure to meet the Substantial Completion Date. The Contractor

and the Department agree that the liquidated damages do not constitute, and shall not be deemed, a penalty but represent a reasonable approximation of the damages to the Department associated with a delay in the Project. In the event the Contractor fails to meet the Substantial Completion Date as defined in each individual Task Order Agreement, the Contractor consents to a termination for default.

**16. Terms & Conditions.** The District of Columbia Department of General Services Standard Contract Provisions for Construction Contracts, Standard Contract Provisions for Architectural & Engineering Services and The District of Columbia Department of General Services Standard Contract Provisions for Construction Contracts are incorporated into this Task Order Agreement as **(Exhibit D1 and Exhibit D2)**.

**17. Service Contract Act.** The Contractor agrees that the work performed under the proposed Contract shall be subject to the Service Contract Act Wage Determination in effect on the date

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



the contract is executed and such wages are incorporated as **(Exhibit E)**. Service Contract Wage Schedules are available at [www.wdol.gov](http://www.wdol.gov).

**17. SBE Subcontracting Requirement:**

**17.1 Mandatory Subcontracting Requirements**

**DC. Code § 2–218.91. Certified Business Enterprise assistance**

(a) Notwithstanding subchapter IX-A of this chapter, or any other provision of District law or regulation, during the period of the COVID-19 emergency, any contract for a government-assisted project in excess of \$250,000 that is unrelated to the District's response to the COVID-19 emergency but entered into during the COVID-19 emergency, absent a waiver pursuant to § 2-218.51, shall provide that:

(1) At least 50% of the dollar volume of the contract be subcontracted to small business enterprises; or

(2) If there are insufficient qualified small business enterprises to meet the requirement of paragraph (1) of this subsection, the subcontracting requirement may be satisfied by subcontracting 50% of the dollar volume ("CBE minimum expenditure") to any qualified certified business enterprises; provided, that best efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.

(a-1) Notwithstanding subsection (a) of this section, a certified business enterprise awarded a contract for a government-assisted project in excess of \$250,000 that is unrelated to the District's response to the COVID-19 emergency but entered into during the COVID-19



emergency shall:

(1) Perform at least 35% of the contracting effort with its own organization and resources if the certified business enterprise is granted points or a price reduction pursuant to § 2-218.43 or selected through a set-aside program; and

(2) If the certified business enterprise subcontracts, ensure that 50% of the dollar volume of the subcontracted effort be with certified business enterprises unless a waiver is granted pursuant to § 2-218.51.

(a-2) Notwithstanding subsection (a) of this section, a certified joint venture awarded a contract for a government-assisted project in excess of \$250,000 that is unrelated to the District's response to the COVID-19 emergency but entered into during the COVID-19 emergency shall:

(1) Perform at least 50% of the contracting effort with its own organization and resources if the certified joint venture is granted points or a price reduction pursuant to § 2-218.43 or selected through a set-aside program; and

(2) If the certified joint venture subcontracts, 50% of the dollar volume of the subcontracted effort shall be with certified business enterprises unless a waiver is granted pursuant to § 2-218.51.

(b) (1) For every dollar expended by a beneficiary with a resident-owned business, the beneficiary shall receive a credit for \$1.10 against the CBE minimum expenditure.

(2) For every dollar expended by a beneficiary with a disadvantaged business enterprise, the beneficiary shall receive a credit for \$1.25 against the CBE minimum expenditure.

(3) For every dollar expended by a beneficiary that uses a company designated as both a disadvantaged business enterprise under § 2-218.33 and as a resident-owned business under § 2-218.02(15), the beneficiary shall receive a credit for \$1.30 against the CBE minimum expenditure.

(c) For the purposes of this section, the term:

(1) "Beneficiary" has the same meaning as set forth in § 2-218.02(1B).

(2) "Best efforts" means that a beneficiary is obligated to make its best attempt to accomplish the agreed-to goal, even when there is uncertainty or difficulty.

(3) "COVID-19 emergency" means the emergencies declared in the Declaration of Public Emergency (Mayor's Order 2020-045) together with the Declaration of Public Health Emergency (Mayor's Order 2020-046), declared on March 11, 2020, including any extension of those declared emergencies.

(4) "Disadvantaged business enterprise" has the same meaning as set forth in § 2-218.33.

(5) "Government-assisted project" has the same meaning as set forth in § 2-218.02(9A).

(6) "Longtime resident business" has the same meaning as set forth in § 2-218.02(13).

(7) "Resident-owned business" has the same meaning as set forth in § 2-218.02(15).

(8) "Small Business Enterprises" has the same meaning as set forth in § 2-218.32.

(d) Contracts entered into on an emergency basis or that are made in furtherance of, or that are related to, the District's response to the COVID-19 emergency shall not be subject to the requirements of **subchapter IX-A** of this chapter or **subchapter X** of this chapter.

## **17.2 Subcontracting Plan Requirements**

If the Prime Contractor is required by law to subcontract under the contract, it must submit a subcontracting plan for at least (50%) of the dollar volume of the contract in accordance with D.C. Official Code § 2-218.91. The subcontracting plan shall be submitted as part of the Proposal and may only be amended with the prior written approval of the CO and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the plan shall inure to the benefit of the District and the Department. Each subcontracting plan shall include the following:

- a) The name and address of each subcontractor;
- b) A current certification number of the small or certified business enterprise;
- c) The scope of work to be performed by each subcontractor; and
- d) The price that the Prime Contractor will pay each subcontractor.

## **17.3 Copies of Subcontracts**

Within twenty-one (21) days of the date of award, the Prime Contractor shall provide fully executed copies of all subcontracts identified in the subcontracting plan to the CO, District of Columbia Auditor, and the Director of Department of Small and Local Business Development.

## **17.4 Subcontracting Plan Compliance Reporting**

- c) The Prime Contractor has a subcontracting plan required by law for this Agreement; the Prime Contractor shall submit a quarterly report to the CO, 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:
  5. The price that the Prime Contractor will pay each subcontractor under the subcontract;
  6. A description of the goods procured, or the services subcontracted for;
  7. The amount paid by the Prime Contractor under the subcontract;
  8. A copy of the fully executed subcontract, if it was not provided with an earlier quarterly report.
- d) 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.

## **17.5 Annual Meetings**

Upon at least 30-days written notice provided by DSLBD, the Prime Contractor shall meet annually with the CO, contract administrator (“CA”), District of Columbia Auditor and the Director of Department of Small and Local Business Development to provide an update on its subcontracting plan.

## **17.6 DSLBD Notices**

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

## **17.7 Enforcement and Penalties for Breach of Subcontracting Plan**

A Prime Contractor shall be deemed to have breached a subcontracting plan required by law, if the Prime

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. A Prime 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. If the CO determines the Prime Contractor's failure to be a material breach of the Agreement, the CO shall have cause to terminate the Agreement under the default provisions in the Standard Contract Provisions. Neither the Prime Contractor nor its 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 Prime Contractor developing a plan that is, in the Department's sole and absolute judgment, adequate to maintain the level of LSDBE participation on the Project.

### **17.8 Residency Hiring Requirements for Contractors and Subcontractors**

At least fifty-one percent (51%) of the Offeror's Team and every subconsultant's employees hired after the Offeror enters into a contract with the Department, or after such subconsultant enters into a contract with the Offeror, to Work on this Project, shall be residents of the District of Columbia.

Upon execution of the contract, the Offeror and all of its member firms, if any, and each of its subcontractors and subconsultants shall submit to the Department a list of current employees that will be assigned to the Project, the date that they were hired and whether or not they live in the District of Columbia.

The Offeror shall comply with subchapter III of Chapter II of Title 1, and subchapter II of Chapter II of Title 1 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The Offeror and all member firms, subcontractors, tier subcontractors, subconsultants, and suppliers with contracts in the amount of (\$100,000) or more shall be required to comply with the following: (i) enter into a First Source Employment Agreement with the D.C. Department of Employment Services ("DOES") upon execution of the Agreement; (ii) submit an executed First Source Agreement to DOES prior to beginning Work on the Project; (iii) make best efforts to hire at least (51%) District residents for all new jobs created by the Project; (iv) list all employment vacancies with DOES; (v) submit monthly compliance reports to DOES by the 10<sup>th</sup> of each month; (vi) at least (51%) apprentices and trainees employed must be residents of the District registered in program approved by the D.C. Apprenticeship Council; and (vii) trade contractors and subcontractors with contracts in the amount of (\$500,000) or more must register an apprenticeship program with the D.C. Apprenticeship Council.

The Offeror shall comply with subchapter X of Chapter II of Title 2, 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, including, but not limited to the following requirements:

- a) At least twenty percent (20%) of journey Worker hours by trade shall be performed by District residents;
- b) At least sixty percent (60%) of apprentice hours by trade shall be performed by District residents;
- c) At least fifty one percent (51%) of the skilled laborer hours by trade shall be performed by District residents; and

d) At least seventy percent (70%) of common laborer hours shall be performed by District residents.

### **17.9 Apprenticeship Act**

The District of Columbia Apprenticeship Act of 1946, D.C. Official Code §§ 32-1401 *et seq.* (“Act”), as amended, may apply to this project. All subcontractors selected to perform Work on the project on a craft-by-craft basis shall be required to comply with this Act. All terms and conditions of the Act, D.C. Apprenticeship Council Rules and Regulations, as well as any federal requirements, shall be implemented. The Prime Contractor shall be liable for any subcontractor non-compliance.

### **17.10 Special Provisions Related To The Covid-19 Emergency**

- (a) Notwithstanding section 5.1 SUBCONTRACTING REQUIREMENTS, for all contracts in excess of \$250,000 that are unrelated to the District’s response to the COVID-19 emergency but entered into during the COVID-19 emergency, absent a waiver pursuant to D.C. Official Code § 2-218.51, at least 50% of the dollar volume (“CBE minimum expenditure”) of the contract shall be subcontracted to SBEs.
- (b) If there are insufficient qualified SBEs to meet the requirement of paragraph (a), the subcontracting requirement may be satisfied by subcontracting the CBE minimum expenditure to any qualified CBE; provided, that best efforts shall be made to ensure that qualified SBEs are significant participants in the overall subcontracting Work.
- (c) For every dollar expended by the Contractor with a resident-owned business (ROB), as defined in D.C. Official Code § 2-218.02(15), the Contractor shall receive a credit for \$1.10 against the CBE minimum expenditure.
- (d) For every dollar expended by the Contractor with a disadvantaged business enterprise (DBE), as defined in D.C. Official Code § 2-218.33, the Contractor shall receive a credit for \$1.25 against the CBE minimum expenditure.
- (e) For every dollar expended by the Contractor that uses a company designated as both a DBE and as a ROB, the Contractor shall receive a credit for \$1.30 against the CBE minimum expenditure.
- (f) "COVID-19 emergency" means the emergencies declared in the Declaration of Public Emergency (Mayor's Order 2020-045) together with the Declaration of Public Health Emergency (Mayor's Order 2020-046), declared on March 11, 2020, including any extension of those declared emergencies.
- (g) This special provision shall apply to all option periods exercised under those contracts.
- (h) Except as provided in this section 5.10, the requirements of section 5.1 shall remain in effect.

### **18. Non-Responsive Proposal**

Proposals responding to this RFTOP shall be deemed non-responsive and shall be rejected if the Offeror fails to submit a subcontracting plan that meets the criteria set forth below:

- (a) The name and address of each subcontractor.

(b) A current certification number of the small or certified business enterprise.

(c) The scope of work to be performed by each subcontractor; and

(d) The price to be paid by the prime contractor to each subcontractor.

The subcontracting plan shall be provided before the District accepts the submission of the proposal. If the Contractor self-performs, the appropriate field on the form should be selected.

**19. Compliance Documents.** The Contractor shall comply with all laws and regulations based upon the project value and shall provide the Department with all of the compliance documents and requirements including, but not limited to, the certificate of insurance, subcontracting plan, payment and performance bonds, first source agreement and employment plan, tax compliance certificate, and all other compliance documents, as applicable to this District of Columbia government-funded project. The failure by the Contractor to comply with any of the legal and compliance requirements or the failure to provide the Department with any of the required documents within the time specified will result in termination of this Task Order Agreement based upon the Contractor's default. The Department shall not incur any cost due to the Contractor's failure to comply with the District of Columbia's laws and regulations

**20. Order of Precedence.** The following documents are incorporated into this Task Order Agreement in the following order of precedence:

1. This Task Order Agreement No. [ ]
2. Contract No. DCAM-21-CS-RFQ-0001-[ ] (by reference)
3. Scope of Work (**Exhibit A**)
4. The Contractor's proposal (**Exhibit B**)
5. Davis Bacon Act Wage Determination (**Exhibit C**)
6. The District of Columbia Department of General Services Standard Contract Provisions for Construction Contracts (**Exhibit D1**).
7. The District of Columbia Department of General Services Standard Contract Provisions for Architectural & Engineering Services Contracts (**Exhibit D2**).
8. Service Contract Act (**Exhibit E**).

**ISSUED BY:**

By: \_\_\_\_\_

Name:

Title: **Contracting Officer**

Date: \_\_\_\_\_

**ACCEPTED BY:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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



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**Exhibit A  
Scope of Work**

**(See following page)**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
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**Exhibit B  
Contractor's Proposal**

**(See following page)**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
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**Exhibit C  
Davis Bacon Act Wage Determination**

**(See following page)**



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
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**Exhibit D1  
The District of Columbia Department of General Services Standard Contract Provisions  
for Supplies and Services Contracts**

**(See following page)**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
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**Exhibit D2  
The District of Columbia Department of General Services Standard Contract Provisions  
for Architectural & Engineering Services Contracts**

**(See following page)**

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**Exhibit E  
Service Contract Act**

**(See following page)**

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**EXHIBIT 4**

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



## SBE SUBCONTRACTING PLAN

**INSTRUCTIONS:** All construction & non-construction contracts for **government-assisted projects (agency contracts & private project with District subsidy)** over \$250,000, shall require at least 35% of the amount of the contract (total amount of agency contract or total private project development costs) be subcontracted to Small Business Enterprises (SBE), if insufficient qualified SBEs to Certified Business Enterprises (CBE). The SBE Subcontracting Plan must list all SBE and CBE subcontracts at every tier. Once the SBE Subcontracting Plan is submitted for agency contracts, options & extensions, it can only be amended with DSLBD's consent.

**SUBMISSION OF SBE SUBCONTRACTING PLAN:**

- ▲ For **agency** solicitations - submit to agency with bid/proposal.
- ▲ For **agency** options & extensions - submit to agency before option or extension exercised.
- ▲ For **private projects** - submit to DSLBD, agency project manager and District of Columbia Auditor, with each quarterly report. As private projects may not have awarded all contracts at the time the District subsidy is granted, the SBE Subcontracting Plan may be submitted simultaneously with each quarterly report and list all SBE/CBE subcontracts executed by the time of submission.

**CREDIT:** For each subcontract listed on the SBE Subcontracting Plan, credit will only be given for the portion of the subcontract performed, at every tier, by a SBE/CBE using *its own organization and resources*. **COPIES OF EACH FULLY EXECUTED SUBCONTRACT WITH SBEs and CBEs (AT EVERY TIER) MUST BE PROVIDED TO RECEIVE CREDIT.**

**EXEMPTION:** If the **Beneficiary (Prime Contractor or Developer)** is a CBE and will perform the ENTIRE **government-assisted project** with its *own organization and resources* and will NOT subcontract any portion of the services and goods, then the CBE is not required to subcontract 35% to SBEs.

**BENEFICIARY (✓ which applies  Prime Contractor or  Developer) INFORMATION:**

Company: \_\_\_\_\_ Contact # \_\_\_\_\_ Email address: \_\_\_\_\_

Street Address: \_\_\_\_\_

✓ all that applies, Company is:

- a SBE     a CBE     CBE Certification Number: \_\_\_\_\_
- WILL perform the ENTIRE agency contract or private project with its own organization and resources
- WILL subcontract a portion of the agency contract or private project

Company's point of contact for agency contract or private project:

Point of Contact: \_\_\_\_\_ Title: \_\_\_\_\_

Contact # \_\_\_\_\_ Email address: \_\_\_\_\_

Street Address: \_\_\_\_\_

**GOVERNMENT-ASSISTED PROJECT (✓ which applies  Agency Contract or  Private Project) INFORMATION:**

**AGENCY SOLICITATION**

Solicitation Number \_\_\_\_\_  
 Solicitation Due Date: \_\_\_\_\_  
 Agency : \_\_\_\_\_  
 Total Dollar Amount of Contract: \$ \_\_\_\_\_

*\*Design-Build must include total contract amount for both design and build phase of project.*

35% of Total Dollar Amount of Contract: \$ \_\_\_\_\_

Total Amount of All SBE/CBE subcontracts: \$ \_\_\_\_\_  
*(include every lower tier)*

**PRIVATE PROJECT**

District Subsidy: \_\_\_\_\_  
 Agency Providing Subsidy: \_\_\_\_\_  
 Amount of District Subsidy: \_\_\_\_\_  
 Date District Subsidy Provided: \_\_\_\_\_

Project Name: \_\_\_\_\_

Project Address: \_\_\_\_\_

Total Development Project Budget: \$ \_\_\_\_\_  
*(include pre-construction and construction costs)*

35% of Total Development Project Budget: \$ \_\_\_\_\_

Total Amount of All SBE/CBE subcontracts: \$ \_\_\_\_\_  
*(include every lower tier)*



**SBE/ CBE SUBCONTRACTORS (FOR EACH TIER):**

**SBE/ CBE SUBCONTRACTOR INFORMATION:** *(For design-build projects, the SBE Subcontracting Plan is not required to be submitted for preconstruction services; however, a full SBE Subcontracting Plan (35% of the contract amount **including total design and build costs**) is required to be submitted before entering into a guaranteed maximum price or contract authorizing construction.)*

SBE/ CBE Company	Address/Telephone No./ Email	Subcontractor Tier (1 <sup>st</sup> , 2 <sup>nd</sup> , 3 <sup>rd</sup> , etc.)	Description of Subcontract scope of work to be PERFORMED WITH SBE/CBEs OWN ORGANIZATION & RESOURCES
_____	_____	<u>Select Tier</u>	_____

Period of subcontract: _____  Price to be paid to the SBE/CBE Subcontractor: \$_____	SBE/ CBE Point of Contact  Name: _____  Title: _____  Telephone Number: _____  Email Address: _____
✓ <i>all that applies</i> , Subcontractor is: <input type="checkbox"/> a SBE <input type="checkbox"/> a CBE <input type="checkbox"/> CBE Certification #: _____ <input type="checkbox"/> SBE/CBE will perform the ENTIRE subcontract with its own organization and resources <input type="checkbox"/> SBE/CBE will subcontract a portion of the subcontract (MUST LIST EACH LOWER TIER SBE/ CBE SUBCONTRACTS)	

**SBE/ CBE SUBCONTRACTOR INFORMATION:** *(For design-build projects, the SBE Subcontracting Plan is not required to be submitted for preconstruction services; however, a full SBE Subcontracting Plan (35% of the contract amount **including total design and build costs**) is required to be submitted before entering into a guaranteed maximum price or contract authorizing construction.)*

SBE/ CBE Company	Address/Telephone No./ Email	Subcontractor Tier (1 <sup>st</sup> , 2 <sup>nd</sup> , 3 <sup>rd</sup> , etc.)	Description of Subcontract scope of work to be PERFORMED WITH SBE/CBEs OWN ORGANIZATION & RESOURCES
_____	_____	<u>Select Tier</u>	_____

Period of subcontract: _____  Price to be paid to the SBE/CBE Subcontractor: \$_____	SBE/ CBE Point of Contact  Name: _____  Title: _____  Telephone Number: _____  Email Address: _____
✓ <i>all that applies</i> , Subcontractor is: <input type="checkbox"/> a SBE <input type="checkbox"/> a CBE <input type="checkbox"/> CBE Certification # _____ <input type="checkbox"/> SBE/CBE will perform the ENTIRE subcontract with its own organization and resources <input type="checkbox"/> SBE/CBE will subcontract a portion of the subcontract (MUST LIST EACH LOWER TIER SBE/ CBE SUBCONTRACTS)	

I \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_ swear or affirm the above is true and accurate  
 (Name) (Title) (Prime Contractor/ Developer)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

**Complete additional copies as needed.**



**AGENCY CONTRACTING OFFICER'S USE ONLY** OR  **AGENCY PROJECT MANAGER'S USE ONLY**  
 (✓ which applies. Only one option should be selected.)

AGENCY CONTRACT AWARD	PRIVATE PROJECT SUBSIDY AWARD
Agency: _____ Prime Contractor: _____ Contract Number: _____ Date SBE Subcontracting Plan Accepted: _____ Date agency contract signed: _____  Anticipated Start Date of Contract: _____ Anticipated End Date of Contract: _____  Total Dollar Amount of Contract: \$ _____  <i>*Design-Build must include total contract amount for both design and build phase of project.</i>  35% of Total Contract Amount: \$ _____  Total Amount of All SBE/CBE subcontracts: \$ _____ <i>(include every tier)</i>  <input checked="" type="checkbox"/> if applies <input type="checkbox"/> Base Period Contract -- Option/Extension Period: _____ <input type="checkbox"/> Multi-year Contract First year (period) of Contract: _____ Current year (period) of Contract: _____ <input type="checkbox"/> Design-Build --Date of Guaranteed Contract: _____  <input type="checkbox"/> Check if prime contractor is a CBE and will perform the ENTIRE government-assisted project (agency contract) with its <i>own organization and resources and NOT subcontract any portion of services or goods.</i>	Agency Providing Subsidy: _____ District Subsidy: _____ Developer: _____ Amount of District Subsidy: _____ Date District Subsidy Provided/ contract signed: _____  Anticipated Start Date of Project: _____ Anticipated End Date of Project: _____  Project Name: _____ Project Address: _____  Total Development Project Budget: \$ _____ <i>(include pre-construction and construction costs)</i>  35% of Total Development Project Budget: \$ _____  Total Amount of All SBE/CBE subcontracts: \$ _____ <i>(include every lower tier)</i>  <input type="checkbox"/> Check if developer is a CBE and will perform the ENTIRE government-assisted project (private project) with its <i>own organization and resources and NOT subcontract any portion of services or goods.</i>

**AGENCY CONTRACTING OFFICER'S AFFIRMATION** OR  **AGENCY PROJECT MANAGER'S AFFIRMATION**  
 (✓ which applies)

The Below Agency Contracting Officer or Agency Project Manager Affirms the following (✓ to affirm):

- If the Beneficiary is a CBE, DSLBD was contacted to confirm Beneficiary's CBE certification;
- The fully executed Contract (Base or Option or Extension or Multi-Year) or subsidy document, between the Beneficiary and Agency, was emailed to DSLBD @ [Compliance.Enforcement@dc.gov](mailto:Compliance.Enforcement@dc.gov) within five (5) days of signing;
- FOR AGENCY CONTRACT** the SBE Subcontracting Plan, submitted by Beneficiary, was emailed to DSLBD @ [Compliance.Enforcement@dc.gov](mailto:Compliance.Enforcement@dc.gov) within five (5) days of signing the contract between the Beneficiary and Agency.

\_\_\_\_\_  
 Name of Agency Contracting Officer or Agency Project Manager

\_\_\_\_\_  
 Title of Agency Contracting Officer or Agency Project Manager

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Date