

**AGREEMENT**

**FOR**

**CONSTRUCTION MANAGEMENT AT-RISK SERVICES FOR SOUTHEAST TENNIS  
AND LEARNING CENTER SOUTH CAMPUS**

**BY AND BETWEEN**

**THE DEPARTMENT OF GENERAL SERVICES AND**

**[INSERT CMAR]**

**CONTRACT NUMBER: DCAM-24-CS-RFP-0003**

## PROJECT INFORMATION

### A. PROJECT SUMMARY

1.	<b>Project Name:</b>	Construction Management At-Risk Services for Southeast Tennis & Learning Center South Campus
2.	<b>Project Address:</b>	701 Mississippi Ave SE, Washington, DC 20032
3.	<b>Agreement Type:</b>	Construction Management At-Risk with Guaranteed Maximum Price
4.	<b>Client Agency:</b>	District of Columbia Department of Parks and Recreation (“DPR” or “Client Agency”)
5.	<b>Contractor:</b>	
6.	<b>Agreement Amounts:</b>	
i.	<b>Initial NTE:</b>	TBD
ii.	<b>Project Budget:</b>	\$14,200,000.00
7.	<b>Contractor Compensation:</b>	
i.	<b>Construction Management Fee:</b>	
ii.	<b>Base Construction Management Fee (75% of the Construction Management Fee):</b>	
iii.	<b>Preconstruction Fee:</b>	
iv.	<b>At Risk Portion of the Construction Management Fee (25% of the Construction Management Fee):</b>	
v.	<b>Lump Sum General Conditions Cost:</b>	

vi.	<b>Contingency:</b>	To be determined at GMP
vii.	<b>Allowances:</b>	To be determined at GMP
8.	<b>Liquidated Damages:</b>	
i.	<b>Failure to Submit Deliverables:</b>	\$1,000 per deliverable per day
ii.	<b>Delay in Substantial Completion:</b>	\$1,000 per calendar day
9.	<b>GMP Proposal Submission</b>	August 9, 2024
10.	<b>GMP Amendment Executed By:</b>	TBD
11.	<b>Substantial Completion Date:</b>	September 18, 2025
12.	<b>Final Completion Date:</b>	November 18, 2025
13.	<b>Administrative Term Expiration Date:</b>	February 16, 2026
14.	<b>Key personnel removal or replacement disincentive</b>	\$25,000 per person
15.	<b>Notice to Proceed:</b>	
i.	<b>Period of Performance</b>	From [ INSERT ] (date of execution of Letter Contract) through Administrative Term Date with a Substantial Completion Date of September 18, 2025 and Final Completion Date of November 18, 2025.
ii.	<b>NTE Amount:</b>	\$990,000.00
16.	<b>GMP Basis Documents Design Progression</b>	Permit Set
i.	<b>GMP Bed Set/Permit Set</b>	

**CONSTRUCTION MANAGEMENT AT-RISK AGREEMENT  
CONGRESS HEIGHTS RECREATION CENTER  
DCAM-24-CS-RFP-0003**

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”) and [Insert] with a place of business at [Insert] (the “Construction Manager” or “Contractor” , and collectively, the “Parties”).

**RECITALS**

**WHEREAS**, the Department issued a request for proposals dated January 9, 2024 (the “RFP”) to engage a Contractor to provide Construction Management At-Risk (“CMAR”) services for Southeast Tennis & Learning Center (“SETLC”) South Campus (the “Project”), located at 701 Mississippi Ave SE, Washington, DC 20032.

**WHEREAS**, the Department desires that the Project be substantially complete no later than September 18, 2025 (“Substantial Completion Date”);

**WHEREAS**, the Contractor submitted a proposal entitled Construction Management At-Risk Services for Southeast Tennis & Learning Center South Campus dated [Insert Date] to provide construction management at-risk services for the Project;

**WHEREAS**, the Department wishes to retain the Contractor to provide CMAR services for the Project. The Project is to include pre-construction services and construction services;

**WHEREAS**, the Contractor wishes to provide the preconstruction and construction and related services necessary to complete the Project, subject to the terms and conditions set forth in this Agreement;

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

**WHEREAS**, the Department has established a budget for the Project, including all fees, hard construction costs, loose furnishings, and fees and general conditions of the Contractor (such budget, the “Project Budget”);

**WHEREAS**, the Department has engaged MTF A Design + Preservation (the “Architect/Engineer” or “A/E”) pursuant to a separate contract (the “Design Contract”) to provide design, planning, architectural, and engineering services in order to construct the Project; and

**WHEREAS**, the Department will remain in contract with the A/E and will manage the Design Contract for the duration of the Project. The Contractor will, however, be required to

coordinate with the A/E.

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

## **Article 1 - DEFINITIONS**

### **Section 1.1 Administrative Term.**

The Agreement shall have an administrative term (the “Administrative Term”) that runs from the effective date of the notice to proceed to the Administrative Term Date set forth in the Project Information Section above. In addition, within this time the Contractor shall execute and submit a Final Release of Liens and Claims in a form and format required by a Contracting Officer (“CO” or “Contracting Officer), inclusive of providing the Department with a complete set of any product manuals (“O&M”) and training videos, if applicable. The Administrative Term is established for the sole purpose of permitting the Department’s Office of the Chief Financial Officer to process payments in the event any payments become due. Notwithstanding the foregoing, nothing herein shall be construed to: (i) extend the Substantial Completion Date; (ii) extend the Final Completion Date; or, (iii) limit the Department’s ability to assess liquidated damages thereon.

### **Section 1.2 Agreement.**

The term “Agreement” or “Contract” shall mean this entire, integrated agreement between the Department and the Contractor with respect to the Project, consisting of this document and the Exhibits thereto, including but not limited to the Standard Contract Provisions (Construction Contract), the Construction Documents released for the Contractor’s use and any Change Orders or Change Directives that have been executed by the Department.

### **Section 1.3 Client Agency.**

The governmental or quasi-governmental entity represented by the Department, requesting the Project.

### **Section 1.4 Construction Documents.**

The final drawings and specifications, as prepared, sealed by the A/E’s design professional in accordance with the law, and issued by the Contractor for the purpose of obtaining bids from potential trade subcontractors and material suppliers for use in constructing the Project.

### **Section 1.5 Construction Phase Services.**

Services provided throughout the construction phase during which the Contractor shall carry out the bulk of the construction for the Project.

### **Section 1.6 Cost of General Conditions.**

The Cost of General Conditions shall have the meaning set forth in Section 8.2 of this Contract.

### **Section 1.7 Contract Documents.**

“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.

**Section 1.8 Preconstruction Phase Services.**

The services to be provided under Article 3 constituting the preconstruction phase services to be performed by the Contractor.

**Section 1.9 Drawings.**

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and wherever issued, showing the design, locations and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

**Section 1.10 Final Completion.**

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 delivered.

**Section 1.11 Final Completion Date.**

The date established in the Contract by which the Contractor shall achieve Final Completion. The Final Completion Date may be modified only by Change Order (“Change Order”) or Change Directive in accordance with the Agreement.

**Section 1.12 Fully Complete.**

To undertake all of the Work necessary to fully construct and complete the Project and execute all tasks necessary to obtain the final certificate of occupancy for the Project from the District of Columbia; submit final lien releases from the Contractor and Subcontractors and material suppliers; complete all punch list items to the Department’s approval and sign-off; and cause all representations, warranties and guarantees to be honored and otherwise fulfill all of the requirements set forth in the Agreement.

**Section 1.13 Guaranteed Maximum Price or GMP.**

The maximum amount, including, but not limited to, the Construction Management Fee and the Cost of the Work, that will be paid to the Contractor to Fully Complete the Project as set forth in Article 5. The Guaranteed Maximum Price (“GMP”) may be modified only by Change Order or Change Directive in accordance with the Agreement.

**Section 1.14 Environmental and Hazardous Material Requirements.**

The Contractor shall be required to comply with all applicable Federal and District environmental laws and regulations for the project, including but not limited to, the District of Columbia Environmental Policy Act (e.g., D.C. Code § 8-109.01 - 8-109.12; and the District of Columbia Municipal Regulations Chapter 20-72). Additionally, the Contractor shall lawfully handle, remediate, and abate as necessary and appropriate, any toxic substance or hazardous chemicals defined or regulated pursuant to federal, state or local laws, including in regards to pollution, treatment, storage or disposal of waste, or protection of human health or the environment. Such laws include, without limitation, the Comprehensive Environmental

Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act and laws relating to emission, spills, leaks, discharges, releases or threatened releases of toxic material. The term Hazardous Materials shall also include petroleum and petroleum byproducts.

**Section 1.15 Notice to Proceed.**

A written notice to proceed, signed by the Department’s Contracting Officer, directing the Contractor to proceed with the Project or any portion of the Project (“Notice to Proceed” or “NTP”).

**Section 1.16 Project Schedule.**

The schedule for the Project agreed to by the Department and the Contractor. Such schedule shall include a Baseline Schedule (“Baseline Schedule”) as updated periodically by the Contractor and approved by the Department. The Project Schedule shall not be changed except by a Change Order or Change Directive issued by the Department’s Contracting Officer. The Project Schedule shall be in a form and contain such detail as may be agreed upon by the Parties.

**Section 1.17 Self-Performed Work.**

Trade work performed by employees of: (1) the Contractor; (2) any entity that is a partner or member of the entity comprising the Contractor; (3) any entity that controls, is controlled by, or is under common control with the Contractor; or (4) any entity that controls, is controlled by, or is under common control with any entity that is part of the Contractor. Self-Performed Work is distinguished from trade work performed by Subcontractors unaffiliated with the Contractor or the entities of which the Contractor is comprised.

**Section 1.18 Services.**

The services to be provided pursuant to the Agreement which shall include the Preconstruction Phase Services and the Construction Phase Services.

**Section 1.19 Specifications.**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

**Section 1.20 Standard Contract Provisions.**

The District of Columbia Department of General Services Standard Contract Provisions, General Provisions (Construction Contracts), as amended, are attached hereto as **Exhibit I** and incorporated herein.

**Section 1.21 Subcontractor.**

Any person, natural or legal, to whom the Contractor delegates performance of any portion of the Work required by the Agreement. The term “Subcontractor,” used without a qualifier, shall mean a subcontractor in direct privity with the Contractor. “Subcontractors at all tiers” shall mean not only those Subcontractors in direct privity with the Contractor, but also those performing Work pursuant to sub-subcontracts, subcontracts, and so on. “Subcontractors” shall include both those who are retained to perform labor only and those who are retained both



to perform labor and to supply material or equipment. “Subcontractors” shall also include design professionals who are not the Contractor’s employees and to whom the Contractor delegates any part of its responsibilities under the Agreement, except that references to “trade Subcontractors” shall exclude design professionals.

### **Section 1.22 Substantial Completion.**

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 temporary certificate of occupancy and all other required permits or approvals have been obtained; (3) draft copies of all operating and maintenance manuals, training videotapes and warranties required by the Agreement have been delivered to the Department and the Client Agency; (4) final warranties have been submitted for material and labor for any installed, replaced, or repaired synthetic surfaces at recreation spaces including, but not limited to, the following material types: Pour-in-Place (“PIP”), artificial grass or turf, rubber mulch, and engineered wood fiber; (5) any supplemental training session required by the Agreement for operating or maintenance personnel have been scheduled; (6) all clean-up required by the Agreement has been completed; (7) the Project is ready for the Department and Client Agency to use it for its intended purpose; and (8) 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; and (9) certificates of compliance with impact standards (IPEMA) for synthetic surfaces at recreation spaces have been submitted to the Department. “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 or Client Agency’s normal use of the Project.

### **Section 1.23 Substantial Completion Date.**

The date established herein by which the Contractor shall achieve Substantial Completion. The Substantial Completion Date may be modified only by Change Order or Change Directive in accordance with the Agreement.

### **Section 1.24 The Work**

The term “Work” refers to any and all work done in performance of the services necessary, at any and all phases of the Agreement, to Fully Complete the Project.

## **Article 2 - GENERAL PROVISIONS**

### **Section 2.1 Letter Contract.**

The Parties acknowledge that certain of the preconstruction activities described in Article 3 of this Agreement were performed pursuant to the Letter Contract between the Parties dated [Insert Date]. Pursuant to the terms of the Letter Contract, upon execution of this Agreement by the Department (the "Agreement Effective Date"), the Letter Contract shall automatically be incorporated into and shall merge into and be superseded by this Agreement. The Parties agree that any services provided or work performed pursuant to the merged Letter Contract, and prior to the Agreement effective date.

### **Section 2.2 Term and Termination**

The period of performance under this Agreement shall commence from the date of execution of the notice to proceed ("Notice to Proceed" or "NTP") by the Department and shall terminate upon the expiration of the Administrative Term or upon termination by the Department pursuant to Articles 5 and 6 of the Standard Contract Provisions for Construction Contracts.

### **Section 2.3 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 Work and complete the Project in an expeditious and economical manner consistent with the interests of the Department. The Department shall endeavor to promote harmony and cooperation among the Department, Contractor, Program Manager, and other persons or entities employed by the Department for the Project. In performing its duties under this Agreement, the Contractor shall at all times use the standard of care used by Contractor that construct projects similar to the Project in type, size and scope in large, urban areas. Whenever the term "competent" is used herein to describe the Contractor's actions or duties that term shall refer to the level of competence customarily possessed by those Contractors that construct projects similar to the Project in type, size and scope in large, urban areas.

### **Section 2.4 Confidentiality of Information**

The Contractor shall assure and keep all information and data obtained throughout the performance of the Project whether related to the Agreement, the Work in all of its aspects, the Department and the Department's employees confidential, during and following the term of the Agreement, 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, unless disclosure is required pursuant to court order, subpoena, or other regulatory authority. The Contractor shall not be divulged of confidential information without the individual's and the Department's written consent and only in accordance with the District's and/or Federal laws, codes and regulations. The Contractor and any subcontractors who utilize, access, or store personally identifiable information as part of the performance of this Agreement are required to safeguard this information and immediately notify the Department of any breach or suspected breach in

the security of such information. The Contractor and all subcontractors shall allow the Department to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. The Contractor, subcontractors, and their respective employees working on this Project may be required to sign a confidentiality statement.

## **Section 2.5 Project Description.**

The Contractor shall provide any and all preconstruction and construction services needed for the Project's completion. The Project shall be complete, operating, and ready for use by the Substantial Completion Date and within the Project's budget as set forth in this Contract.

The Contractor will be required to provide a full range of services required to selectively demolish existing features as necessary and construct a new expansion facility to meet the Department's programmatic requirements. The new expansion will include an indoor tennis facility housing three (3) indoor tennis hardcourts along with general use areas such as restrooms, locker rooms, office space, and multi-purpose room. Outdoor amenities will include five (5) tennis hardcourts, eight (8) pickleball courts, and a parking area. The existing clay-tech tennis court at the existing SETLC facility will be demolished for an additional two (2) new pickleball courts. A pedestrian bridge will be required to span Oxon Run and link the existing SETLC to the new expansion site.

Generally, the Contractor's responsibilities shall include, but will not be limited to, the following:

- a) To confirm the construction of the Project in accordance with the Contract Documents ("Contract Documents").
- b) To provide all construction management services necessary to implement the goals of the Project inclusive of, but not limited to, the following: construction management services inclusive of budgeting, value engineering ("Value Engineering"), scheduling, project administration, management, and coordination of subcontractors.
- c) To conduct subsurface investigation work if and as required for the Project.
- d) To furnish and provide all materials, management, personnel, equipment, hazardous material abatement, supervision, labor and other services necessary to complete the Project.
- e) To furnish and provide furniture, fixtures, and equipment ("FF&E"). FF&E procurement schedule to be developed by the Contractor subject to DPR, the Department's specification, agreement, and acceptance.
- f) To provide one (1) year of preventative and corrective maintenance services following substantial completion and using as a basis the recommended maintenance schedule developed to meet project closeout requirements.
- g) To the extent it is applicable, the Contractor shall comply with the Public Facilities Environmental Safety Amendment Act of 2020 and D.C. Code § 10-171.03.

The Project shall be constructed in such a way so as to allow for substantial completion to be

achieved no later than the Substantial Completion Date.

The expansion shall include Americans with Disability Act (“ADA”) accessibility requirements, life safety and fire protection requirements, security requirements, IT renovations, Mechanical, electrical, plumbing (“MEP”) systems renovations, roof renovations, and various exterior site improvements.

## **Section 2.6 Program Manager and Project Manager.**

The Department has engaged a Program Manager and Project Manager to provide certain program management functions. Such Program Manager and Project Manager shall, at all times, be acting solely for the benefit of the Department, not the Contractor. **The Contractor hereby acknowledges and agrees that only a duly authorized and designated Contracting Officer shall have the authority to issue Change Orders or Change Directives on the Department’s behalf. As of the date that this Agreement is signed, the Department’s duly authorizing Contracting Officers are set forth in Exhibit H.**

**The Contracting Officer’s Technical Representative (“COTR”)/ Program Manager is as follows:**

**Cassidy Mullen**  
Operations Manager  
Department of General Services  
3924 Minnesota Avenue, NE | 5<sup>th</sup> Floor  
Washington, DC 20019  
[cassidy.mullen@dc.gov](mailto:cassidy.mullen@dc.gov)

**The Project Manager is as follows:**

Andy Bayer  
Project Manager  
Department of General Services  
3924 Minnesota Avenue, NE | 5<sup>th</sup> Floor  
Washington, DC 20019  
[andrew.bayer@dc.gov](mailto:andrew.bayer@dc.gov)

## **Section 2.7 General Description of Contractor’s Duties.**

Generally, the Contractor shall perform the Services in a professional workmanlike manner. The Contractor shall supply and furnish at the location where the Work is to be performed all labor, materials, equipment, tools, services, and supervision, and shall bear all items of expense, necessary to complete and satisfactorily perform this Agreement, except such items that the Department, in this Agreement, specifically agrees to supply or furnish to or for the use of Contractor. Any labor, materials, equipment, tools, services or supervision not

specifically described in this Agreement, but which may be fairly implied as required thereby or necessary to properly complete the Work, shall be deemed within the Scope of the Work and shall be provided by Contractor at Contractor's sole expense.

## **Section 2.8 Warranties and Representations**

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

**2.8.1.** If any disclosure, representation, warranty or certification the Contractor has made or makes pursuant to the RFP or the Agreement, 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 Agreement, entitling the Department to any and all available remedies.

**2.8.2.** The terms and conditions of this Section 2.8 shall apply during both the Preconstruction and Construction Phases.

## **Section 2.9 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, laborers, and the agents and employees of the subcontractors, sub-subcontractors, material suppliers, and laborers performing or supplying Work in connection with the Project.

## **Section 2.10 Building Information Modeling (BIM).**

BIM is required to be used throughout the lifecycle of the Project, including all Project phases from project planning and concept design through construction, as-builts and into facilities management. The BIM requirements are provided as **Exhibit P**. It is expected by the Department that all team members are to be committed to the use of BIM in the Project, share their ideas of BIM expertise with the team, provide BIM data as requested by other team members, look for cost savings and schedule improvements during the entire Project duration, and endeavor to leave as a legacy a fully updated, as built, facility management ready building information model.

## Article 3 - CONTRACTOR'S PRECONSTRUCTION SERVICES

### Section 3.1 Preconstruction Services.

The Preconstruction Phase will start from the issuance of the NTP through the execution of the GMP amendment ("GMP Amendment"). The Department will issue a NTP for preconstruction services. During the Preconstruction Phase, the Contractor shall provide such preconstruction services to properly advance the Project. Without limiting the generality of the foregoing, the Contractor shall: (i) work with the Department's A/E and any design consultants to provide constructability reviews of the design for the Project in consultation with Client Agency, the Department, and its Program Manager; (ii) obtain bids from trade subcontractors to perform the work described in the Construction Documents and provide bid tabulations to the Department; (iii) engage in any Value Engineering and scoping exercises necessary to return the cost of the work to the Project Budget; (iv) engage in preconstruction activities, including identifying any long-lead items; (v) develop a GMP proposal for the Project; and (vi) enter into a GMP for the Project. Throughout the Preconstruction Phase, the Contractor shall schedule and attend regular meetings with the Department, the Program Manager and the A/E. A list of preconstruction deliverables is set forth in Exhibit C.

**Section 3.1.1 Additional Preconstruction Services.** In addition to those items enumerated above, the Contractor shall provide such preconstruction services as are necessary to properly advance the Project. These services shall include, but are not limited to, scheduling, estimating, shop-drawings, the ordering of long-lead materials, condition assessments, conservator studies, archeological studies, recommended testing, additional geotechnical testing, and monitoring of historic assets.

### Section 3.2 Baseline Schedule, Building System Assessment, and Construction Management Plan.

**Section 3.2.1 Baseline Schedule.** Within ten (10) business days after the Preconstruction NTP is issued, the Contractor shall prepare and submit a Baseline Schedule for the Project (the "Baseline Schedule"). The Baseline Schedule shall be subject to review and approval by the Department and the Contractor shall incorporate such adjustments to the Baseline Schedule as may be reasonably requested by the Department. The Baseline Schedule shall be prepared in a critical path method ("CPM") in a sufficient level of detail to permit the Department and the Contractor and any other affected parties to properly plan the Project. The Baseline Schedule shall show: (i) key design milestones and bid packages (to be provided by the A/E); (ii) release dates for long lead items; (iii) release dates for key subcontractors; and (iv) Substantial and Final Completion Dates. The Baseline Schedule must also be submitted in Primavera 6 native format and shall be updated by the Contractor, at a minimum, on a bi-weekly basis. Bi-weekly updates to the schedule should include the original baseline schedule as well to show time difference between planned start and finish dates versus actual start and finish dates. The preliminary schedule is attached hereto as Exhibit B.

During the Preconstruction Phase, the Contractor shall monitor the Project's progress and promptly notify the Department of any delays, regardless of their cause, the causes of such

delays, and the Contractor's best projection of the effect of such delays on the Project Schedule. The Department's receipt of, and lack of objection to, any schedule update showing a later Substantial Completion or Final Completion 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, the Project may not be completed by the applicable Substantial or Final Completion Date. The Project Schedule shall be maintained and continuously updated during the Preconstruction and Construction Phases.

**Section 3.2.2 Construction Management Plan.** The Contractor shall submit a draft of its construction management plan ("Construction Management Plan") within thirty (30) days after the Preconstruction NTP is issued to include, but is not limited to, noise control, hours for construction and deliveries, truck routes, trash and debris removal plan, traffic and parking control, communications procedures, emergency procedures, quality control procedures, dust control, public street cleaning and repair, planned occupancy of public ways, erosion control, tree protection plan, vibration monitoring, temporary fire protection measures, Project signage, pest control, construction staging plan, and construction logistics plan.

### **Section 3.3 Constructability Reviews**

**3.3.1.** It is contemplated that the Contractor will have met with representatives of the Department and the A/E as well as other stakeholders to better develop the Department's requirements for the Project following contract award. During the Preconstruction Phase, the Contractor will be required to provide constructability reviews of the design documents for the Project.

**3.3.2.** The Contractor shall meet with the representatives of the Department, A/E and Client Agency throughout the Preconstruction Phase as the design progresses and these and other stakeholders provide input in and approve the design direction at appropriate times. The GMP Basis Documents, and all interim design submissions shall be subject to review and approval by the Department, and the Contractor shall be required to provide input on these documents to address concerns raised by the Department and/or other project stakeholders and such reviews shall not entitle the Contractor to an increase in the Preconstruction Fee.

**3.3.2.1 Preliminary Budget Estimate.** Within fourteen (14) days of the NTP, the Contractor shall submit a detailed cost estimate of the proposed design (such estimate, the "Preliminary Budget Estimate"). With regard to building systems (i.e. roofs, doors, HVAC, security, IT, etc.), the cost estimate shall be prepared on a "system" basis that identifies the key building systems or functions and allocates an estimated cost for each such system. The Construction Management Fee, the Cost of General Conditions, and Contingencies shall be broken out in separate line items. The primary purpose of such cost estimate is to aid the Department and Client Agency in understanding the costs associated with key elements of the Project so as to better prioritize and manage the use of the funding allocated to this Project.

**3.3.2.2 Baseline Budget and Program.** The Department shall provide the Contractor with the approved baseline budget and program. Such approval shall be provided (or signed by) the Department. In the event the Contractor does not receive such approval within fourteen (14) days after submitting the Preliminary Budget Estimate, it shall so advise the Department's Program Manager, the Department's Deputy Director for Capital Construction and the Contracting Officer in writing of such failure and request direction. If the Contractor fails to provide such notice, the Contractor will be proceeding at its own risk and will be responsible for costs associated with budget revisions. Only the Department shall have the authority to increase the Project Budget, and absent such direction, the Contractor shall proceed throughout the Project on the assumption that the budget remains as originally directed by the Department pursuant to this Section 3.3.2.2.

**3.3.2.3 Constructability/Sole Source/Long-Lead Time Memorandum.** Concurrently with the Construction Management Plan, the Contractor shall prepare a memorandum identifying key construction concerns related to the Project. Such memorandum shall: (i) assess the constructability issues related to the Project, including site logistics; (ii) identify any items where the design is predicated on a single manufacturer and, if so, identify at least two (2) comparable products; and (iii) identify any long-lead delivery items that could adversely affect the Baseline Schedule. To the extent any such long-lead items are identified, the memorandum shall make recommendations for addressing such items.

**3.3.2.4 Early Release Packages.** The Department may release funding for hazardous materials abatement and selective demolition or razing, and funding for long-lead items in advance of the Construction Phase. If the Contractor believes an earlier release is required for long-lead materials in order to meet the Project Schedule, it shall advise the Department and make a recommendation as to the requested release date. Similarly, if the Contractor believes that additional work must be released in advance of the establishment of a GMP for the Project, it shall advise the Department and make a recommendation as to the scope of work to be released as well as to the requested release date. Further, any decision to authorize an early release shall be made by the Department in its sole and absolute discretion.

**3.3.2.5 Permits.** The Contractor shall be responsible for preparing and submitting trade permit applications for construction trades that are necessary for the construction of the Project. No later than ten (10) days after the notice to proceed for Preconstruction Services, the Contractor shall prepare and submit a matrix that identifies all permits and land use approvals that are required for the Project to proceed. The matrix should include zoning and other land use entitlements, building permits, as well as trade permits and lane closure permits. The matrix shall identify the specific permit, the date by which such is needed to maintain the Project's Schedule, and a status column. The matrix shall be updated monthly. For permits previously submitted by the Department or the A/E, the Contractor shall provide assistance and input, if and as requested by the Department, for all such permits through the review process. The Contractor shall develop a list of the required permits and shall track the progress of all such permits through the review process. The



Contractor shall update the Department with the status of each permit that is required for the Project.

## **Article 4 - FORMATION OF GMP PROPOSAL**

### **Section 4.1 General.**

During the Preconstruction Phase, the Department shall cause the A/E in coordination with the Contractor to prepare a set of drawings and specifications upon which the Contractor's GMP for construction of the Project will be based (the "GMP Basis Documents") as set forth in the Project Information Section of this Agreement. Based upon the GMP Basis Documents, the Contractor shall propose a GMP (referred to as the "GMP Proposal") no later than the date set forth in the Project Information Section of this Agreement, and which shall be submitted in accordance with this Section 4.1. The Contractor acknowledges and understands that the GMP Basis Documents will be incomplete at the time it submits its GMP Proposal. Although complete construction documents will not be available and many details will not be shown on GMP Basis Documents or will otherwise need to be adjusted, the GMP proposed in the Contractor's GMP Proposal shall be intended to represent the Contractor's offer for the Final Completion of the Project. If the Contractor's GMP Proposal is acceptable to the Department, it shall be memorialized in form of an amendment to this Agreement (such amendment, the "GMP Amendment"). The Contractor and the Department shall execute a GMP Amendment in the form of **Exhibit K** attached hereto.

As part of the GMP Amendment, the Contractor shall certify that the GMP established thereby: (i) contains sufficient amounts to perform all Work necessary for the Final Completion of the Project; and (ii) contains sufficient amounts to provide and construct any items or facilities that are not contained in the GMP Basis Documents but which are necessary for a fully functioning facility that meets the programmatic requirements established for the Project. The Contractor will further covenant and agree in the GMP Amendment that it will perform all of the construction work necessary for the Final Completion of the Project, including, without limitation, aspects of the Work that are not shown on the GMP Basis Documents but which are a logical development of the design intent reflected in the GMP Basis Documents, for an amount not to exceed the Guaranteed Maximum Price.

### **Section 4.2 Review of GMP Basis Documents.**

The Department has selected the Contractor, in large part, because of its special expertise in constructing similar projects. Before submitting its GMP, the Contractor shall review the GMP Basis Documents for accuracy, constructability and completeness and shall bring such deficiencies to the attention of the Department and shall cause its A/E to address any such deficiencies. To the extent that any such deficiencies in the GMP Basis Documents could have been identified by such review by a competent Contractor, such deficiencies shall not be the basis for a change in the GMP or delaying the Project Schedule.

### **Section 4.3 Contingency.**

The Cost of the Work shall include a contingency, which shall be a sum established by the Department and the Contractor to cover, among other things costs necessary to address scope expansion that is a logical development of the design, issues arising from or as a result of deficiencies in the GMP Basis Documents and other costs which are properly reimbursable as

Cost of the Work but not the basis for a Change Order, such as costs that were not reasonably foreseeable as of the effective date of this Agreement, including such items as emergencies, unforeseeable changes in market conditions for materials or labor, or subsurface, soils or site conditions that were neither known nor reasonably discoverable as of the effective date of the Agreement (the “Contingency”). During the Construction Phase, the Contractor shall keep the Program Manager and the Contracting Officer informed as to the status of the Contingency and shall, at a minimum: (i) advise the Program Manager and Contracting Officer when draws reach 3% upon the contingency in a timely manner; and (ii) provide the Program Manager with running status of the Contingency balance at least once every two (2) weeks.

#### **Section 4.4 Trade Bids.**

**4.4.1. Subcontractors and Suppliers; Bidding Procedures.** During the Preconstruction Phase, the Contractor shall seek to develop subcontractor interest in the Project. Within fifteen (15) days after issuing the Notice to Proceed, the Contractor shall provide to the Department for its review and approval a written submission on the proposed bidding procedures. Such procedures shall include: (i) a list of proposed trades packages; (ii) a list of trade subcontractors that will be invited to bid on each such package; and (iii) a narrative description of the process. At least three (3) potential subcontractors shall be identified for each trade package. A copy of this deliverable must be submitted to both the Program Manager and the Contracting Officer. In the event the Department does not approve the proposed bidding procedures within fifteen (15) days after its receipt, such procedures shall be deemed approved unless the Department advises that such is still under review. The Contractor shall have at least one “over the shoulder” review session for each major trade package with the A/E. These “over the shoulder” review sessions shall be scheduled at appropriate times for such review.

**4.4.2. Bidding.** Following the Department’s approval of the GMP Basis Documents, the Contractor shall manage the trade bidding process in accordance with the approved bidding procedures and shall use commercially reasonable best efforts to solicit at least three (3) qualified and bona fide bids for each trade package that has an expected value in excess of One Hundred Thousand Dollars (\$100,000). Trade packages shall not be parceled, split, or divided to avoid the \$100,000 threshold. In addition to the information normally required in such bids, the Contractor shall also require subcontractors to provide an estimate of the percentage of labor hours performed in completing the subcontracted work which will be performed by District residents. The Contractor shall carefully document its procedures for making available bid packages to potential bidders, the contents of each bid package, discussions with bidders at any pre-bid meetings, bidders’ compliance with bid requirements, all bids received, the Contractor’s evaluations of all bids, and the basis for the Contractor’s recommendation as to which bidders should be chosen. The Department shall be afforded access to all such records at all reasonable times so that, among other things, requirements set forth in the Agreement, including, without limitation, affirmative action requirements and subcontracting requirements.

**4.4.3. Bid Tab.** As part of the negotiations leading up to the GMP, the Contractor shall provide to the Department tabulations of the trade bids solicited and copies of all trade bids. In general, the bid tab shall be presented in tabular format that compares the bids received and any other relevant information (i.e. exclusions, past performance history, etc.). The bid tabulation shall include scope assessments and identify required leveling of the trade submitted. To the extent that the Contractor's award recommendation is based on scoping adjustments, the Contractor shall clearly identify the scoping adjustment and the need for such adjustments. Such bid tabulation shall include Local, Small and Disadvantaged Business Enterprises ("LSDBE") utilization information in addition to price and other information. Such bid tabulations as well as copies of the bids shall be submitted to the Department's Program Manager. The Contractor represents and warrants that the bid tabs so submitted shall fairly represent the results of the subcontractor bidding process and that the Contractor shall not misrepresent any such data to the Department or its Program Manager.

**4.4.4. Value Engineering.** Based on the trade bids received, the Contractor shall prepare a written report of suggested Value Engineering strategies necessary to reconcile the costs of constructing the Project budget. The Contractor shall meet with the Department's representatives to discuss any Value Engineering and changes in scope necessary to ensure that the Department's schedule and programmatic requirements are met and that the budget is not exceeded. The Contractor shall coordinate with the A/E to implement and price any approved Value Engineering strategies.

#### **Section 4.5 Basis of Guaranteed Maximum Price.**

The Contractor shall include with the GMP Proposal a written statement of its basis, which shall include:

**4.5.1.** GMP Basis Documents which shall include a list of the Drawings and Specifications, including all addenda thereto, and general, supplementary and other conditions which were used in preparation of the GMP Proposal and on which the GMP is based.

**4.5.2.** A list of unit prices and allowance, as applicable, items and a statement of their basis; provided, however, that only such allowances as are agreed to by the Department shall be included.

**4.5.3.** A list of the clarifications and assumptions made by the Contractor in the preparation of the GMP Proposal to supplement the information contained in the Drawings and Specifications, noting in particular any exclusions. The assumptions and clarifications shall take precedence over the Drawings and Specifications. The Contractor shall prepare a separate memorandum that highlights any differences between the then approved drawings and the modifications made in the assumptions and clarifications. Such memorandum shall specifically address any changes in the Project's aesthetics, functionality or performance.

**4.5.4.** The proposed GMP, including a statement of the detailed cost estimate organized by trade categories, allowances, Contingency, and other items and the fee that

comprise the GMP.

**4.5.5.** An update to the Project's schedule to which the Contractor will agree to be bound. This update shall be prepared in the same level of detail and in the same manner as the Baseline Schedule.

**4.5.6.** A subcontracting plan setting forth the names and estimated dollar volume of the work that will be performed by local, small, and disadvantaged business enterprises, as certified by the Department of Small and Local Business Development, upon which the GMP is based.

**4.5.7.** Contractor's Designated Representative.

**Section 4.6 Department Review of GMP Proposal.**

The Contractor shall meet with the Department to review the GMP Proposal and the written statement of its basis. In the event that the Department discovers any inconsistencies or inaccuracies in the information presented, the Department shall promptly notify the Contractor, who shall make appropriate adjustments to the GMP Proposal, its basis or both.

**Section 4.7 Department Acceptance of GMP Proposal.**

The Department and the Contractor shall meet to negotiate the terms of the GMP Proposal. If the GMP Proposal is acceptable to the Department, the Department shall submit the resulting GMP Amendment for review and approval by the Council for the District of Columbia (the "Council") in the event it exceeds the previously approved contract value by more than \$1 million. In such event, the GMP shall not be effective until so approved and executed by the Parties.

**Section 4.8 GMP Amendment.**

In the event an acceptable GMP Proposal is not developed and a GMP Amendment is not executed, the Agreement will be terminated. In the event the Agreement is terminated pursuant to this Section, the Department shall be free to use any of the documents and information developed through the date of termination to retain a new contractor to complete the Project.

**Section 4.9 Assignment Upon Failure to Reach GMP.**

In the event that the Department and the Contractor are unable to agree upon a GMP, the Department shall have the right to terminate this Agreement, and if requested by the Department, the Contractor shall assign any trade Subcontracts to the Department upon such terms and conditions and at the time requested by the Department. In such event, the Contractor shall forfeit fifty percent (50%) of the Preconstruction Fee.

**Section 4.10 Certification.**

As part of the GMP Proposal submitted in accordance with this Article, the Contractor agrees to specifically acknowledge and declare that the Contract Documents are sufficiently complete to have enabled the Contractor to determine the Cost of the Work therein in order to enter into the GMP Amendment and to enable the Contractor to agree to construct the Work outlined therein in accordance with applicable laws, statutes, building codes and regulations to

the best of Contractor's knowledge, and otherwise to fulfill all its obligations hereunder. The Contractor shall further acknowledge that it has visited the site, examined all conditions affecting the Work, is fully familiar with all of the conditions thereon and affecting the same, and, has carefully examined all drawings and specifications provided to it.

#### **Section 4.11 Preconstruction Phase Deliverables.**

The deliverables set forth in **Exhibit C** are required during the Preconstruction Phase. In the event that the Contractor fails to provide any deliverable so listed, and unless such failure is the result of any event of Force Majeure, the Contractor shall pay to the Department liquidated damages for each deliverable that is not timely submitted as set forth in Article 13 of this Contract after receiving written notice from the Contracting Officer of failure to submit such deliverable.

#### **Section 4.12 Unsafe Materials and Hazardous Materials**

**4.12.1.** 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 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.

**4.12.2.** The Contractor shall abate Hazardous Materials on the site as necessary to complete the Work contemplated by this Agreement. 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. The Contractor shall ensure abatement subcontractors and disposal sites are appropriately licensed and qualified.

**4.12.3.** The Contractor shall be entitled to submit a Change Request in accordance with Article 4 of the Standard Contract Provisions (Construction Contract) in the event the Contractor encounters Hazardous Materials beyond those contemplated in the Contract Documents.

**4.12.4.** 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.

## Article 5 - CONSTRUCTION PHASE

### Section 5.1 General.

The Construction Phase shall not commence until the Department issues a NTP for Construction Phase Services. The Contractor shall, through subcontractors or, with the written consent of the Department, with its own forces, perform all of the Work necessary to construct the Project so that it is complete, safe, and properly built in strict accordance with the approved Construction Documents and the other requirements of this Agreement. Without limitation, the Contractor shall provide all of the labor, materials, tools, equipment, temporary services, and facilities necessary to complete the Project in accordance with the drawings, specifications, schedule and budget that are issued for the Project. The Contractor shall be responsible for paying for and obtaining all necessary permits, with the exception of the Building Permit, and to pay all necessary fees for utility connections. The Work shall be carried out in a good and workmanlike, first-class manner, and in a 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.

**5.1.1. Unrenovated Portions of the Structure.** In constructing the Project, the Contractor shall ensure that unrenovated portions of existing structures, if any, including, but not limited to, the mechanical, plumbing, electrical systems and other building systems are not adversely affected. All unrenovated portions of the structures should function, at a minimum, at the level of functionality that existed immediately prior to the construction of the Project. If any unrenovated portion of the Project functions at a lower level of functionality as a result of the Contractor's Work, the Contractor shall be back-charged the costs incurred by the Department in addressing the decreased functionality.

### Section 5.2 Design Completion.

**5.2.1. Third Party Contractors.** The Department will hire third party contractors for plan review and for testing and material inspections. The Contractor shall coordinate and work with the Project Manager and third-party plan reviewer during the Building Permit process.

### Section 5.3 Subcontracting and Administration.

**5.3.1.** It is contemplated that all or substantially all of the construction of the Project will be carried out by trade Subcontractors and that those trade subcontracts will be awarded through the competitive bid process contemplated in Section 4.4. The Contractor shall enter into a written agreement with each subcontractor. The trade subcontractors will be under written contract with the Contractor. All subcontracts and agreements for the supply of equipment or materials awarded for the Project shall be fixed-price contracts unless otherwise expressly authorized by the Department, in writing. It is understood and agreed, however, that certain trade packages (such as the mechanical and electrical packages) may be awarded on a design-assist or design-build basis and that such trade packages may be awarded on such other basis subject to the Department's consent as to the bidding procedures and economic structure with regard to those packages. The Contractor

and its affiliates may not carry out trade work with its own forces without the Department's written permission, which permission may be withheld or conditioned by the Department in its sole and absolute judgment.

**5.3.2.** In addition to the open book reporting requirements set forth in Section 5.10, the Contractor shall provide to the Department a copy of all quotes or proposals submitted by potential subcontractors.

**5.3.3.** The Contractor shall develop a purchasing strategy to address the expedited schedule and conditions of this Project and shall include appropriate provisions in the subcontracts to minimize the cost impact associated with such conditions. Such strategies may include, but are not limited to: (i) obtaining from subcontractors' unit price quotes for typical coordination items; (ii) setting aside allowances for coordination work; and (iii) such other techniques as may be employed by the Contractor.

**5.3.4.** The Contractor shall carefully document its procedures for making available bid packages to potential bidders, the contents of each bid package, discussions with bidders at any pre-bid meetings, bidders' compliance with bid requirements, all bids received, the Contractor's evaluations of all bids, and the basis for the Contractor's recommendation as to which bidders should be chosen. The Department shall be afforded access to all such records at all reasonable times so that, among other things, it may independently confirm the Contractor's adherence to all requirements set forth in the Agreement including, without limitation, affirmative action requirements and subcontracting requirements.

**5.3.5.** The Department may, in its sole discretion, reject any or all bids and proposals received for any bid package, and may require the Contractor to obtain new or revised bids or proposals.

**5.3.6.** The Department may, in its sole discretion, direct the Contractor to accept a bid from a qualified bidder other than the bidder to whom the Contractor recommends award of a subcontract or supply agreement. If the Department chooses this option, it shall issue a Change Order to the Contractor for any difference between the cost of the subcontract or supply agreement awarded and the bid price of the Subcontractor or supplier recommended by the Contractor, but without any adjustment to the Construction Management Fee.

**5.3.7.** The Department must approve all Subcontractors and suppliers. The Department may elect to review the form of any subcontract or agreement with a material supplier to ensure that such contract incorporates the contractual provisions required by this Agreement.

**5.3.8.** The Contractor shall manage the Change Order process with all Subcontractors to verify validity, purpose, and cost.

**5.3.9.** The Contractor must contract for provision of all services and materials for the Project (other than Self-Performed Work which must be authorized in advance and in writing by the Department) via written subcontracts or, for contracts requiring provision



of materials or equipment only, and not labor, via written supply agreements. All subcontracts and supply agreements shall include the following provisions:

**5.3.9.1** that, to the extent of the work or supply within the 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;

**5.3.9.2** 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;

**5.3.9.3** that the Department is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit;

**5.3.9.4** 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;

**5.3.9.5** that the subcontractor or supplier shall comply immediately with a written order from the Department to the Contractor to suspend or stop work;

**5.3.9.6** that the subcontractor or supplier shall maintain records of all Work it 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 General Conditions Cost and requiring the subcontractor or supplier to make those records available for review or audit by the Department during that time;

**5.3.9.7** 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);

**5.3.9.8** that, if the Department terminates the Agreement for convenience, the Contractor may similarly terminate the subcontract or supply agreement for convenience, upon written notice to the Subcontractor or supplier, and that the subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in Article 6 of the Standard Contract Provisions (Construction Contract);

**5.3.9.9** 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;

**5.3.9.10** 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;

**5.3.9.11** a provision requiring that Subcontractors and suppliers promptly pay subcontractors and suppliers at lower tiers, imposing upon the Subcontractors and suppliers a duty to pay interest on late payments, and barring reimbursement for interest paid to lower tier subcontractors or suppliers due to a subcontractor's or supplier's failure to pay them in timely fashion;

**5.3.9.12** a provision requiring that all Subcontractors at all tiers comply with the provisions of Article 12 of this Contract (Economic Inclusion Goals); provided, however, that the Contractor may, in its reasonable discretion impose a different LSDBE subcontracting goal on some or all of its subcontractors; provided, further, however, that nothing in this provision shall be deemed to excuse the Contractor from using its best efforts to achieve the LSDBE subcontracting goal on an aggregate basis for the Project;

**5.3.9.13** a provision which allows the Contractor to withhold payment from the subcontractor if the subcontractor does not meet the requirements of the subcontract;

**5.3.9.14** lien and claim release and waiver provisions substantially identical to those in this Agreement.

**5.3.10.** Within seven (7) calendar days of receiving any payment from the Department that includes 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 used for other items such as the Construction Management Fee. 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 be reimbursable as part of the Cost of the Work.

**5.3.11.** The Contractor shall not enter into any profit sharing, rebate, or similar arrangement with any Subcontractor or supplier at any tier with respect to the Project or the Work to be carried out for the Project.

**5.3.12.** . The Contractor shall not substitute or replace any Subcontractor or supplier approved by the Department without the Department's Contracting Officer and DSLBD prior written consent

**5.3.13.** The Department has the right to contact subcontractors or suppliers at all tiers, or material or equipment suppliers directly to confirm amounts due and owing to them or amounts paid to them for Work on the Project, and to ascertain from the Subcontractors or suppliers at all tiers their projections of the cost to complete their work or to supply their

material or equipment, or the existence of any claims or disputes. In doing so the Department shall not issue any directions to subcontractors or suppliers at any tier.

**5.3.14.** If it comes to the Department's attention that a subcontractor or supplier has not been paid in timely fashion (other than for disputed amounts), and if the Contractor fails to cure the problem within five (5) calendar days after the Department gives it written notice of the failure to pay, the Department may make payments to the subcontractor or supplier and Contractor by joint check. If the payment was already made to the contractor, the joint check be for future payments (if any).

**5.3.15.** The Contractor shall be required to provide an evaluation of each of its subcontractors' performance by completing and submitting to the Department the Subcontractor Performance Evaluation Form set forth as **Exhibit N**, as follows:

- (a) Within ninety (90) days of initiating the Construction Phase; and
- (b) Within thirty (30) days after Final Completion of the Project.

**5.3.16.** The Contractor must provide, for the CO's approval, a certificate of insurance for each subcontractor before such subcontractor begins work.

#### **Section 5.4 Weekly Progress Meetings & Schedule Updates.**

The Contractor shall schedule and conduct, at a minimum, weekly progress meetings following a Contractor generated agenda at which the Department, the A/E, the Program Manager, the Contractor, and appropriate Subcontractors can discuss the status of the Work. The Contractor shall prepare and promptly distribute meeting minutes. In addition, the Contractor shall submit bi-weekly Schedule updates which shall reflect actual conditions of Project progress as of the date of the update. The update shall reflect the actual progress of construction, identify any developing delays, regardless of their cause, and reflect the Contractor's best projection of the actual date by which 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 a native format reasonably acceptable to the Department (e.g., Primavera).

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(s). 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 this Agreement.

## **Section 5.5 Written Reports.**

The Contractor shall provide written reports to the Department on the progress of the entire Work at least monthly from Preconstruction Notice to Proceed until Final Completion of the Project. Such written report shall include the following elements:

**5.5.1. Construction Progress Update.** Each monthly update shall contain a narrative description of the Project progress and a critical path method schedule in Primavera format, including any plans to correct defective or deficient work or for time lost due to delays.

**5.5.2. Cost Update.** The monthly update shall reflect, by GMP line item, the original line item amount, approved, pending, and projected Change Order amounts, the cost incurred to date, the projected cost to complete the Work of the line item, and any variance between the actually approved budgeted balance of the line item and the projected cost to complete. A clear distinction must be made between approved Change Orders and those merely requested or anticipated. The report shall explain all variances including "buy-outs" or final actual costs including those below their respective Guaranteed Maximum Price line item. In addition, the report must disclose any instances in which the Contractor has transferred amounts from one line item to another, or from the Contingency to any other line item. Neither submission of, nor the Department's failure to reject an update reflecting that the projected cost to complete the Project exceeding the GMP will operate to increase the GMP or waive the Department's right to enforce the GMP. If the report reflects budget overruns, it must also include a recovery plan.

**5.5.3. Economic Inclusion Report.** The monthly report shall include a detailed summary of the Contractor's efforts and results with respect to the economic inclusion goals set forth in this Agreement. Such report shall be in a format acceptable to the Department and shall include, at a minimum: (i) the Contractor's overall performance with respect to the goals; (ii) a listing of subcontracts and agreements with material suppliers during the month and the percentage of those subcontracts and agreements with material suppliers awarded to LSDBEs; (iii) a listing of subcontracts during the month and the estimated percentage of the labor hours to be worked by District of Columbia residents pursuant to those subcontracts; and (iv) a description of the major subcontracting and supply opportunities that will be solicited during the next three (3) months and the actions being taken to meet the subcontracting goals.

**5.5.4. Cash Flow Update.** If there have been any changes to the anticipated cash flow for the Project, such changes shall be disclosed and explained in the monthly report. If there are no such changes, the report shall so state.

**5.5.5. Quality Assurance Report.** The monthly report shall include a detailed summary of the steps that are being employed to ensure quality construction and workmanship. Each report shall specifically address issues that were raised by the Department and/or its Program Manager during the prior month and outline the steps that are being taken to address such issues.

**5.5.6. Progress Photos.** The monthly report shall include updated progress photos that shall detail changes in the Work during the month.

**5.5.7. Daily Log.** 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 A/E and the Program Manager, and on a monthly basis a copy of the log shall be submitted to the Department.

## **Section 5.6 Cost Control System.**

The Contractor shall use a system of cost control for the Work in a format consistent with the GMP Drawings & Specifications and approved by the Department, which shall include, without limitation, regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Contractor shall identify variances between actual and estimated costs and report the variances to the Department and the Program Manager at regular intervals.

## **Section 5.7 Key Personnel.**

**5.7.1.** To carry out its duties, the Contractor shall provide at least the key personnel identified in **Exhibit E** to this Agreement (“Key Personnel”), who shall carry out the functions identified in **Exhibit E**. Among other things, the Key Personnel shall include: (i) the Project Executive; (ii) the Field Superintendent; (iii) the Project Manager who will supervise the Project; (iv) the Project Manager who will supervise the Mechanical, Electrical, and Plumbing (“MEP”) work; and (v) the individual that will manage quality control and interact with the Department’s quality control representative (Safety/Quality Assurance/Quality Control Manager). It is contemplated that these Key personnel will work from the design stage, purchasing and throughout the bulk of the field work. The Contractor’s obligation to provide adequate staffing is not limited to providing the Key Personnel, but is determined by the needs of the Project. The Contractor shall not replace any of the Key Personnel without the Department’s prior written approval. If any of the Key Personnel become unavailable to perform services in connection with the Agreement due to death, disability or separation from the employment of the Contractor or any affiliate of the Contractor, then the Contractor shall promptly notify the Department’s Contracting Officer and propose a replacement acceptable to the Department. The Department shall be entitled to complete information before approving such replacement, including, but not limited to, a current resume of the proposed replacement to include qualifications and experience.

**5.7.2.** Certain members of the Contractor's Key Personnel shall be subject to replacement fee for their removal or reassignment by the Contractor. Those members of the Contractor's Key Personnel subject to the replacement fee as indicated in the Project Summary Section of this Agreement shall be identified in **Exhibit E** as subject to the replacement fee provision. In the event there is no delineation in **Exhibit E** of those members of the Contractor's Key Personnel subject to the replacement fee provision of this Agreement, then all of the Key Personnel shall be subject to the replacement fee provision of this Agreement.

**5.7.3. Key Personnel Removal or Replacement Disincentive.** If the Contractor removes or reassigns one of the Key Personnel (excluding, however, instances where such personnel become unavailable due to death, disability, or separation from the employment of the Contractor or any affiliate of the Contractor without the prior written consent of the Department's Contracting Officer, the Contractor shall pay to the Department the sum of \$25,000 for each replacement as a replacement fee and not as a penalty, to reimburse the Department for its administrative costs arising from the Contractor's failure to provide the Key Personnel. The foregoing replacement fee amount shall not bar recovery of any other damages, costs or expenses other than the Department's internal administrative costs. In addition, the Department shall have the right, to be exercised in its sole discretion, to remove, replace or to reduce the scope of services of the Contractor in the event that a member of the key personnel has been removed or replaced by the Contractor without the consent of the Department's Contracting Officer. In the event the Department exercises the right to remove, replace or to reduce the scope of services of the Contractor, the Department shall have the right to enforce the terms of the Agreement and to keep-in-place those members of the Contractor's team not removed or replaced and the remaining members shall complete the services required under the Agreement in conjunction with the new members of the Contractor's team approved by the Department.

### **Section 5.8 Qualified Personnel/Cooperation.**

The Contractor shall employ on the Project only those employees and subcontractors who will work together in harmony and who will cooperate with one another on the Project. The Contractor shall enforce strict discipline, good order and harmony among its employees and its Subcontractors and shall remove from the site any person who is unfit for the work or fails to conduct herself or himself in a proper and cooperative manner. If the Department requests removal of any person as unfit or as having behaved inappropriately, the Contractor shall promptly comply.

### **Section 5.9 Warranty.**

The Contractor shall provide assistance to the Department and the Client Agency during any applicable warranty period. The Contractor warrants to the Department that materials and equipment furnished under the Contract Documents will be of good quality and new unless otherwise required or permitted by the Contract Documents, that for the one (1) year period following the Substantial Completion Date the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. The Contractor's warranty excludes remedies for damage or defect caused by abuse,

modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear from normal usage. The Contractor shall use commercially reasonable efforts to schedule a joint inspection of the Project during the eleventh month after Substantial Completion is achieved. During such inspection, the Contractor and a representative of the Department shall walk the Project to identify any necessary warranty work.

#### **Section 5.10 Open Book Reporting.**

The Contractor shall maintain an open book reporting system with the Department, allowing the Department or its consultants access to the Contractor's Subcontractors and material suppliers, invoices, purchase orders, Change Order estimates, records for Self- Performed Work, and other relevant documentation and sources of information concerning the Work or costs. The Department shall not use its access to the Subcontractors to give instructions or directions to them. All instructions or directions shall be given only to the Contractor.

#### **Section 5.11 Claims for Additional Time**

**5.11.1.** Time is of the essence of this Agreement. The GMP Basis Documents must be submitted no later than the date set forth within the Project Information Section and the Project must be Substantially Complete no later than the Substantial Completion Date set forth within the Project Information Section above.

**5.11.2.** 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 5.11.3 below, the delay shall be deemed Non-Excusable and the Contractor shall not be entitled to an extension of time. 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:

**5.11.2.1** Suspensions of work; Delays due to job site labor disputes, work stoppages;

**5.11.2.2** 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. For purposes of this clause, weather shall only be deemed "adverse" if the weather in question was more severe than that encountered at the Project site over the last ten (10) years for the month in question. Such determinations shall be made based on the number of rain/snow days or the cumulative precipitation total for the month in question. Notwithstanding the foregoing, named storms shall conclusively be deemed "adverse";

**5.11.2.3** 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; or

**5.11.2.4** 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 as permitted by Article 4, Section A of the Standard Contract Provisions (Construction Contracts), or Hazardous Materials Remediation shall be deemed an Excusable Delay.

**5.11.3.** The Contractor shall be entitled to an adjustment in the Substantial Completion Date due to an Excusable Delay. The term “Excusable Delay” shall mean:

**5.11.3.1** Delays due to adverse weather other than those that are classified as a Non-Excusable delay in accordance with Section 5.11.2.2 of this Agreement;

**5.11.3.2** 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 or inaction of the Contractor, or any of its employees, agents, Subcontractors or material suppliers be deemed an Excusable Delay;

**5.11.3.3** Delays caused by differing Site Conditions as permitted by Article 4, Section A of the Standard Contract Provisions (Construction Contract), or Hazardous Materials Remediation as contemplated in Section 5.11.2.4 of this Agreement;

**5.11.3.4** Delays due to suspensions of work by the Department; or

**5.11.3.5** Delays caused by the Client Agency or separate contractors of the Client Agency to the extent such delays are not concurrent with delays caused by the Contractor or any of its employees, agents, subcontractors or material suppliers.

In addition to the forgoing, 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 on Project’s critical path; and (iv) is in addition to any time contingency periods set forth in the critical path.

**5.11.4.** If the Contractor wishes to make a claim for an adjustment in time allotted per the Project Schedule, written notice as provided herein shall be given to the Contracting Officer and Program Manager. 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.



**5.11.5.** In no event shall the Contractor be entitled to an increase in the GMP, the Preconstruction Fee, or the Construction Management Fee as a result of either an Excusable or Non-Excusable Delay; provided, however, that to the extent that a delay is: (i) an Excusable Delay; (ii) of unreasonable duration; (iii) caused solely by the Department; and (iv) not concurrent with any other delay, then the Contractor shall be entitled to receive its actual costs, including all direct and indirect costs, bonds and insurances resulting from such extended duration. It is understood that the Contractor shall not be entitled to any profit or home office overhead, including, but not limited to, an increase in the Construction Management Fee, on any amounts to which the Contractor may be entitled pursuant to the preceding sentence.

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

**5.12.1.** The Contractor will be required to provide a safe and efficient site, with controlled access. As part of this obligation, the Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project, and shall comply with the requirements set forth in Article 16, Section F of the Standard Contract Provisions (Construction Contract).

**5.12.2. 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 Safety Plan developed by the Contractor shall describe the proposed separation and the specific nature of the safety measures to be taken including fences and barriers that will be used as well as the site security details. The Safety Plan will be submitted to the Department and Client Agency for their review and approval prior to the commencement of construction. Once the Safety Plan has been approved, the Contractor shall comply with it at all times during construction. The Contractor shall be required to revise the Safety Plan as may be requested by the Department or Client Agency. The cost of revising and complying with the plan shall not entitle the Contractor to an increase in the GMP. In the event the Contractor fails to provide the Safety Plan, the Contractor will not be permitted to commence the Construction Phase until the Safety Plan is submitted and in no event shall any resulting delay constitute an Excusable Delay. Additionally, the Contractor shall comply with the requirements of Article 27, Section A of the Standard Contract Provisions (Construction Contract).

**5.12.3. Safety Barriers/Fences.** As part of its responsibility for Project safety, the Contractor shall install such fences and barriers as may be necessary to separate the construction areas of the site from those areas that are then being used by Client Agency for educational purposes. The Contractor shall describe in the Safety Plan the proposed separation and the specific nature of the fences and barriers that will be used. The Contractor’s storage/laydown area will be limited to the limits of disturbance shown on the approved construction plans.

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

**5.12.5. Exculation.** The right of the Department and Client Agency 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.

**5.12.6. Temporary Power.** The Contractor shall 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 to bring power to the site. The Contractor shall also be responsible for the cost of all temporary construction necessary on the site.

**5.12.7. 5.12.7 Site Cleanliness.** During the Agreement performance and/or as directed by the Department's Program Manager, as the installation is completed, the Contractor shall ensure that the site is clear of all extraneous materials, rubbish, or debris.

### **Section 5.13 Workhours, Site Office, and Coordination with Client Agency and Community**

**5.13.1. Workhours.** The Contractor shall comply with the noise ordinance and neither it nor its subcontractors shall undertake work on the Project site other than at the times and sound level permitted by the noise ordinance.

**5.13.2. Site Office.** Throughout the Project, the Contractor shall provide and maintain a fully-equipped construction office for the Project site. The Contractor shall, at all times, provide and maintain a fully equipped construction office for DGS staff assigned to the Project. The costs for these Site Office(s) shall be included as part of the Design-Builder's general conditions cost.

**5.13.3. Parking.** The Contractor shall organize its work in such a manner so as to minimize the impact of its operations on the surrounding community. To the extent that the number of workers on the site is likely to have an adverse impact on neighborhood parking, the Contractor shall develop a parking plan for those individuals working on the site that is reasonably acceptable to the Department.

**5.13.4. Wheel Washing Stations.** The Contractor shall provide wheel washing stations on site so as to prevent the accumulation of dirt and other refuse on the streets surrounding the Project site.

**5.13.5. Outreach Plan.** The Contractor shall keep the Department informed of the construction activities and their potential impact on the community and shall develop a community outreach plan (the "Outreach Plan"). The Contractor shall submit the Outreach Plan to the Department prior to its implementation which shall be subject to the Department's review and approval.

**5.13.6. Supervision.** Throughout the Work, the construction office shall be managed by personnel competent to oversee the Work at all times while construction is

underway. Such personnel shall maintain full-time, on-site construction supervision and provide daily inspections, quality control, monitoring, coordination of various trades, record drawings, and daily work log.

#### **Section 5.14 Close-out & FF&E.**

**5.14.1.** A detailed list of FF&E requirements will be developed during the preconstruction phase and attached hereto as **Exhibit L**.

**5.14.2. Punchlist.** Promptly after Substantial Completion, the Contractor shall coordinate with the A/E to develop a punchlist. Once the punchlist is prepared, the Contractor shall inspect the work along with representatives from the Department. The punchlist shall be revised to reflect additional work items that are discovered during such inspection. The Contractor shall correct all punchlist items no later than thirty (30) days after Substantial Completion is achieved.

**5.14.3. Warranties & Manuals.** Subsequent to Substantial Completion and no later than fifteen (15) days following Substantial Completion, the Contractor shall prepare and submit the following documentation: (i) a complete set of product manuals (O&M), training videos, warranties, etc.; (ii) attic stock; (iii) an equipment schedule; (iv) a proposed schedule of maintenance for the renovated building; (v) environmental, health and safety documents for the renovated building; and (vi) all applicable inspection certificates/permits (boiler, elevator, emergency evacuation plans, health inspection, etc.) for the renovated building. No later than thirty (30) days following Substantial Completion, the Contractor shall prepare and submit: (i) a complete set of its Project files; and (ii) a set of record drawings; and (iii) the building information modeling file(s).

#### **5.14.4. RESERVED.**

**5.14.5. Support for Initial Heating & Cooling Season.** The Contractor and its mechanical subcontractor shall provide support to Client Agency and the Department during system start-up and in initial operation for the first heating and cooling season after Substantial Completion is achieved.

**5.14.6. Training.** The Contractor shall provide training to Client Agency staff on all of the building systems. The Contractor shall be required to schedule such training sessions and shall use commercially reasonable efforts to ensure all such training occurs prior to Final Completion.

**5.14.7.** The Contractor shall assist Client Agency in relocating FF&E and other items as necessary within the renovated building, as well as for cleaning and other move-in services as directed by the Department. The GMP shall include an allowance and scope of work for these activities. This allowance is in addition to cleaning services that would otherwise be required by the Contractor, including, but not limited to, the obligation to deliver a broom clean building at the end of construction.

### **Section 5.15 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 5.16 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 5.17 Quality Control.**

**5.17.1. General Obligation.** The Contractor shall be responsible for all activities necessary to manage, control, and document the Work to ensure compliance with Contract Documents. The Contractor's responsibility includes ensuring adequate quality control services are provided by the Contractor's employees and its subcontractors at all levels. The work activities shall include safety, submittal management, document reviews, reporting, and all other functions related to quality construction.

**5.17.2. Quality Control Plan.** Within forty-five (45) days after the Permit Set of construction documents are approved, the Contractor shall develop a quality control plan for the Project (the "Quality Control Plan"). A draft of the Quality Control Plan shall be submitted to the Department and shall be subject to the Department's review and approval. The Quality Control Plan shall be tailored to the specific products/type of construction activities contemplated by the GMP Basis Documents, and in general, shall include a table of contents, quality control team organization, duties/responsibilities of quality control personnel, submittal procedures, inspection procedures, deficiency correction procedures, documentation process, and a list of any other specific actions or procedures that will be required for key elements of the Work.

**5.17.3. Implementation.** During the Construction Phase, the Contractor shall perform regular quality control inspections and create reports based on such inspections pursuant to the Quality Control Plan. The quality control reports shall be provided to the Department electronically on a monthly basis. The Contractor shall incorporate a quality control section in the progress meetings to discuss outstanding deficiencies, testing/inspections, and upcoming Work. The monthly report shall include a detailed summary of the steps that are being employed to provide quality construction and workmanship. The monthly report should specifically address issues raised during the month and outline the steps that are being used to address such issues.

### **Section 5.18 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: (i) the Contractor fails to 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 otherwise 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 schedule recovery plan (“Recovery 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 the Recovery Plan within five (5) days after the issuance of the notice (i.e. within forty eight (48) hours after the receipt of the proposed Recovery Plan), the Department shall have the right to direct such acceleration as the Department, in its reasonable judgment, deems necessary. Provided Department complies with the notice provisions of this Section, the cost of any acceleration directed under this Section shall not justify an adjustment to the GMP or the Substantial Completion Date.

Given the nature of the Project and the fact that there is a fixed date upon which the Client Agency plans to occupy the building, the Contractor hereby: (i) acknowledges that this provision is a material inducement upon which the Department has relied in entering into this Agreement; and (ii) represents and warrants that it has included sufficient funding in the GMP in order to comply with the requirements of this Section.

#### **Section 5.19 Corrective Action Plan.**

Subject to the terms of this Section, the Department shall have the right to direct the Contractor to revise the provisions of the Quality Control Plan if, in the reasonable judgment of the Department, the craftsmanship of the Work being installed fails to comply with generally applicable industry standards, requirements set forth in the Specifications that are reasonably related to the quality of craftsmanship quality, or any provisions set forth in this Agreement (each a “Quality Control Event”). In the event that the Department or its Program Manager determine that a Quality Control Event has occurred, the Department shall provide the Contractor with written notice of the occurrence of such Quality Control 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 (each instance, a “Corrective Action Plan”). If the Department and the Contractor are unable to agree on the terms of the Corrective Action Plan within five (5) days after the issuance of the notice (i.e. within forty eight (48) hours after the receipt of the proposed corrective action plan), the Department shall have the right to direct such corrective action measures as the Department, in its reasonable judgment, deems necessary. Such directive may include adjustments to the procedural provisions set forth in the Quality Control Plan and/or may impose additional requirements on the manner in which Work is being performed. Provided the Department complies with the notice provisions of this Section, the cost of any such corrective action directed under this Section shall not justify an adjustment to the GMP on the Substantial Completion Date.

#### **Section 5.20 Use of Project Team.**

The Contractor shall utilize the Department's ProjectTeam system to submit any and all documentation required to be provided by the Contractor, including, but not limited to: (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) invoices/applications for payment (full package including all forms required by the Department); (v) certified payrolls (in addition to upload via LCP Tracker); (vi) drawings and specifications; (vii) building information model(s); (viii) punchlist; and (ix) other documents as may be designated by the Department.

**Section 5.20.1 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, per Article 8 of the Standard Contract Provision, 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 5.21 Conformance with Laws.**

It shall be the responsibility of the Contractor to perform under the Agreement in conformance with the Department's Procurement Regulations and all applicable laws, codes, ordinances, regulations, rules, requirements, orders, and policies 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. Given the requirements for the Project, the Department may, at its sole discretion: (i) apply for variance to the requirement of adhering to the Green Building Act on the Project; and (ii) consider deferring the scope of work associated with storm water management to a later phase of the Project.

**Section 5.22 Construction Phase Deliverables.**

The deliverables set forth on **Exhibit C** are required during the Construction Phase.

**Section 5.23 Close-Out Deliverables.**

The deliverables set forth in **Exhibit D** are required during the Project's Close-Out and prior to Final Payment, to include but not limited to:

- a) A complete set of the Contractor's Project files;
- b) A complete set of product manuals (O&M), training videos, warranties, etc.;
- c) As built record drawings;
- d) Attic stock and schedule;
- e) Equipment schedule;
- f) Proposed schedule of maintenance;
- g) Environmental, health & safety documents;
- h) LEED – Preliminary Construction Review;

- i) All applicable inspection certificates/permits (boiler, elevator, emergency evacuation plans, health inspection, etc.); and
- j) All other files and requirements outlined in Turnover Protocol Document.

**Section 5.24 Licensing, Accreditation and Registration.**

The Contractor and all of its Subcontractors and subconsultants (regardless of tier) shall comply with all applicable District of Columbia, state, and federal licensing, accreditation, and registration requirements and standards necessary for the performance of the Agreement. Without limiting the generality of the foregoing, all drawings shall be signed and sealed by a professional A/E licensed in the District of Columbia.

**Section 5.25 Protection of Existing Elements.**

The Contractor shall ensure the protection of all existing features, public utilities, and other existing structures during construction. The Contractor shall ensure the protection of existing, site improvements, trees and shrubs from damage during construction. Protection extends to the root systems of existing vegetation. The Contractor shall not store materials or equipment, or drive machinery, within drip line of existing trees and shrubs.

**Article 6 - DESIGNATED REPRESENTATIVES**

**Section 6.1 Department's Designated Representative.**

The Department designates the individual(s) identified in **Exhibit H** 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 H**, 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 of 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 Contractor 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.

**Section 6.2 Contractor's Designated Representative.**

The Contractor designates the individual(s) identified in **Exhibit G**, as its representative with express authority to bind the Contractor with respect to all matters requiring the Contractor's approval or authorization. In addition, the Department retains the right to approve candidates to serve as on-site personnel in accordance with each candidate's experience with similar projects and local marketplace conditions. Once approved, individuals cannot be changed without the Department's prior approval. During the entire term, it is agreed that the Contractor's designated representative will devote his or her time exclusively to the Project, unless the Department consents to a reduction in time. All services provided by the Contractor

shall be performed in accordance with the highest professional standards recognized and adhered to by contractors that build first-class state-of-the-art buildings and projects that are similar to the Project in large urban areas.

**Article 7 -           COMPENSATION AND PAYMENTS FOR RECONSTRUCTION  
  PHASE SERVICES**

**Section 7.1    Compensation**

**7.1.1.** The Department shall compensate and make payments to the Contractor for preconstruction services in accordance with Article 7 and Article 10 of this Contract. For preconstruction services, the Contractor's compensation shall be as set forth in the Project Information Section of this Contract (the "Preconstruction Fee"). The Preconstruction Fee shall be the Contractor's sole compensation for Preconstruction Phase Services. The Preconstruction Fee shall include, but not be limited to, amounts necessary to compensate the Contractor for:

- Profit;
- Home Office Overhead;
- Cost of preconstruction staff;
- Fringe Benefits associated with staff costs;
- Payroll taxes associated with staff costs;
- Staff costs associated with obtaining permits and approvals during the Preconstruction Phase;
- Out-of-house consultants;
- Travel, Living and Relocation expenses;
- Job vehicles;
- Office equipment including but not limited to:
  - Computer hardware and software;
  - Fax machines; and
  - Copying machines;
- Office supplies;
- Telephone; and
- Local delivery and overnight delivery costs.



## **Section 7.2 Payments**

**7.2.1.** Payments for Preconstruction Phase Services shall be made monthly over the anticipated duration of the Preconstruction Phase following presentation and acceptance of the Contractor's invoice and shall be in proportion to services performed. In no event, however, will the aggregate of the Contractor's monthly invoices for Preconstruction Phase Services exceed the Preconstruction Fee.

**7.2.2** Payments are due and payable in accordance with Article 10 of this Agreement. Amounts unpaid after the date of which payments due shall bear interest in accordance with the Quick Payment Act.

## Article 8 - COMPENSATION FOR CONSTRUCTION PHASE SERVICES

### Section 8.1 Compensation.

**8.1.1.** The Department shall compensate and make payments to the Contractor for Construction Phase Services in accordance with this Article 8 and Article 10. For the Construction Phase Services, the Contractor's compensation shall be as set forth in the Project Information Section of this Agreement (the "Construction Management Fee"). The Contractor acknowledges and agrees that the percentage of the total amount of the Construction Management Fee set forth in the Project Information Section of this Agreement is at risk (the "At Risk Portion"), and the Contractor shall only be entitled to the At Risk Portion as set forth below. Unless and until the Contractor's entitlement to any subset of the At Risk Portion is determined by the Department, the Contractor shall only be entitled to bill for the portion of the Construction Management Fee that is not at risk (the "Base Construction Management Fee"). The Base Construction Management Fee shall be billed in accordance with Article 10, to be paid in equal monthly installments over the anticipated duration of the Construction Phase. To the extent that the duration of the Agreement is extended, the then remaining amounts of the Base Construction Management Fee will be re-allocated such that the then existing portion of the Base Construction Management Fee shall be evenly spread over the then remaining duration of the Construction Phase.

**8.1.2. Award Fee Pool.** The At Risk Portion shall be used to establish and fund an award fee pool ("the Award Fee Pool"). Within sixty (60) days after approval and full execution of this Agreement, the Department shall appoint a committee that will determine entitlement to the Award Fee Pool (such committee, the "Award Fee Evaluation Committee"). The Award Fee Evaluation Committee will consist of: (i) the Department's Deputy Director for Capital Construction; (ii) a senior representative from Client Agency; and (iii) a senior member of the Program Management team that is not involved in the day-to-day management of this Project that is acceptable to both Parties.

**8.1.3.** The Contractor may earn the At-Risk Portion of the Construction Management Fee in accordance with **Exhibit M.**

### Section 8.Lump Sum General Conditions Cost.

The Contractor shall not be entitled to recover more than the amount set forth in the Project Information Section of this Agreement for the Cost of General Conditions (such amount, the "Lump Sum General Conditions Cost"). If, as a result of any Change Order(s) or Change Directive(s): (i) the Project durations extends 30 days or more beyond the Substantial Completion Date; and (ii) the Contractor can demonstrate to the satisfaction of the Department that such additional Costs of General Conditions are reasonable and not due to any fault of the Contractor, its Subcontractors, materialmen, consultants or anyone making claims thereunder, the Contractor may request a Change Order to adjust the Lump Sum

General Conditions Cost. To the extent the Contractor incurs Costs of General Conditions in excess of the Lump Sum General Conditions Cost, the Contractor shall not be entitled to reimbursement for such amounts unless the Department authorizes, in writing, an increase to the Lump Sum General Conditions Cost. Nonetheless, in such an event, if the Contractor exceeds the Lump Sum General Conditions Costs, the Contractor shall continue to be required to adequately staff the Project.

### **Section 8.3 Initial Not-to-Exceed Amount.**

Unless and until the GMP Amendment is executed and approved by the Council for the District of Columbia, this Agreement shall have an initial not-to-exceed amount as set forth in the Project Information Section of this Agreement (the “Initial NTE”). In no event shall the Contractor be entitled to recover more than the Initial NTE unless the Contractor is authorized to exceed the Initial NTE by the Department in advance and in writing. Prior to expending or committing any portion of the Initial NTE, the Contractor shall obtain the Department’s written approval of such expenditure or commitment, as well as a determination as to whether the work will qualify as a “capital” expense under the Department’s financial guidelines. In making such a request, the Contractor shall submit an itemized breakdown of the work that the Contractor seeks to release using funds from the Initial NTE as well as the associated costs of such work.

### **Section 8.4 Project Budget.**

The Department has established a budget for the Project as set forth in the Information Section of this Agreement (such budget, the “Project Budget”). Such Project Budget includes any and all amounts which may be due to the Contractor pursuant to this Agreement, and in no event shall the Contractor be entitled to recover more than the Project Budget unless the Contractor is authorized to exceed the Project Budget by the Department in advance and in writing.

### **Section 8.5 No Adjustments to Fee.**

It is the Department’s intent to engage the Contractor to develop a GMP that meets the preliminary design set forth in **Exhibit A** by the Client Agency and the Project Budget as set forth herein (*i.e.* built to budget), to allow for Substantial Completion of the Work to be achieved no later than the Substantial Completion Date. The Contractor shall be entitled to an adjustment to the Construction Management Fee at the time the GMP is established to the extent, and only to the extent, that: (i) the Department makes additions to the scope that, when measured relative to the program, cause the GMP to exceed the Project Budget by more than ten percent (10%); or (ii) the Department makes additions to the scope provided for herein which (other than for punchlist or warranty work) requires the Contractor’s services at the Project beyond **September 18, 2025**. With regard to Change Orders issued after the GMP is established, the Contractor shall be entitled to an increase in the Construction Management Fee to the extent, and only to the extent, that: (i) the Department has added a new programmatic element to the Project; or (ii) the Department made additions to the GMP scope which (other than punchlist or warranty work) require the Contractor’s services at the Project to extend 30 days or more beyond the Substantial Completion Date.

## **Section 8.6 Markup on Trade Work.**

The maximum markup for change order work shall be in accordance with Section 17.11.

## **Section 8.5 Direct Cost of Work**

“Direct Cost of the Work” shall mean labor, material, and other costs reasonably and necessarily incurred in the proper performance of the Work as approved by the Department and shall include, but not be limited to:

**8.5.1 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 five percent (5%) of direct labor costs may be allowed.

**8.5.2 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. 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.

**8.5.3 Contractor’s Equipment.** Payment for required equipment owned by the Construction Management 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.

**8.5.4 Materials.** Incorporated and unincorporated materials as permitted under Section 9.1.2 (b) and 9.1.2 (c).

**8.5.5** Direct Cost of the Work does not, however, include home office overhead, field supervision, general conditions, or profit of either the Subcontractor or the Design-Builder. No personnel above the level of a working foreman shall be considered a Direct Cost of the Work.

## Article 9 - COST OF THE WORK FOR CONSTRUCTION PHASE

### Section 9.1 Cost of the Work.

The term "Cost of the Work" shall mean the costs necessarily incurred by the Contractor in the proper performance of the Work and shall include only the following:

**9.1.1.** Payments made by the Contractor to Subcontractors and suppliers, other than design subconsultants, but only in accordance with the subcontracts and supply agreements;

**9.1.2.** All amounts due to the Contractor under the terms of the Department's written authorization for the Contractor to perform any portion of the Work as Self-Performed Work. If an authorization for the Contractor to engage in Self-Performed Work is not on a fixed-price basis, then, as to that Work, the following costs shall be within the Cost of the Work:

(a) **Labor.** Properly documented wages actually paid to Project foremen, construction workers, and other personnel in the direct employ of the Contractor, while engaged in approved Self-Performed Work, together with contributions, assessments, payroll taxes, or fringe benefits required by the laws or applicable collective bargaining agreements.

(b) **Incorporated Materials.** The cost, net of trade discounts, of all materials, products, supplies and equipment incorporated into the Self-Performed Work, including, without limitation, costs of transportation and handling.

(c) **Unincorporated Materials.** The cost of materials, products, supplies and equipment not actually installed or incorporated into the Self-Performed Work, but required to provide a reasonable allowance for waste or spoilage, subject to the Contractor's agreement to turn unused excess materials over to the Department at the completion of the Project or, at the Department's option, to sell the material and pay the proceeds to the Department or give the Department a credit in the amount of the proceeds against the Cost of the Work.

**9.1.3.** Royalty and license fees paid for use of a design, process or product, if its use is required by this Agreement or has been approved in advance by the Department;

**9.1.4.** Fees for obtaining all required approvals or permits associated with any abatement, demolition, utilities abandonment, and utility relocation (including utility connection fees), including any and all building and/or trade permits fees;

**9.1.5.** All performance and payment bonds and general liability insurance. The Department may, in its sole discretion, allow the Contractor to recover the costs of subcontractor default insurance at a mutually agreed upon rate in lieu of

trade level bonds, provided that such insurance be approved by the Department in advance and after being presented with a cost-benefit analysis of such use;

**9.1.6.** All fees and other costs necessarily incurred to carry out testing and inspection required by the Agreement or applicable laws, or otherwise to maintain proper quality assurance. The costs the Contractor incurs to schedule and coordinate any additional testing and inspections the Department may decide to conduct itself shall be within Cost of the Work unless the additional testing establishes that the Work tested was defective or otherwise failed to satisfy requirements set forth in the Agreement, in which case the Contractor shall pay the costs, without reimbursement;

**9.1.7.** All bonds to jurisdictional agencies (utilities, storm water management, land disturbance, and grading);

**9.1.8.** The Lump Sum General Conditions Cost; and

**9.1.9.** Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor, and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers. It is understood that the cost of repairing, correcting damaged or nonconforming Work that was Self-Performed shall not be reimbursable in any event.

## **Section 9.2 Lump Sum General Conditions.**

The Contractor's Lump Sum General Conditions Cost shall be the extent of what the Contractor is entitled to recover for the cost of General Conditions. General Conditions may include, but are not limited to:

- a. Cost of construction staff;
- b. Fringe Benefits associated with construction staff;
- c. Payroll taxes and payroll insurance associated with construction staff;
- d. Staff costs associated with obtaining permits and approvals;
- e. Out-of-house consultants, including, but not limited to, permit expeditors, safety managers, and schedulers;
- f. Job vehicles;
- g. The field office(s) for the Construction Manager and Department, including, but not limited to: (i) trailer purchase and/or rental; (ii) field office installation, relocation and removal; (iii) utility connections and charges during the Construction Phase; (iv) furniture; and (v) office supplies;
- h. Office equipment including, but not limited to: (i) computer hardware and software; (ii)

- fax machines; (iii) copying machines; (iv) voice/data system installation and use charges; and (v) job radios;
- i. Local delivery and overnight delivery costs;
  - j. Field computer network;
  - k. First aid facility;
  - l. Printing cost for drawings, bid packages, etc.;
  - m. BIM Cost (software, seats, hardware);
  - n. Parking costs for the construction staff;
  - o. Salting sidewalks and shoveling snow on sidewalks that surround the site; and
  - p. Exterior site fencing, fence wrapping and construction signage.

### **Section 9.3 Costs Not to Be Reimbursed.**

All costs not specifically listed in Section 9.1 as being within the Cost of the Work are excluded from the Cost of the Work and shall not be reimbursable. In particular, but without limitation, the Cost of the Work does not include any of the following:

- 9.3.1** Any personnel or labor costs other than those provided for in Section 9.2.1 (a);
- 9.3.2** Fees for any permits or licenses the Contractor requires to conduct its general business operations;
- 9.3.3** Capital expenses and interest on capital employed for the Work;
- 9.3.4** Direct or indirect costs of any kind, except those expressly included in Section 9.1;
- 9.3.5** Sales or use taxes, unless the Contractor establishes that applicable law required payment of such taxes;
- 9.3.6** Costs due to the errors or omissions of the Contractor or its Subcontractors or suppliers at all tiers, negligent or otherwise;
- 9.3.7** Costs due to breach of the Agreement by the Contractor or its Subcontractors or material suppliers at all tiers, including, without limitation, costs arising from defective or damaged Work or its correction, disposal of materials or equipment erroneously supplied, and repairs to property damaged by the Contractor or its Subcontractors or material suppliers at all tiers;
- 9.3.8** Any costs incurred in performing work of any kind before NTP, unless specifically authorized by a duly authorized Contracting Officer of the Department in advance and in writing;
- 9.3.9** The cost of home or regional offices, it being understood that compensation for such costs included in the Construction

Management Fee and Award Fee.

**Section 9.4 Discounts, Rebates And Refunds.**

**9.4.1** Cash discounts obtained on payments made by the Contractor shall accrue to the Department if: (i) before making such payment(s), the Contractor included them in an Application for Payment and received payment therefor from the Department; or (ii) the Department has deposited funds with the Contractor with which to make such payment(s). All other cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Department, and the Contractor shall make provisions so that such amounts can be secured.

**9.4.2** Amounts that accrue to the Department in accordance with the provisions of Section 9.4.1 shall be credited to the Department as a deduction from the Cost of the Work.

**Section 9.5 Facilitating Tax Exempt Purchases.**

The Department expects that the Project will qualify as tax-exempt under applicable laws. Upon request, the Department will provide the Contractor with the necessary information relating to the tax exemption. In the event any savings are attributable to the tax- exempt status of the Project, the Contractor shall not be entitled to share in such savings.

**Section 9.6 Accounting Records.**

The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Agreement. The Contractor's accounting and control systems shall be satisfactory to the Department. The Department, its representatives, and the Department's accountants shall be afforded access to the Contractor's records, books, correspondence, instruction, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Contractor shall preserve such documentation relating to the Project for a period of three years after final payment, or for such longer period as may be required by law.

**9.6.1** Before NTP, unless specifically authorized by a duly authorized Contracting Officer of the Department in advance and in writing;

**9.6.2** The cost of home or regional offices, it being understood that compensation for such costs included in the Construction Management Fee; and

**9.6.3** Except as provided in Section 9.1.10 of this Agreement, costs due to the errors or omissions of the Contractor or its Subcontractors or suppliers at all tiers, negligent or otherwise.



**Section 9.7 Excluded Cost Elements.**

It is the Department's intent that the Contractor provide a turnkey solution for the implementation of the Project, and the Project Budget set herein has been developed based on such framework. The Contractor shall advance the Project in a manner consistent with the Project Budget with the understanding that only the following cost elements shall be excluded from the Project Budget set forth herein:

**9.10.1** Design by A/E and its sub-consultants;

**9.10.2** 3<sup>rd</sup> Party Material Testing;

**9.10.3** Commissioning;

**9.10.4** 3<sup>rd</sup> Party Inspections;

**9.10.5** Costs of active DPR equipment; and

**9.10.6** 3<sup>rd</sup> Party Plan Review.

**Article 10 - CONSTRUCTION PHASE PAYMENTS**

**Section 10.1 Progress Payments.**

The Contractor shall be compensated in a series of progress payments and a Final Payment, for Work completed in accordance with the Agreement, and for which proper Applications for Payment have been submitted and approved. The amount of each progress payment shall be as follows:

The Cost of Work completed to date

Plus  $\frac{\text{Cost of Work for Pay Period}}{\text{Construction Management Fee not at risk}} \times 75\%$  of Construction Management Fee (i.e. Construction Management Fee not at risk)

Current approved estimated  
Cost of Work through Final Completion

Plus Any subset of the At Risk Portion of the Construction Management Fee to which the Department has determined the Contractor to be Entitled

Minus Applicable retainage

Minus Amounts previously paid by the Department

**Section 10.2 Retention.**

The Department shall withhold from each progress payment an amount equal to ten percent (10%) of the payment related to: (i) each subcontract and supply agreement; (ii) the Preconstruction Fee; (iii) Construction Management Fee; (iv) General Conditions Costs; and (v) the Cost of the Work related to each item of Self-Performed Work, until such time as fifty percent (50%) of the then currently budgeted cost associated with each such item has been invoiced, at which point the Department may cease retaining against such item; provided, however, that retention shall not be held on the costs of bonds, insurances, and those elements of the general requirements which consist of a single, insolated effort such as dumpster disposal and safety carpentry. The Department may elect to increase the retention on any trade Subcontractor up to ten percent (10%) in the event the Department determines that the situation so warrants. The Department, in its sole and absolute discretion, may elect to reduce the retainage relating to a particular trade Subcontractor, or the Cost of the Work related to a specific item of Self- Performed Work to zero upon: (a) satisfactory completion of such Work; (b) submission of all required warranties, certifications, and operating or maintenance instructions with respect to that Work; and (c) execution of appropriate waivers of lien and releases of claims. However, in no event shall the total retainage held by the Department be reduced to an amount that is less than two and one-half percent (2.5%) of the GMP.

**Section 10.3 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 AIA Documents G702 and G703 or other form acceptable to the Department, and such other supporting documentation as the Department may reasonably request. Each Application for Payment shall include detailed documentation of costs as a condition to approving progress payments, but the Contractor shall nevertheless maintain complete documentation of the costs. An executed Release of Liens and Claims in the format required by the Contracting Officer must accompany each Application for Payment.

**Section 10.4 Stored Materials.**

The Department shall not be required to pay for materials stored at the site or stored at other locations absent prior written authorization to do so, which authorization may be withheld at the Department's sole discretion. If the Department expressly agrees to pay for materials stored at the site but not yet incorporated into the Work, the Application for Payment may also include a request for payment of the cost of such materials, if the materials have been delivered to the site, and suitably stored. Such requests shall be documented by appropriate invoices and bills of sale. Payment for stored materials shall be conditioned also on the Contractor's representation that it has inspected the material and found it to be free from defect and otherwise in conformity with this Agreement, and on satisfactory evidence that the materials are insured under the builder's risk policy. Further, if the Contractor requests the Department to allow payments for storage of materials offsite, the Contractor shall be required, inter alia, to agree to execution of proper documentation to afford the Department a secured interest in the materials upon payment.

**Section 10.5 Contractor's Certification.**

Each Application for Payment shall be accompanied by the Contractor's signed certification that:

**Section 10.5.1.** all amounts paid to the Contractor on the previous Application for Payment that were attributable to subcontractor Work or to materials or equipment being supplied by any supplier have been paid over to the appropriate subcontractors and suppliers;

**Section 10.5.2.** that all amounts currently sought for subcontractor Work or supply of materials or equipment are currently due and owing to the subcontractors and material or equipment suppliers;

**Section 10.5.3.** that all Work, materials or equipment for which payment is sought is, to the best of the Contractor's knowledge, free from defect and meets all of the requirement set forth in the Agreement.

**Section 10.5.4.** that the Contractor's subcontracts include the clauses required by subparagraphs (1) through (4) of D.C. Official Code §2-221.02(d) (2017); and

**Section 10.5.5.** The Contractor shall not include in an Application for Payment amounts for Work for which the Contractor does not intend to pay.

**Section 10.6 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, in a form substantially similar to **Exhibit J** for the Contractor and all Subcontractors and material suppliers at all tiers who have supplied labor or material or both for which payment is requested, subject only to receipt of payment. If the Department so requests, the Contractor shall also submit unconditional waivers of liens for itself and all Subcontractors and material suppliers at all tiers with respect to Work or materials or equipment for which payment has been previously made, and additional forms of waiver acknowledging receipt of final payment under the Agreement, and providing final release of such liens.

**Section 10.7 Warranty of Title.**

By submitting an Application for Payment, the Contractor warrants to the Department that title to all Work for which payment is sought will pass to the Department, without liens, claims, or other encumbrances, upon the receipt of payment by the Contractor. The Department may require execution of appropriate documents to confirm passage of clear title. Passage of title shall not operate to pass the risk of loss with respect to the Work in question. Risk of loss remains with the Contractor until Substantial Completion, unless otherwise agreed by the Department, in writing.

**Section 10.8 Submission.**

On the twenty-fifth 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. All amounts formally submitted via Application for Payment and not disputed by the Department shall be due and payable on the last day of the month following submission or, if that is not a business day, on the following business day. If the Contractor and Department are unable to agree on the amounts properly due and owing, the Department shall pay in accordance with its good faith determination and the Contractor may protest and pursue a claim as provided in this Agreement and the Standard Contract Provisions (Construction Contract).

**Section 10.8.1 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 10.9 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:

- 10.9.1** the Work is defective and such defects have not been remedied; or
- 10.9.2** 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 Recovery Plan in accordance with Section 5.18; or
- 10.9.3** the Contractor's monthly schedule update reflects that the Contractor has fallen behind the Project Schedule, and the Contractor fails to include, in the same monthly report, a realistic and acceptable Recovery Plan in accordance with Section 5.18; or
- 10.9.4** the Contractor has failed to provide reports in full compliance with Section 5.5 of this Agreement; or
- 10.9.5** 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
- 10.9.6** 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
- 10.9.7** the Department has reasonable evidence that the Work will not be completed by the Substantial Completion Date, as required, that the unpaid balance of the GMP would not be adequate to cover actual or liquidated damages arising from the anticipated delay; or
- 10.9.8** the Department has reasonable evidence that the Work cannot be completed for the unpaid balance of the GMP; or
- 10.9.9** the Contractor is otherwise in substantial breach of this Agreement (including, without limitation, failures to comply with LSDBE Utilization requirements; or
- 10.9.10** the Application for Payment is incomplete, unsubstantiated and/or does not contain sufficient documentation for evaluation by the Contracting Officer.

**Section 10.10 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.

**Section 10.11 Department Not Obligated to Others.**

The Department shall have no obligation to pay or be responsible in any way for

payments to Subcontractor performing portions of the Work.

**Section 10.12 Final Payment.**

A final payment (“Final Payment”) shall be made by the Department to the Contractor when: (i) Final Completion has been achieved; (ii) all deliverables set forth in Section 5.14, and **Exhibit D** have been delivered to and are accepted by the Department; (iii) the Contractor provides the Department a complete set of product manuals (O&M), training videos, and warranties, as applicable; and (iv) a complete final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Contractor and reviewed by the Department and, to the extent the Department determines appropriate, the Department’s accountants. The Department shall make Final Payment not more than thirty (30) days after the Department verifies the amount of the final payment set forth in a complete final Application for Payment.

**10.12.1** The amount of the Final Payment shall be calculated as follows:

**10.12.1.1** Take the sum of the Cost of the Work substantiated by the Contractor’s final accounting and the Preconstruction Fee and the Construction Management Fee as adjusted to reflect whether the goals established in **Exhibit M** have been met; but not more than the GMP.

**10.12.1.2** Subtract amounts, if any, for which the Department withholds pursuant to the Agreement.

**10.12.1.3** Subtract the aggregate of previous payments made by the Department. (If the aggregate of previous payments made by the Department exceeds the amount due the Contractor, the Contractor shall promptly reimburse the difference to the Department).

**10.12.1.4** The Final Payment shall take into account any savings accruing to the Department or the Contractor.

**10.12.2** The Department will review and report in writing on the Contractor’s final accounting within 30 days after delivery of the final accounting to the Department by the Contractor. Based upon Department’s determination of the Cost of the Work, and provided the other conditions of Section 10.12.1 have been met, the Department will, within fifteen (15) days after the Department’s determination, notify the Contractor of any amount that the Department will withhold and the reasons therefor. The time periods stated in this Section 10.12.2 supersede those for typical progress payments.

**10.12.3** If the Department determines that the Cost of the Work is that claimed by the Contractor, the Contractor shall be entitled to proceed in accordance with Article 3 of the Standard Contract Provisions (Construction Contract). Pending a final resolution of the disputed amount, the Department shall pay the Contractor the amount that the Department determines to be appropriate.

## Article 11 - INSURANCE

### Section 11.1 Insurance Required by the Project

- A. GENERAL REQUIREMENTS. The Contractor at its sole expense shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall submit a Certificate of Insurance to the Contracting Officer (CO) giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO.

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

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

#### B. INSURANCE REQUIREMENTS

1. Commercial General Liability Insurance ("CGL") - The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services

Office, Inc. ("ISO") form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor and under all subcontracts, covering claims for bodily injury, including without limitation sickness, disease or death and mental anguish of any persons, broad form property damage, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$1,000,000 for each occurrence, and a \$2,000,000 general aggregate.

The Commercial General Liability shall be further endorsed to:

- a) To the fullest extent permitted by law, provide additional insured coverage using ISO form CG 2015 0413 (or its equivalent) to The Government of the District of Columbia
  - b) Coverage available to the additional insureds shall apply on a primary and non-contributing basis as respects any other insurance, deductibles, or self-insurance available to the additional insureds
  - c) A waiver of subrogation in favor of The Government of the District of Columbia
  - d) Any Annual Aggregate shall apply on a per location or per project basis (where applicable)
  - e) Defense costs shall be in addition to and not erode the limits of liability
2. Automobile Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the CO in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Contractor in connection with work under this agreement, with a minimum combined single limit of \$1,000,000 for bodily injury or death and property damage, including loss of use thereof. Such policy or policies of automobile liability insurance shall be written on an "occurrence" (as opposed to a "claims made") basis.

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

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

The Commercial Auto Liability policy shall be further endorsed to:

- a. To the fullest extent permitted by law, provide additional insured coverage to The Government of the District of Columbia



- b. Coverage available to the additional insureds shall apply on a primary and non-contributing basis as respects any other insurance, deductibles, or self-insurance available to the additional insureds
  - c. A waiver of subrogation in favor of The Government of the District of Columbia
  - d. Defense costs shall be in addition to and not erode the limits of liability
  - e. If applicable, include Form CA 99 48 03 06 Pollution Liability - Broadened Coverage for Covered Autos - Business Auto, Motor Carrier, and Truckers (or its equivalent)
3. Workers' Compensation Insurance - The Contractor shall provide evidence satisfactory to the CO of Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

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

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

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

of this Agreement and for an extended reporting period of not less than two (2) years after.

5. Professional Liability Insurance (Errors & Omissions) - The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of \$1,000,000 per claim or per occurrence for each wrongful act and \$2,000,000 annual aggregate. The Contractor warrants that any applicable retroactive date precedes the date the Contractor first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services. Limits may not be shared with other lines of coverage.
6. Commercial Umbrella or Excess Liability - The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits of \$10,000,000 per occurrence and \$10,000,000 in the annual aggregate, following the form and in excess of all liability policies. **All** liability coverages must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by The Government of the District of Columbia and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.
7. Crime Insurance (3rd Party Indemnity) - The Contractor shall provide a Crime policy including 3<sup>rd</sup> party fidelity to cover the dishonest acts of Contractors, its employees and/or volunteers which result in a loss to the District. The Government of the District of Columbia shall be included as loss payee. The policy shall provide a limit of \$15,000 per occurrence.
8. Environmental Liability/Contractors Pollution Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of environmental liability insurance covering losses caused by pollution or other hazardous conditions arising from ongoing or completed operations of the Contractor. Such insurance shall apply to bodily injury, property damage (including loss of use of damaged property or of property that has been physically injured), clean-up costs, transit and non-owned disposal sites. Coverage shall extend to defense costs and expenses incurred in the investigation, civil fines, penalties and damages or settlements. There shall be neither an exclusion nor a sublimit for mold or fungus-related claims. The minimum limits required under this paragraph shall be \$2,000,000 per occurrence and \$2,000,000 in the annual aggregate. If such coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverages under the policy precedes the Contractor's performance of any work under the Contract and that continuous completed operations coverage will be maintained for at least ten (10) years or an extended reporting period shall be purchased for no less than ten (10) years after completion.

The Contractor also must furnish to the CO Owner certificates of insurance evidencing environmental liability insurance maintained by third party transportation and disposal site operators(s) used by the Contractor for losses arising from facility(ies) accepting, storing or disposing hazardous materials or other waste as a result of the Contractor's operations. Such coverages must be maintained with limits of at least the amounts set forth above.

The Environmental Liability policy shall be further endorsed to include The Government of the District of Columbia as an Additional Insured.

9. Employment Practices Liability - The Contractor shall provide evidence satisfactory to the CO with respect to the operations performed to cover the defense of claims arising from employment related wrongful acts including but not limited to: Discrimination, Sexual Harassment, Wrongful Termination, Workplace Torts, "Bullying" in "any location" and "by any means," including the Internet, whether between employees of contractor or against third parties. Employment Practices Liability coverage must specifically state Third Party Liability coverage is included. Contractor will indemnify and defend The Government of the District of Columbia should it be named co-defendant or be subject to or party of any claim. Coverage shall also extend to Temporary Help Firms and Independent Contractors hired by Contractor. The policy shall provide limits of not less than \$1,000,000 for each wrongful act and \$2,000,000 annual aggregate for each wrongful act.
10. Installation-Floater Insurance - For projects not involving structural alterations, the contractor shall provide an installation floater policy with a limit equal to the Property values being installed as part of the project. The policy shall cover property while located at the project site, at temporary locations, or in transit; deductibles will be the sole responsibility of the contractor.
11. Riggers Liability – If and to the extent Contractor's services or scope of Work call for, require, or involve the lifting, picking, rigging and setting of others property, materials or equipment, Contractor shall procure, maintain and pay for Riggers Liability Insurance to insure against physical loss of or damage in amounts sufficient to insure the full market value and / or replacement costs of the property, materials or equipment being lifted. In addition to replacing any property, materials or equipment damaged through Contractor's work involving the lifting, picking, rigging and or setting, Contractors shall also be responsible for all consequential loss of use, and delay damages involved in replacing and / or repairing the damaged property, materials, or equipment. Failure to carry appropriate insurance and or failure to carry adequate limits shall not relieve Contractor from its indemnity and contractual obligations herein.
12. Sexual/Physical Abuse & Molestation - The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate of affirmative abuse and molestation liability coverage. Coverage should include physical abuse, such as sexual or other bodily harm and non-physical abuse, such as verbal, emotional, or mental abuse; any actual,

threatened or alleged act; errors, omission or misconduct. This insurance requirement will be considered met if the general liability insurance includes an affirmative sexual abuse and molestation endorsement for the required amounts or through a separate stand-alone sexual abuse and molestation policy with confirmation there are no exclusions for abuse or assault & battery under the General Liability. So called “silent” coverage or “shared” limits under a commercial general liability or professional liability policy will not be acceptable. Limits may not be shared with other lines of coverage. The applicable policy may need to be submitted to the ORM for compliance review.

### **Construction Projects Controlled by the District**

For construction projects controlled by the District, the District will procure the following policies with the District listed as the first named insured. Since the District will control the placement of the policies, the District should not contractually bind itself to secure coverage broader than the minimum that satisfies the interests of the Contractor.

Builders Risk – The District shall purchase and maintain, in a company authorized to do business in the jurisdiction in which the project is located, builders risk insurance, written on an “all risk”, special causes of loss or equivalent form. Builders risk coverage will include boiler and machinery / equipment breakdown, earthquake, and flood perils. Building ordinance and terrorism coverage will be included.

The deductible shall not exceed \$25,000 except for earthquake, flood, windstorm, water damage or other perils at the discretion of the District and as available in the insurance industry.

The project limit shall equal the replacement value of the structure, including coverage for property in transit and stored off premises.

At the discretion of the District, builders risk coverage will extend to soft costs and delayed completion.

Builders risk insurance shall include the interests of The Government of the District of Columbia, the Contractor, Subcontractors and Sub – subcontractors in the project.

### **C. SUBCONTRACTOR INSURANCE REQUIREMENTS**

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

either instance, the Contractor must provide proof of the subcontractor's required insurance prior to commencement of work by the subcontractor.

**D. PRIMARY AND NONCONTRIBUTORY INSURANCE**

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

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

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

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

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

**I. NOTIFICATION.** The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of cancellation, non-renewal, or material changes to the extent such cancellation or material changes results in Contractor no long complying with the above requirements. The Contractor shall provide the CO with ten (10) days' prior written notice in the event of non-payment of premium. The Contractor will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract. The Government of the District of Columbia may reasonably change the above insurance coverage requirements during the Term by giving Contractor at least 30 days' notice of the change. Contractor must comply, at your expense, and deliver to the CO evidence of compliance before the change becomes effective.

**J. CERTIFICATES OF INSURANCE.** The Contractor must send to CO, at least 10 days after execution of this Agreement, certificates of insurance evidencing the required insurance coverage and endorsements required herein. Contractor must also provide us with evidence of renewal before the expiration date of each insurance policy. Contractor

is responsible for providing us with 30 days advanced written notice if the certificate of insurance by the insurer has been canceled, reduced in coverage, or otherwise altered. Certificates of insurance must reference the corresponding contract number. Evidence of insurance shall be submitted to:

**The Government of the District of Columbia**

**And mailed to the attention of:**

Obaidullah Ranjbar  
Contracting Officer  
Department of General Services  
Contracts and Procurement Division  
3924 Minnesota Ave, NE, 5th Floor  
Washington, DC 20019  
Obaidullah.Ranjbar@dc.gov

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

- K. **DISCLOSURE OF INFORMATION.** The Contractor agrees that The Government of the District of Columbia may disclose the name and contact information of its insurers to any third party which presents a claim against The Government of the District of Columbia for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.
- L. **CARRIER RATINGS.** All Contractor's and its subcontractors' insurance required in connection with this contract shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A- VII or better (or the equivalent by any other rating agency) and licensed in the District of Columbia.
- M. **WARRANTIES.** When applicable, the Contractor should be named as an additional insured on the applicable manufacturer's/distributor's Commercial General Liability policy using Insurance Services Office, Inc. ("ISO") form CG 20 15 04 13 (or another occurrence-based form with coverage at least as broad). CO should collect, review for accuracy, and maintain all warranties for goods and services.

## **Article 12 - ECONOMIC INCLUSION REQUIREMENTS**

### **Section 12.1 Preference for Certified Business Enterprises**

Under the provisions of the “Small and Certified Business Enterprise Development and Assistance Act of 2005”, D.C. Code § 2-218.01 *et seq.*, as amended (“Act”, as used in this section), the District shall apply preferences in evaluating proposals from businesses that are certified by the Department of Small and Local Business Development (“DSLBD”) pursuant to Part D of the Act.

#### **12.1.1 Application of Preferences**

For evaluation purposes, the allowable preferences under the Act shall be applicable to prime contractors as follows:

**12.1.1.1** Any prime contractor that is a small business enterprise (“SBE”) certified by the DSLBD will receive the addition of three (3) points on a 100-point scale added to the overall score.

**12.1.1.2** Any prime contractor that is a resident-owned business (“ROB”) certified by DSLBD will receive the addition of five (5) points on a 100-point scale added to the overall score.

**12.1.1.3** Any prime contractor that is a longtime resident business (“LRB”) certified by DSLBD will receive the addition of five (5) points on a 100-point scale added to the overall score.

**12.1.1.4** Any prime contractor that is a local business enterprise (“LBE”) certified by DSLBD will receive the addition of two (2) points on a 100-point scale added to the overall score.

**12.1.1.5** Any prime contractor that is a local business enterprise with its principal offices located in an enterprise zone (“DZE”) certified by DSLBD will receive the addition of two (2) points on a 100-point scale added to the overall score.

**12.1.1.6** Any prime contractor that is a disadvantaged business enterprise (“DBE”) certified by DSLBD will receive the addition of two (2) points on a 100-point scale added to the overall score.

**12.1.1.7** Any prime contractor that is a veteran-owned business (“VOB”) certified by DSLBD will receive the addition of two (2) points on a 100-point scale added to the overall score.

**12.1.1.8** Any prime contractor that is a local manufacturing business enterprise (“LMBE”) certified by DSLBD will receive the addition of two (2) points on a 100-point scale added to the overall score.

**12.1.1.9** Any prime contractor that is an equity impact enterprise certified by DSLBD will receive the addition of five (5) points on a 100-point scale added to the overall score.

## **Section 12.2 Mandatory Subcontracting Requirements**

**Section 12.2.1** Unless the Director of the Department of Small and Local Business Development (DSLBD) has approved a waiver in writing, in accordance with D.C. Official Code § 2-218.51, for all contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted to qualified small business enterprises (SBEs).

**Section 12.2.2** If there are insufficient SBEs to completely fulfill the requirement of Section 13.2.1, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.

**Section 12.2.3** A prime contractor that is certified by DSLBD as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of Sections 13.2.1 and 13.2.2.

**Section 12.2.4** Except as provided in Sections 13.2.1 and 13.2.2, a prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

**Section 12.2.5** A prime contractor that is a certified joint venture and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A certified joint venture prime contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

**Section 12.2.6** Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.

## **Section 12.3 Subcontracting Plan**

If the Contractor is required by law to subcontract under this Agreement, then the subcontracting plan **Exhibit Q** submitted with its Proposal, may only be amended with the prior written approval of the Contracting Officer and Director of DSLBD, as previously stated herein; and, any reduction in the dollar volume of the subcontracted portion resulting from an



amendment of the Subcontracting Plan shall inure to the benefit of the District. The Subcontracting Plan shall include the following:

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

#### **Section 12.4 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 (CO), City Administrator (CA), District of Columbia Auditor and the Director of DSLBD.

#### **Section 12.5 Subcontracting Plan Compliance Reporting**

**Section 12.5.1** If the Contractor has a subcontracting plan required by law for this contract, the Contractor shall submit a quarterly report to the CO, CA, District of Columbia Auditor and the Director of DSLBD. The quarterly report shall include the following information for each subcontract identified in the subcontracting plan:

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

**Section 12.5.2** If the fully executed subcontract is not provided with the quarterly report, the prime contractor will not receive credit toward its subcontracting requirements for that subcontract.

#### **Section 12.6 Annual Meetings**

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

#### **Section 12.7 DSLBD Notices**

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

#### **Section 12.8 Enforcement and Penalties for Breach of Subcontracting Plan**

**Section 12.8.1** A contractor shall be deemed to have breached a subcontracting plan required by law, if the contractor: (i) fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information in a reasonably timely manner; (ii) submits a monitoring or compliance report or other required subcontracting information containing a materially false statement; or (iii) fails to meet its subcontracting requirements.

**Section 12.8.2** A contractor that is found to have breached its subcontracting plan for utilization of CBEs in the performance of a contract shall be subject to the imposition of penalties, including monetary fines in accordance with D.C. Official Code § 2-218.63.

**Section 12.8.3** If the CO determines the Contractor's failure to be a material breach of the contract, the CO shall have cause to terminate the contract under the default provisions in clause 5 of the SCP, Default.

**Section 12.8.4** Neither the Contractor nor a subcontractor may remove a subcontractor or tier-subcontractor if such subcontractor or tier-subcontractor is certified as an LSDBE company unless the Department approves of such removal, in writing. The Department may condition its approval upon the 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 12.9      Equal Employment Opportunity and Hiring of District Residents**

**Section 12.9.1** The Contractor shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs. In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985, the forms for completion of the Equal Employment Opportunity Information Report are incorporated herein as **Exhibit Q**. A contract award cannot be made to any contractor that has not satisfied the equal employment requirements.

**Section 12.9.2** The Contractor shall ensure that at least fifty-one percent (51%) of the Contractor's team and every subconsultant'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 the Project shall be residents of the District of Columbia. This percentage shall be applied in the aggregate, and not trade by trade. In addition, the Contractor shall use commercially reasonable best efforts to comply with the workforce percentage goals established by the recently adopted amendments to the First Source Employment Agreement Act of 1984 (D.C. Code §§ 2-219.01 *et seq.*) and any implementing regulations, including but not limited to the following requirements:

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

- (ii) At least 60% of apprentice hours by trade shall be performed by District residents;
- (iii) At least 51% of the skilled laborer hours by trade shall be performed by District residents; and
- (iv) At least 70% of common laborer hours shall be performed by District residents.

**Section 12.9.3** Thirty five percent (35%) of all apprentice hours worked on the Project shall be worked by District residents.

## **Section 12.10 Economic Inclusion Reporting Requirements**

**Section 12.10.1** Upon execution of the Agreement, the Contractor and all its member firms, if any, and each of its subcontractors shall submit to the Department a list of current employees and apprentices that will be assigned to the Agreement, the date they were hired and whether or not they live in the District of Columbia.

**Section 12.10.2** The Contractor and its constituent entities shall comply with subchapter X of Chapter II Title 2, and subchapter II of Chapter 11 of Title 1 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The Contractor and all member firms and Subcontractors shall execute a First Source Agreement **Exhibit T** with the District of Columbia Department of Employment Services (“DOES”) prior to beginning Work at the Project site.

**Section 12.10.3** The Contractor shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

**Section 12.10.4** The Contractor shall be responsible for: (i) including the provisions of Section 12.10 in all subcontracts; (ii) collecting the information required in Section 12.10 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in the reports required to be submitted by the Contractor pursuant to Section 12.10.

**Section 12.11 Compliance with the 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 this 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 Contractor shall be liable for any subcontractor non-compliance. Thirty five percent (35%) of all apprentice hours worked on the Project shall be worked by District residents.

## **Article 13 - LIQUIDATED DAMAGES AND DISINCENTIVE FEES**

### **Section 13.1 Delay in Submission of Deliverables**

The Contractor acknowledges that the Department is engaging the Contractor to provide an extensive level of preconstruction support services to minimize the potential for cost overruns, schedule delays or the need for extensive Value Engineering/re-design late in the Project and that the certain preconstruction deliverables are key to identify the value of such services. Subject to the terms set forth in Section 4.11, if the Contractor fails to provide any of the deliverables set forth in **Exhibit C**, the Contractor shall pay to the Department liquidated damages in the amount set forth in the Project Information Section of this Agreement for each such deliverable that is not timely submitted.

### **Section 13.2 Delay in Substantial Completion.**

If the Contractor fails to achieve Substantial Completion of the Project 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, agreed and liquidated delay damages in the amount set forth in the Project Information Section of this Agreement per day for each calendar day of delay for failure to meet the applicable Substantial Completion Date. The Contractor and the Department agree that the liquidated damages set forth in this Article 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. These damages shall not apply if the delay is the result of force majeure and the Contractor otherwise complies with the provisions set forth in the collective Standard Contract Provisions.

### **Section 13.3 Early Completion.**

In the event the Contractor achieves Substantial Completion of the Project prior to the Substantial Completion Date, the Contractor shall maintain the completed Project, at its own expense, until such time that the Department agrees to occupy and use the Project for its intended use.

## **Article 14 - MISCELLANEOUS PROVISIONS**

### **Section 14.1 Ownership and Use of Documents.**

The Drawings, Specifications and other documents prepared by the A/E and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor, subcontractors, sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Department and the Architect/Engineer. The referenced Drawing, Specifications and other documents shall become the property of the Department.

### **Section 14.2 Assignment.**

The Department and Contractor respectively bind themselves, their partners, members, joint venturers, constituent entities, successors, assigns and legal representative to the other party hereto and to partners, members, joint venturers, constituent entities, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Agreement. Neither party to the Agreement shall assign the Agreement or its rights and obligations under the Agreement, without written consent of the other party. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement.

### **Section 14.3 Buy American Act Provision.**

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

14.3.1 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.

**14.3.2 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.

**14.3.3 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.

**14.3.4 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 14.4        The Quick Payment Clause**

### **14.4.1 Interest Penalties to Contractors**

**14.4.1.1**        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.*, 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:

- 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;

**14.4.1.2** 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.

**14.4.1.3**

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.

**14.4.2 Payments to Subcontractors**

**14.4.2.1** 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.

**14.4.2.2** 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:

**14.4.2.3**

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

**14.4.2.4** 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.

**14.4.2.5** 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 is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

#### **14.4.3 Subcontractor Quick Payment Clause Flow-Down Requirements**

**14.4.3.1** The Contractor shall include in each subcontract under this Contract a provision requiring the subcontractor to include in its contract(s) 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).

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).

#### **14.4.4 Requirements for Change Order payments**

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

- (i) Agrees with the prime contractor and, if applicable, the subcontractor on a price for the additional work;
- (ii) Obtains a certification from the Chief Financial Officer that there are sufficient funds to compensate the prime contractor and, if applicable, the subcontractor for the additional work;
- (iii) Has made a written, binding commitment with the prime contractor to pay for the additional work within 30 days after the prime contractor submits a proper invoice for the additional work to the contracting officer; and
- (iv) Gives written notice of the funding certification from the Chief Financial Officer to the prime contractor;

**14.4.4.2** The Contractor is required to include in its subcontracts a clause that requires the prime contractor to:

- (i) Within 5 business days of receipt of the notice required under subparagraph (A)(iv) of



this paragraph, provide the subcontractor with notice of the approved amount to be paid to the subcontractor based on the portion of the additional work to be completed by the subcontractor;

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

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

**14.4.4.4 Authorized Changes by the Contracting Officer**

- a. The CO is the only person authorized to approve changes in any of the requirements of this Contract.
- b. The Contractor shall not comply with any order, directive, or request that changes or modifies the requirements of this Contract 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 Contract price to cover any cost increase incurred as a result thereof.

**Section 14.5 Contract Work Hours And Safety Standards Act Provision.** The Contractor agrees that the applicable work performed under this Agreement shall be subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333).

**Section 14.6 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 the DC Official Code §22-2514 and §§2-381.01 et seq. In the event that it is discovered that the Contractor has made a false, fraudulent or unsupported statement or claim to the Department, the Department may terminate this Agreement without liability.

**Section 14.7 Interpretation of Contract and Order of Precedence.** 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 for the Contractor, as the intent of the Agreement is, with specific identified exceptions, to require the Contractor to assume entire responsibility for construction of 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:

- (1) This Agreement and its Modifications, Change Orders, Change Directives and any Exhibits thereto;
- (2) The Department's collective Standard Contract Provisions, as amended, and any missing term in this Agreement shall be addressed in accordance with the collective Standard Contract Provisions; and
- (3) The Construction Documents as approved by the Department.

**Section 14.8 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; (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 Agreement objectives. The Contractor shall have exclusive authority to manage, direct, and control the work, and shall be responsible for all means, methods, techniques, sequences, and procedures, as well as for Project safety. In carrying out all its obligations under the Agreement, the Contractor shall act as an independent contractor and not as an employee or agent of the Department, nor as a joint venture or partner of the Department.

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

**Section 14.11 Construction.** This Agreement shall be construed fairly as to all Parties and not in favor of or against any party, regardless of which party prepared the Agreement.

**Section 14.12 Notices.** All notices or communications required or permitted under the Agreement shall be in writing and shall be hand delivered or sent by telecopier or by recognized overnight carrier to the intended recipient at the address stated below, or to such other address as the recipient may have designated in writing. Any such notice or communication shall be deemed delivered as follows: if hand delivered, on the day so delivered, if sent by telecopier, on confirmation of successful transmission, and if sent by recognized overnight carrier, the next business day.

If to the Department:

George Lewis  
Chief, Contracts and Procurement  
DGS Chief Procurement Officer  
3924 Minnesota Avenue, NE | 5th Floor  
Washington, DC 20019

If to the Contractor:

[Contractor's Authorized Representative]  
[Title]  
[Address 1]  
[Address 2]

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

**Section 14.13 Limitations.** The Contractor agrees that any statute of limitations applicable to any claim or suit by the Department arising from this Agreement or its breach shall be controlled by applicable District of Columbia law.

**Section 14.14 Survival.** All agreements warranties, and representations of the Contractor contained in the Agreement or in any certificate or document furnished pursuant to the Agreement shall survive termination or expiration of the Agreement.

**Section 14.15 No Waiver.** If the Department waives any power, right, or remedy arising from the Agreement 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 14.16 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 14.17 Headings/Captions.** The headings or captions used in this Agreement or its table of contents are for convenience only and shall not be used in interpreting the Agreement.

**Section 14.18 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 against the Department unless made in writing signed by both the Department and the Contractor, unless otherwise expressly provided to the contrary in the Agreement. Notwithstanding the foregoing, nothing herein shall be construed to limit the Department's ability to unilaterally modify the Agreement.

**Section 14.19 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 14.20 Anti-Deficiency Acts.** The obligations and responsibilities of the Department under the terms of the Agreement, or any subsequent agreement entered into pursuant to this Agreement or referenced herein (to which the Department is a party), are and shall remain subject to the provisions of: (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351, 1511-1519 (2004) (the "**Federal ADA**"), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2001); (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (2004 Supp.)(the "**D.C. ADA**" and (i) and (ii) collectively, as amended from time to time, the "**Anti- Deficiency Acts**"); and (iii) Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2001). Pursuant to the Anti-Deficiency Acts, nothing in this Agreement shall create an obligation of the Department in anticipation of an appropriation by Congress for such purpose, and the Department's legal liability for payments and other charges under this Agreement shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress. **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 AGREEMENT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS**

**Section 14.20.1** The Department agrees to exercise all lawful authority available to it to satisfy the financial obligations of the Department that may arise under this Agreement. During the term of this Agreement, the Mayor of the District of Columbia or other appropriate official shall, for each fiscal period, include in the budget application submitted to the Council of the District of Columbia the amount necessary to fund the Department's known potential financial obligations under this Agreement for such fiscal period. In the event that a request for such appropriations is excluded from the budget approved by the Council and submitted to Congress by the President for the applicable fiscal year or if no appropriation is made by Congress to pay any amounts due under this Agreement for any period after the fiscal year for which appropriations have been made, and in the event appropriated funds for such purposes are not otherwise lawfully available, the Department

will not be liable to make any payment under this Agreement upon the expiration of any then-existing appropriation, the Department shall promptly notify the Contractor and this Agreement shall immediately terminate upon the expiration of any then-existing appropriation.

**Section 14.20.2** 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 14.20.3** 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 14.21 Time.** Time, if stated in a number of days, will be calendar days and thus include Saturdays, Sundays, and holidays, unless otherwise stated herein.

**Section 14.22 Davis-Bacon Act Provision.**

The Davis-Bacon Act is applicable to this Project. As such, the Contractor and its trade subcontractors shall comply with the wage and reporting requirements imposed by that Act **Exhibit F1 and Exhibit F2**. At such time as the Contractor is preparing its GMP, the Contractor shall include the current Davis-Bacon wage rates in its GMP.

**Section 14.23 Living Wage Act.** The Living Wage Act is applicable to this Contract. As such, the Contractor and its subcontractors shall comply with the wage and reporting requirements imposed by that Act **Exhibit R**.

**Section 14.24 SPECIAL PROVISIONS RELATED TO THE COVID-19 EMERGENCY (If applicable)**

**14.24.1** The Contractor is required to comply with Mayor's Order 2021-099, COVID-19 Vaccination Certification Requirement for District Government Employees, Contractors, Interns, and Grantees, dated August 10, 2021, and all substantially similar vaccine requirements, including any modifications to this Order, unless and until they are rescinded or superseded. At the request of the District government, Contractors may be asked to provide certification of compliance with this requirement and/or documents and records in support of this certification.

**14.24.2** The Contractor is required to comply with City Administrator’s Order 2021-4, Resumption of Requirement for All Persons to Wear a Mask Inside District Government Buildings and While on Duty as a District Government Employee or Contractor, dated July 30, 2021, and all substantially similar mask requirements including any modifications to this Order, unless and until they are rescinded or superseded.

**Section 14.25 Americans With Disabilities Act of 1990 (“ADA”).** During the performance of this Contract, 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 14.26 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 14.27 Gratuities Not to Benefit Provisions.**

If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment, or otherwise) were offered or given by the 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.

**14.27.1** In the event the Agreement is terminated as provided in Article 16 of this Agreement, the Department shall be entitled:

- a. 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
- b. as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Department) which shall be not less than ten times the costs incurred by the Contractor in providing any such gratuities.

**Section 14.27.2** No member of, nor delegate to Congress, Mayor or City Council Member, nor the Department nor employee of the District or 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 CO of the Department in which he or she be personally interested as well as all agreements made by the Department in which the

Mayor or City Council Member or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department; but this provision shall not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or employee of the District is de minimis.

**Section 14.28 Ethical Standards for the Department's Employees And Former Employees.** The Department expects the Contractor to observe the highest ethical standards and to comply with all applicable laws, 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 employee or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while employed by 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 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 Contractor or vendor.

#### **Section 14.29 Non-Discrimination in Employment Provisions.**

##### **14.29.1 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 Contract:

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 paragraphs 1 and 2 of Section 15.28.1(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 14.29.3**.

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 14.29.1**, 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 14.29.1**, 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 14.29.1** 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 14.29.2 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:

1. New employees at the commencement of employment;
2. Existing employees; and
3. 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.

### **14.29.3 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 14.30 ASSIGNMENT OF CONTRACT PAYMENTS**

a. Subject to this **Section 14.30**, in accordance with Title 27 DCMR Section 3250, the Contractor may assign due or to become due as a result of the performance of this Contractor to a bank, trust company, or other financing institution funds.

b. Any assignment shall cover all unpaid amounts payable under this Agreement and shall not be made to more than one party.

c. Notwithstanding an assignment of Contract payments, the Contractor, not the assignee, is required to prepare invoices. Where such an assignment has been made, the original copy of the invoice must refer to the assignment and must show that payment of the invoice is to be made directly to the assignee as follows:

“Pursuant to the instrument of assignment dated \_\_\_\_\_, make payment of this invoice to (name and address of assignee).”

### **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 **Section 2.6** of this 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 CAMPAIGN FINANCE REFORM ACT**

Prior to the execution of this Contract, the Contractor shall complete and submit to the Department a completed Campaign Finance Reform Act Self-Certification Form, **Exhibit S**, pursuant to D.C. Official Code § 1-1161.01.

## **Article 15 - TERMINATION OR SUSPENSION**

**Section 15.1** All terminations or suspensions arising out of or under this Agreement shall be in accordance with the terms of the Standard Contract Provisions.

**Section 15.2 Failure to Agree Upon GMP.** The Department shall have the right to terminate this Agreement in the event that the Department and the Contractor are unable to agree upon a GMP for the Project and the Department shall have the right, but not the obligation, to assume any of the Contractor's trade subcontracts upon such terms and conditions as requested by the Department. The Department's decision to terminate under this Section shall be made in the Department's sole and absolute judgment and shall not be subject to review by any reviewing body, including, but not limited to, arbitrators appointed under this Agreement or any court of competent jurisdiction.

**Section 15.3 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. In particular, but without limitation, the Department may terminate the Agreement if:

1. The Contractor fails to perform the Work diligently, in accordance with the Project Schedule or to make such progress in the Work as the Department reasonably believes is necessary to complete the Project within the time required by the Agreement; or
2. The Contractor fails to perform the Work in a good and workmanlike manner or to correct defects in the Work promptly upon notice by the Department; or
4. The Department reasonably determines that the Contractor has abandoned the Work, or has failed to pay laborers, mechanics, materialmen, Subcontractors or suppliers when payment is due; or
5. The Contractor becomes insolvent, makes an assignment for the benefit of creditors, files a voluntary petition under any chapter of the Bankruptcy Code or has an involuntary petition filed against it under any chapter of the Bankruptcy Code, or the Contractor has a receiver appointed, or files for dissolution or otherwise is dissolved; or
6. The Contractor fails to pay its debts in a timely manner or becomes insolvent, the Department reasonably determines that the Contractor does not have the financial ability to carry out its obligations under the Agreement and the Contractor fails to give the Department prompt and reasonable assurances of its ability to perform.

7. In the event the Contractor fails to meet the Substantial Completion Date for more than thirty (30) days, the Contractor consents to a Termination for Default.

**Section 15.3.1** The Department shall provide the Contractor with written notice of its intent to terminate the Agreement, under this Section.

**Section 15.3.2** If the Department terminates the Agreement for default, the Department will have the right to take over the Work, to accept assignment of some or all Subcontracts or agreements with material suppliers, to take possession of the Project, to take and use all tools, equipment and supplies then being used in connection with the Work, and to finish the Project by whatever method it deems expedient, including accepting assignment of all outstanding Subcontracts and Supply Agreements.

**Section 15.4 Termination for Convenience.** The Department may terminate the Contract in whole or specified part, for its convenience, for any reason. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions. The termination for convenience that arises out of or under this Agreement shall be in accordance with the terms of the Standard Contract Provisions.

**Section 15.5 Continued Responsibility After Termination.** If the Contractor is terminated, for default, for Convenience or otherwise, the Contractor shall remain responsible for defects or non-conformities in all Work performed under the Agreement to the date of the termination.

**Article 16 - OTHER CONDITIONS AND SERVICES**

This Agreement and the rights and obligations of the Department and Contractor herein are subject to the approval of the Council for the District of Columbia.

## **Article 17 – CHANGES IN THE WORK**

**Section 17.1 Changes Authorized.** In accordance with the Standard Contract Provisions, the Department may, without invalidating the Agreement, and without notice to or approval of any surety, order changes in the Work, including additions, deletions or modifications. Any such change must be conveyed by the Department to the Contractor via written Change Directive or Change Order.

**Section 17.2 Executed Change Directive/Contract Modification/Change Order Required.** Only a written Change Directive, Contract Modification or change order, executed by the Department's contracting officer as indicted in **Exhibit H**, may make changes to the Agreement. In particular, but without limitation, a written Change Directive or Change Order executed by the Department's Contracting Officer is the only means by which changes may be made to the Substantial or Final Completion Dates, the Preconstruction Fee, the Construction Management Fee, or the Guaranteed Maximum Price.

### **Section 17.3 Department-Initiated Changes**

1. If the Department wishes to make a change in the Work or to accelerate the Work, it will execute and issue to the 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 Dates and/or the Guaranteed Maximum Price should be adjusted to take the Change Order or Change Directive into account.
  
2. Within ten (10) days of receiving a Change Directive, the Contractor shall provide the Department with a written statement of all changes in the Agreement, including, without limitation, any changes to the Substantial or Final Completion Dates or the Guaranteed Maximum Price to which it believes it is entitled as a result of the Change Directive. If additional time is sought, a schedule analysis supporting the requested extension should be included. The schedule analysis should include a written narrative explanation. If a change in the Guaranteed Maximum Price is sought (or if the Department has requested a deduct change), the statement should include a breakdown, by line item, of the estimated cost changes attributable to the proposed change. The Department may request, and the Contractor shall provide, further cost breakdowns, clarifications, documentation or back-up if the Department reasonably believes such additional information is needed to understand and evaluate the request. The additional information required may include cost and pricing data in accordance with the Department's regulations. Any requested adjustment to the Guaranteed Maximum Price shall be limited to increased Cost of the Work due to the Change Directive. The Contractor is not entitled to any markup on any kind of Change Orders except as authorized in Section 17.8, and if so authorized, any mark-up shall be in accordance with Section 17.11.

3. If the Department has not yet directed the Contractor to proceed with the change described by a Change Directive, the Department may rescind it. If the Department wishes to proceed, or has already directed the Contractor to proceed, the Contractor shall immediately proceed with the changed Work and, the Department and the Contractor shall use their good faith best efforts to reach an agreement upon the modifications to the Substantial or Final Completion Dates, and/or the Guaranteed Maximum Price that are justified by the Change Directive. If the Department and the Contractor reach agreement, the agreement shall be set forth in a Change Order and the Contractor shall also execute it, at which point it will become binding on both Parties.
4. If the Parties fail to reach an agreement within sixty (60) days after the Department receives the Contractor's detailed statement pursuant to Section 17.3.2, and such other documentation as the Department may request, the Contractor may assert a claim in accordance with the Agreement. In such a case, and subject to adjustment via the claims and disputes process, the Department shall unilaterally grant the Contractor such adjustments, if any, to the Substantial or Final Completion Dates, the Guaranteed Maximum Price, and/or the Preconstruction or Construction Management Fee as the Department has judged to be appropriate.

**Section 17.4 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 Agreement 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 Dates, or the Guaranteed Maximum Price 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 Dates, or the Guaranteed Maximum Price arising from the Change Event.

**Section 17.5 Detailed Change Request.** Within twenty (20) days after giving notice of a Change Event, the Contractor shall submit a written Change Request to the Department describing, in reasonable detail, all adjustments it seeks to the Substantial or Final Completion Dates or the Guaranteed Maximum Price as a result of the Change Event. The Change Request shall include the same information as described in Section 17.3 with respect to any Agreement changes the Contractor seeks due to the Change Event, and the amount of any requested adjustment to the Guaranteed Maximum Price shall be limited in accordance with that Section 17.3.

**Section 17.6 Changes to GMP.** Subject to the condition precedent that the Contractor have complied with the notice and documentation provisions of this Article, and subject to the limitations stated in this Agreement, the Contractor is entitled to an adjustment to



the Guaranteed Maximum Price in the following cases:

1. If the Department issues a Change Directive or Change Order that directs the Contractor to proceed with work which is beyond the scope of work included within this Agreement; or
2. The Contractor encounters Differing Site Conditions or Hazardous Materials not identified in the Preconstruction Phase.

**Section 17.7 Deductive Change Orders.** The Department reserves the right to issue deductive Change Orders (reducing the Guaranteed Maximum Price or modifying the Substantial or Final Completion Dates to an earlier date) when changes are effected, by Change Directive or otherwise, which will decrease the cost of completing the Work or the time within which it can be completed.

**Section 17.8 No Adjustments to Fee.** The Contractor understands and agrees that the Preconstruction Fee and Construction Management Fee shall not be increased or decreased as a result of any Change Orders or Change Directive. In furtherance of this understanding, the Contractor agrees that it shall not be entitled to an increase in the Preconstruction Fee or the Construction Management Fee by virtue of changes authorized by the Department unless such changes fall outside the general scope of work contemplated by this Agreement. The term general scope of work shall mean full range of services required to demolish the existing building and construct a new recreational facility to meet the Department's programmatic requirements. Without limiting the generality of the foregoing, it is understood and agreed that the Contractor shall not be entitled to any additional fees unless: (i) the Department makes additions to the scope provided for in this Agreement that cause the GMP, either individually or in the aggregate, to increase by more than ten percent (10%); or (ii) the Department makes additions to the scope provided for herein which (other than for punchlist or warranty work) require the Contractor's services for the Project to extend beyond Final Completion Date.

**Section 17.9 Executed Change Orders Final.** The Contractor agrees that any Change Order executed by the Department and Contractor constitutes its full and final adjustment for all costs, delays, disruptions, inefficiencies, accelerations, schedule impacts, or other consequences arising from the change in question, whether a Change Directive, or a Change Event, or from any claimed cumulative effect of changes made to the date of the Change Order, and that no further adjustments in compensation or time shall be sought or made with respect to the Change Directive or the Change Event giving rise to the Change Order. Although the Parties anticipate that most Change Orders will not require an adjustment to the Cost of General Conditions, if the Work described in a Change Order requires an increase or decrease in the Lump Sum General Conditions Cost (i.e. because such a Change requires additional field staff or other equipment that would be classified as General Conditions Costs), the Change Order shall contain an increase to the Lump Sum General Conditions Cost adjusting such amount. The cost of processing a Change Order shall not be considered an event that will require an increase in the Lump Sum General Conditions Cost.

**Section 17.10 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 are 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 19 herein. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Contract and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

**Section 17.11 Mark-Up on Trade Work.** The maximum mark up for Change Order work shall be as follows:

1. For Work performed by a Subcontractor with its own forces, the Subcontractor shall be entitled to a mark-up of not more than five percent (5%) (Covering home office overhead, the cost of insurance and bonds, field supervision, general conditions and profit) on the Direct Costs of the Work. For Work that the Department permits the Contractor to self-perform, the Contractor shall also be entitled to a mark-up of not more than five percent (5%) of the Direct Cost of the Work. With regard to any such Work that is self-performed by the Contractor, the markup contemplated in this Section 17.11.1 shall be the Contractor's exclusive compensation and it shall not be entitled to the markup contemplated in Section 17.11.3;
2. Intervening tier Subcontractors shall be entitled to a mark-up of two percent (2%) (Covering home office overhead, the cost of insurance and bonds, field supervision, general conditions and profit) on Work Performed by lower-tier Subcontractors;
3. To the extent permitted by Section 17.8, the Contractor shall be entitled to an increase in its Construction Management Fee at a rate of 2% on work performed by Subcontractors. Such markup shall cover the same cost elements that were included in the Construction Management Fee; In no event shall the maximum mark-up on the Direct Cost of the Work exceed fifteen percent (5%). Direct Cost of the Work shall mean labor, material and other costs reasonably and necessarily incurred in the proper performance of the Work as approved by the Department and shall include, but not be limited to: (Direct Cost of the Work does not, however, include home office overhead, field supervision, general conditions or profit of either the Subcontractor or the Contractor. No personnel above the level of a working foreman shall be considered a Direct Cost of the Work).

- **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 five percent (5%) of direct labor costs may be allowed.

- **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. 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.
  
- **Contractor's Equipment.** Payment for required equipment owned by the Construction Management 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.
  
- **Materials.** Incorporated and unincorporated materials as permitted under Sections 9.1.2 (b) and 9.1.2 (c).

## Article 18 – BONDS

**Section 18.1. Performance Bond and Payment Bond.** The Contractor shall, before commencing the Construction Phase, provide to the Department payment and performance bonds, each with a penal sum equal to the full value of the Agreement. The Contractor will be required to post an updated payment and performance bonds to reflect the GMP Amendment amount.. In addition to the delivery of the performance and payment bonds, the Contractor must deliver to the Contracting Officer a copy of the executed Agreement of indemnity under which the bonds were issued. 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. Unless otherwise directed by the Department, the Contractor shall require all Subcontractors whose Subcontract prices exceed One Hundred Thousand Dollars (\$100,000) to provide payment and performance bonds, with a penal sum equal to one hundred percent (100%) of the subcontract price. Further, the Contractor must deliver to the Contracting Officer copies of its subcontractor's Agreements of Indemnity. All bonds must be in a form acceptable to the Department, its lenders or bond trustee, and issued by a surety authorized to do business in the District of Columbia and bonding company listed on the United States Department of Treasury's Listing of Approved Sureties. All subcontractors' bonds must include a dual obligee rider, naming the Contractor and the Department as dual obligees. If the Guaranteed Maximum Price is increased pursuant to the terms of the Agreement, the Department may require that the amount of the bonds be increased in the amount of one hundred percent (100%) of the increase, and the Contractor shall promptly comply. The Contractor shall furnish a copy of its bonds to any potential beneficiary of the bonds, or permit that person or company to make a copy. If the bonds provided become unacceptable to the Department, the Contractor shall promptly provide substitute security acceptable to the Department. If the Contractor intends to exercise its rights as dual obligee under any trade Subcontractor's bond, it shall first give the Department twenty (20) days written notice, so that the Department may lodge any objection it may reasonably have to the proposed action.

## **Article 19 – CLAIMS AND DISPUTE RESOLUTION**

All claims or disputes arising out of this Agreement shall be governed by the terms of the Standard Contract Provisions.

**Article 20 – EXHIBITS**

- Exhibit A** Preliminary Design
- Exhibit B** Preliminary Schedule
- Exhibit C** Preconstruction and Construction Phase Deliverables
- Exhibit D** Close-Out Deliverables
- Exhibit E** Key Personnel
- Exhibit F1** Davis-Bacon wage rates
- Exhibit F2** 29 CFR 5.5 Davis Bacon Provision
- Exhibit G** Contractor’s Designated Representative
- Exhibit H** Department’s Designated Representatives and Contracting Officer
- Exhibit I** Standard Contract Provisions, General Provisions (Construction Contracts)
- Exhibit J** Release of Lien Waivers
- Exhibit K** GMP Amendment (To be submitted later)
- Exhibit L** FF&E Requirements (To Be Determined At GMP Amendment)
- Exhibit M** At-Risk Construction Management Fee Award Pool Determination
- Exhibit N** Subcontractor Performance Evaluation Form
- Exhibit O** EEO Policy Form
- Exhibit P** Building Information Modeling (BIM)
- Exhibit Q** Subcontracting Plan (*The SBE plan will be submitted before entering into a GMP with the Contractor.*)
- Exhibit R** 2023 Living Wage Act
- Exhibit S** Campaign Finance Reform Act Self-Certification Form
- Exhibit T** First Source Employment Agreement

**IN WITNESS WHEREOF**, the duly authorized signatories of the Parties have executed this Agreement (DCAM-24-CS-RFP-0003) as of the last date executed below.

**DEPARTMENT OF GENERAL SERVICES**  
**An agency within the executive branch of the**  
**Government of the District of Columbia.**

**[INSERT CONTRACTOR’S NAME]**

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

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

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

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

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

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

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

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