

BASIC ORDERING AGREEMENT

DGS Services Schedule Pre-qualification of General Contractors, Skilled/Unskilled Trade Subcontractors & Related Facility Maintenance, Repair & Other Specialized Service Contractors

[DCAM-21-NC-RFQuals-0002](#)

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

ARTICLE 1 NATURE OF AGREEMENT

Section 1.1 Nature of Agreement. This Agreement is issued pursuant to the Department’s Request for Qualifications for DGS Services Schedule Pre-qualification of General Contractors, Skilled/Unskilled Trade Subcontractors & Related Facility Maintenance, Repair & Other Specialized Service Contractors (Solicitation Number DCAM-21-NC-RFQuals-0002) (the “RFQuals”), and the Contractor, by virtue of this Agreement, shall be included on the Department’s list of pre-qualified contractors to be eligible to compete, as set forth in Section 1.2 of this Agreement with other pre-qualified contractors on small general construction, facility maintenance, and repair service type projects at various properties within the District’s real estate portfolio. **This Agreement does not authorize any specific work or constitute a guarantee that any work will be assigned to the Contractor. All work will be awarded and released through Request for Task Order Proposals (“RFTOP”) and individually awarded project Task Orders as set forth in Section 1.2 of this Agreement.**

Section 1.2 The term Agreement shall include this Contract, any and all Task Order Agreements, the Department of General Services Standard Contract Provisions for (Construction Contracts) terms which apply only to the construction phase of the contemplated projects – and the Department of General Services, Standard Contract Provisions for Supplies and Services Contracts), as amended, attached hereto as *Exhibit A*, all other exhibits attached hereto, and/or any document incorporated by reference.

Section 1.3 Competitive Bidding.

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

Section 1.3.2 The Department contemplates that the specific project descriptions and requirements will be provided with each Request for Task Order Proposal (“RFTOP(s)”) solicitation issued pursuant to the awarded BOAs. The Contractors shall be prepared to compete for the work as further described in a project specific RFTOP. The BOA Contract holder may be provided with an opportunity to walk the project site(s) with the Department’s representatives in order to better understand and clarify the site-specific scope. The Contractor will then be required to submit a proposal with a Task Order price offer for the proposed work, as described in the RFTOP(s). The amount of time that the Contractor will be given to submit proposals under the RFTOP(s), will depend on the specifics of each individual project. The Department will make award for each such project primarily based on price proposals and consideration of other technical factors as it deems appropriate, to include differences in scope and/or proposed design equipment, and materials. Each RFTOP(s) will detail the award criteria for each such project. The successful RFTOP Offeror will be awarded a project specific Task Order Agreement.

Section 1.3.3 Nature of Agreement. This Agreement is issued pursuant to the Department’s Request for Qualifications for DGS Services Schedule for General Contractors, Skilled/Unskilled Trade Subcontractors & Related Facility Maintenance, Repair & Other Specialized Service Contractors (Solicitation Number DCAM-21-NC-RFQUALS-0002) (the “RFQuals”), and the Contractor, by virtue of this Agreement, shall be included on the Department’s list of pre-qualified contractors to be eligible to compete, as set forth in Section 1.2 of this Agreement with other pre-qualified contractors on small general construction, facility maintenance, and repair service type projects at various properties within the District’s real estate portfolio. **This Agreement does not authorize any specific work or constitute a guarantee that any work will be assigned to the Contractor. All work will be awarded and released through individual project task orders as set forth in Section 1.2 of this Agreement.**

Section 1.3.4 The Department will select the contractor to be awarded each such project primarily based on price, but the Department reserves the right to consider non-price factors when making such decisions and will also consider differences in scope and/or proposed finishes, equipment and materials. RFTOPs will detail the award criteria for the project.

Section 1.3.5 In the event the Contractor is selected for a project, the Contractor shall enter into a Task Order Agreement. The Contractor shall not proceed with any work unless and until such Task Order Agreement is fully executed by the Department and the Contractor is directed to begin work. Before the Department executes Task Order Agreement, the contractors are required to resolve any clean hand compliance matters with relevant authorities including, but not limited, to the Office of Tax and Revenue (“OTR”) office.

Section 1.4 Task Order Agreements. Any and all work performed under any Task Order Agreement issued pursuant hereto shall be governed by the terms and conditions set forth in the BOA. It is contemplated that individual Task Orders shall, in general, contain the following information: (i) a description of the scope of work included in such Task Order Agreement; (ii) a

lump sum price and/or such other terms of compensation for the work included in the Task Order Agreement's scope of work; (iii) the Substantial Completion Date for the Task Order Agreement's scope of work and/or such other schedule requirements for Task Order Agreement; (iv) liquidated damages; (v) name and contact information for the assigned Contracting Officers Technical Representative (COTR); and (vi) any other specific requirements of the scope of work. The Task Order Agreement shall also set forth a general description and requirements of the given project (such description and requirements, the "**Project**"). The form of Task Order Agreement is attached as **Exhibit D**.

Section 1.5 Term of Agreement. This Agreement shall be effective from the date of execution of the Government, by and through its Contracting Officer (the "CO") as indicated by the Cos signature, through a date one year thereafter (such time period, the "**Term**").

Section 1.6 Option Year. The Department may elected to *unilaterally* extend the term of this Agreement for a period of four (4), one (1)-year option periods (each an "Option Period"), or successive fractions thereof, by written notice to the Contractor before the expiration of the Agreement; provided that the District will give the Contractor preliminary written notice of its intent to extend at least thirty (30) days before the Agreement expires. The preliminary notice does not commit the Department to an extension. The exercise of any Option Period is subject to the availability of funds at the time of the exercise of this option. The Contractor may waive the thirty (30) day preliminary notice requirement by providing a written waiver to the Contracting Officer prior to expiration of the Agreement.

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

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

Section 1.9 Non-guaranteed Not-to-Exceed Maximum Value of Agreement. All amounts must be authorized by Task Order Agreement. In addition, this Agreement has an aggregate, non-guaranteed not-to-exceed amount of Five Million Dollars (**\$5,000,000**) (the "NTE Amount"). It is understood that the Contractor is not authorized to proceed with any work based solely on this Agreement. Any and all work performed under this Agreement shall be authorized by a written Task Order Agreement. In no event shall the Contractor be entitled to recover in the aggregate, pursuant to this Agreement and any and all Task Order Agreements issued pursuant hereto, more than the NTE Amount, unless and until the Department has authorized the Contractor to exceed the NTE Amount in advance and in writing through a duly executed Modification to this Agreement. In addition, each Option Year shall have the same value as the base period; thus, for each Option Year exercised by the Department, the minimum value of services will be Fifty Dollars (\$50) and a non-guaranteed, aggregate not-to- exceed amount of Five Million Dollars (\$5,000,000).

Section 1.10 No Ordering Limit. There is no limit on the number of orders that may be issued. The Department may issue orders requiring performance at multiple locations. The Department reserves the right, at any time (including after an award hereunder), to either adjust or cancel any order(s).

Section 1.11 Task Order Survivability. Any and all work assigned to the Contractor pursuant to a Task Order Agreement issued pursuant to this Agreement and not completed within that Agreement term, shall be completed by the Contractor within the time specified in the Task Order Agreement(s). This Agreement shall govern the Contractor's and Department's rights and obligations with respect to any and all order(s) to the same extent as if the order(s) were completed during the Agreements' effective period.

ARTICLE 2 GENERAL PROVISIONS

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

Section 2.2 General Scope of Project. The Department anticipates that the projects assigned through Task Orders pursuant this Agreement will be small construction projects and may include building repairs, upgrades, and tenant-fit out improvements including, but not limited to, patching and plumbing, carpentry, masonry, window replacement, fire alarm repairs, electrical and other miscellaneous repairs as may be necessary. The Department reserves the right at any time and without notice to expand and or limit the service area types. All such work issued by Task Order Agreement shall be performed on an as directed/as needed basis.

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

Section 2.4 Contracting Officers Technical Representative. (each, a "COTR"). The Department shall assign a COTR to oversee the Contractor's work under any Task Order Agreement. The name and contact information for the assigned COTR(s) will be specified in the applicable Task Order Agreement. The Contractor shall take direction from, and coordinate its work with, the assigned COTR(s). The Contractor will be required to develop work plans that are coordinated with, and acceptable to, the COTR(s) assigned to each project. *The Contractor acknowledges, however, that the Contracting Officers Technical Representative shall not be authorized to modify any of the rights or obligations of the Department or the Contractor pursuant to the Agreement, or to issue Task Order Agreements, Modifications or Change Directives. The Contractor hereby acknowledges and agrees that only a duly authorized*

Contracting Officer of the Department shall have the authority to issue Task Order Agreements, Modifications or Change Directives on behalf of the Department.

Section 2.5 Administrative Matters

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

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

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

Section 2.7 Coordination with DGS

Section 2.7.1 Working Hours. The Contractor is required to coordinate with the assigned COTR for each individual project. The work may be performed during normal business hours; however, the Contractor may be required to work after hours or on weekend and holidays so as to not adversely impact the work of the District of Columbia employees/and or Contractors. The Contractor will base its bid on normal working hours; off-peak rates will be managed on a case by case basis during price negotiations for projects requiring work after normal business hours. The Contractor will be required to develop work plans that are coordinated with, and acceptable to, the COTR and/or alternative Representative assigned to the Task Order Agreement. If work is to be performed in an occupied facility, the Contractor will be required to submit an initial coordination plan ("**Coordination Plan**") with its Task Order proposal for the project describing how the Contractor will work with the Department and the facility occupants to ensure that the project proceeds smoothly in order to minimize impact on facility operations. Such Coordination Plan would be evaluated as part of the bidding process described in **Section 1.3** above.

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

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

ARTICLE 3 PRECONSTRUCTION DELIVERABLES

Section 3.1 Schedule. Within seven (7) days of the issuance of a Notice to Proceed

("NTP") for any Task Order Agreement awarded by the Department, the Contractor may be required to submit to the Department for its approval a schedule for the project. Such schedule shall include a schedule for submittals and key milestones that are reasonably acceptable to the COTR. The Contractor shall not begin any activities until the COTR has approved a schedule for the Task Order Agreement. Unless otherwise authorized by the Task Order Agreement, prior to mobilizing to the Project site and commencing work, the Contractor shall complete those activities set forth in Sections 3.1, 3.2, 3.3, 3.4, 3.5, 5.13, 5.14 and 5.15.

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

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

Section 3.4 Design Reviews/Submittals [if applicable]. On or before the dates specified in the approved detailed schedule (see Section 3.1), the Contractor shall submit the necessary design information (i.e. permit drawings, shop drawings, submittals, sketches, etc.) to the COTR for review and approval. Unless a different timeframe is established in the approved detailed schedule, the COTR shall have five (5) business days to review such documents. In the event the COTR finds such documents to be unacceptable, the Contractor shall be required to revise and resubmit such documents. The Contractor shall not commence construction activities unless and until such documents have been approved by the COTR. Any delays that result from design resubmissions shall be considered Non-Excusable. In addition, the Contractor shall coordinate with the Program Manager and the Department's architect/engineer (if applicable) with respect to requests for information (RFIs), architect's supplemental instructions and other construction administration, as well as the District of Columbia Historic Preservation Review Board and Commission of Fine Arts, as required.

Section 3.5. Permits. Unless otherwise specified in the Task Order Agreement, it is

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

ARTICLE 4 CONTRACT SUM

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

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

Section 4.3 Risks Assumed by Contractor. By submitting a bid for any project, the Contractor shall be deemed to have thoroughly examined the terms of the RFTOP, any Drawings (where applicable) and Specifications that may be included with the RFTOP, and shall constitute its acknowledgement that it has been provided with an opportunity to visit the Project site and that such Contractor has had the opportunity to become familiar with local conditions under which the work is to be performed. Further, in submitting any such bid, the Contractor shall be deemed to represent that it has satisfied itself that it can undertake the work for the stated cost. Among other things, by submitting a bid, the Contractor assumes the following risks: (1) the nature of the land and subsoil unless such conditions constitute a Differing Site Condition under Article 4.A of the Standard Contract Provisions for Construction Contracts; (2) the form and nature of the site and surrounding areas; (3) details and levels of existing pipe lines, conduits, sewers, drains, cables or other existing services; (4) the quantities, nature and availability of the materials, tools, equipment and labor necessary for the completion of the work; (5) the means of access to the site and any accommodation that may be required; (6) uncertainties of weather and physical conditions at the site; and in general to have itself obtained all necessary information as to risk contingencies, climatic, hydrological and natural conditions and other circumstances which

may influence or affect his performance of the work.

Section 4.4 Allowances. To the extent that the Contract Sum related to a Task Order Agreement includes one or more allowances, such allowances shall be reflected on the Schedule of Values attached to such Task Order Agreement. The Contract Sum associated with that Task Order Agreement shall be adjusted (either upward or downward) by change order to reflect the actual cost of the work covered by such allowance.

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

ARTICLE 5 CONSTRUCTION PHASE

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

Section 5.2 Mandatory Subcontract Provisions. To the extent the Contractor intends to subcontract a portion of the work, any subcontract in excess of \$250,000.00 shall include the following provisions:

- (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;
- (2) that the Subcontractor or supplier is not in privity with the Department and shall not seek compensation directly from the Department on any third-party beneficiary, quantum meruit, or unjust enrichment claim, or otherwise, except as may be permitted by any applicable mechanic's lien law;
- (3) that the Department is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit;
- (4) that the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Contractor is terminated for default;

- (5) that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Contractor to suspend or stop work;
- (6) that the Subcontractor or supplier shall maintain records of all Work 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 and requiring the Subcontractor or supplier to make those records available for review or audit by the Department during that time;
- (7) that the Subcontractor shall obtain and maintain, throughout the Project, workers' compensation insurance in accordance with the laws of the District of Columbia (This provision is not applicable to supply agreements.);
- (8) that, if the Department terminates the Agreement for convenience, the Contractor may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) days' 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 the Termination for Convenience provisions of this Agreement;
- (9) that the Department shall have the right to enter into a contract with the Subcontractor or supplier for the same price as its subcontract or supply agreement price less amounts already paid, if the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;
- (10) that the Subcontractor or supplier shall not be entitled to payment for defective or non-conforming work, materials, or equipment, and shall be obligated promptly to repair or replace non-conforming work, materials, or equipment at its own cost;

Section 5.3 Certified Subcontractors. The Contractor shall not substitute or replace any Subcontractor or supplier certified by the District of Columbia Department of Small and Local Business Development without the Department's prior written consent.

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

assumes the responsibility and costs for the work and the cost of correcting work previously installed. Once work is started, Contractor assumes the responsibility and costs for the work and the cost of correcting work previously installed.

Section 5.5 Warranty of the Construction Work. The Contractor warrants to the Department that materials and equipment furnished under Task Order Agreement will be of good quality and new and previously unused unless otherwise expressly permitted in writing, and shall be free of manufacturing or other defects and that for the one (1) year period following the Substantial Completion Date, the work will be free from defects not inherent in the quality required or permitted, and that the work will conform to the Scope of Work and/or any approved design documents. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. When applicable, and as stipulated by a project specific RTFOP and awarded Task Order Agreement, the Contractor and a representative of the Department shall walk the project together eleven (11) months after the Substantial Completion Date to identify any necessary warranty work. In the event the Contractor fails to schedule such a walk, the warranty period shall be extended until such time as the Contractor schedules such a walk.

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

Section 5.7 Unsafe Materials and Hazardous Materials

Section 5.7.1 The Contractor shall not bring, spill or release onto the site asbestos, 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 and or discovery of such Hazardous Materials in the design documents. If the Contractor believes that anything in the Task Order Agreement would require that it use or bring onto the site asbestos, PCBs, or

any Hazardous Material that is not customarily used in a facility of the type and similar to the Project, it shall immediately inform the Department and seek direction before proceeding.

Section 5.7.2 If Hazardous Materials are discovered on the site, the Contractor shall immediately inform the Program Manager and the Department of such discovery. The Contractor shall be entitled to submit a request for modification in accordance with the Standard Contract Provisions for any Hazardous Materials abatement and disposal work. The Contractor shall comply with all laws, including, without limitation, the requirements of the 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. In addition, the Contractor shall ensure that any subcontractors involved in the abatement of hazardous materials maintain a contractor's pollution legal liability insurance policy of at least Two Million Dollars (\$2,000,000) for the duration of the project and a period of three (3) years after Substantial Completion of the Project, and that any disposal site to which hazardous materials are taken carries environmental impairment liability insurance for the duration of the Project and a period of three (3) years after Substantial Completion of the Project.*

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

Section 5.8 Progress Meetings. The project specific RFTOPs and awarded Task Order Agreements may require the Contractor to schedule and conduct at a minimum bi-weekly progress meeting at which the Department, the COTR and the Contractor and appropriate subcontractors can discuss the status of the work. The Contractor shall prepare and promptly distribute meeting minutes.

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

Section 5.10 Key Personnel.

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

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

Section 5.11 Work by Separate Contractors. The Department reserves the right to perform construction or operations related to the Project with Department's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site.

Section 5.12 Site Safety and Clean-Up.

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

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

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

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

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

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

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

Section 5.15 RESERVED

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

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

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

patching, or otherwise altering such construction, or by excavation.

Section 5.19 Correction of Work.

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

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

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

Section 5.20 Manufacturers' Warranties.

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

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

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

Section 5.22 Schedule Update. The Contractor shall submit bi-weekly schedule updates which shall reflect actual conditions of Project progress as of the date of the update. The update shall reflect the actual progress of construction, identify developing delays, regardless of their cause, and reflect the Contractor's best projection of the actual date by which Substantial Completion and Final Completion of the Project will be achieved. Via a narrative statement (not merely a critical path method schedule), the Contractor shall identify the causes of any potential delay and state what, in the Contractor's judgment, must be done to avoid or reduce that delay. The Contractor shall point out, in its narrative, changes that have occurred since the last update, including those related to major changes in the scope of work, activities modified since the last update, revised projections of durations, progress and completion, revisions to the schedule logic or assumptions, and other relevant changes. Any significant variance from the previous schedule or update shall also be identified in a narrative, together with the reasons for the variance and its impact on Project completion. All schedule updates shall be in Primavera 6 format. The Department may make reasonable requests during the Project for changes to the format or for further explanation of information provided. Submission of updates showing that Substantial Completion or Final Completion of the Project will be achieved later than the applicable scheduled completion date shall not constitute requests for extension of time and shall not operate to change the scheduled completion date. The Department's receipt of, and lack of objection to, any schedule update showing Substantial Completion or Final Completion later than the dates agreed upon in the Project Schedule shall not be regarded as the Department's agreement that the Contractor may have an extension of time, or as a waiver of any of the Department's rights, but merely as the Contractor's representation that, as a matter of fact, Substantial Completion or Final Completion of the Project may not be completed by the agreed upon date in the Project Schedule. Changes to the scheduled completion dates may be made only in the circumstances and only by the methods set forth in the Task Order Agreement.

Section 5.23 Acceleration. Subject to the terms of this Section, the Department shall have the right to direct the Contractor to accelerate the work if, in the reasonable judgment of Department, the Contractor fails to: (i) supply a sufficiency of workers or to deliver the materials or equipment with such promptness as to prevent the delay in the progress of the work; or (ii) the progress of the work materially falls behind the projections contained in the then currently approved Project Schedule. In the event that the Department or its COTR determine that either of the events specified in the preceding sentence have occurred, the Department shall provide the Contractor with written notice of such event and the Contractor shall be required to provide the Department with a corrective action plan that is reasonably designed to address the concerns

raised in such notice within three (3) days after receipt of such notice. If the Department and the Contractor are unable to agree on the terms of such corrective action plan within five (5) calendar days after the issuance of the notice (i.e. with forty eight (48) hours after the receipt of the proposed corrective action plan), the Department shall have the right to direct such acceleration as the Department, in its reasonable judgment, deems necessary. Provided the notice provisions of this Section are complied with, the cost of any acceleration directed under this Section shall not justify an adjustment to the Task Order Agreement Price or the Substantial Completion Date. The Contractor hereby acknowledges that this provision is a material inducement upon which the Department has relied in entering into the Contract; and represents and warrants that it has included sufficient funding in its Task Order Agreement Price in order to comply with the requirements of this Section.

ARTICLE 6

SUBSTANTIAL AND FINAL COMPLETION/CLAIMS FOR ADDITIONAL TIME

Section 6.1 Time is of the essence of this Agreement.

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

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

and shall not entitle the Contractor to an extension of time:

- (1) Delays due to job site labor disputes, work stoppages, or suspensions of work;
- (2) Delays due to adverse weather, unless the Contractor establishes that the adverse weather was of a nature and duration in excess of averages established by data from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for the Project locale for the ten (10) years preceding the effective date of the Agreement;
- (3) Delays due to the failure of the Contractor or Subcontractors or material suppliers at any tier to perform in timely or proper fashion, without regard to concepts of negligence or fault;
- (4) Delays due to Site conditions whether known or unknown as of the effective date of the Agreement, foreseeable or unforeseeable at that time, naturally occurring or man-made; provided, however, that delays due to Differing Site Conditions or hazardous materials remediation shall be deemed an Excusable Delay;
- (5) Delays in completing the preconstruction activities, unless the result of a delay by the Department or the COTR beyond the timeframes set forth herein or in the Task Order Agreement, or an event of force majeure; or
- (6) Delays due to design submissions as described in Section 3.4.

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

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

In addition to the 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 of a duration of not less than three (3) days; (iv) is on Project's critical path; and (iv) is in addition to any time contingency periods set forth in the critical path.

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

ARTICLE 7 PAYMENT PROVISIONS

Section 7.1 Compensation. The Contractor shall be paid its compensation in a series of progress payments and a final payment. Progress payments shall be based on a Schedule of Values that is agreed upon by the Parties as well as the COTR and/or the Program Manager's good faith estimate of the level of completion for each component of the Schedule of Values.

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

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

Section 7.4 Documents Required with Application for Payment. Each Application for Payment shall be accompanied by the Contractor's job cost ledgers in a form satisfactory to the Department, the Subcontractors' and Suppliers' Applications for Payment on AIA Documents G702 and G703 or other form acceptable to the Department, and such other supporting documentation as the Department may reasonably request.

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

Section 7.6 Lien Waivers. Each Application for Payment shall be accompanied by written waivers of the right to file a mechanic's lien and all other claims.

Section 7.7 Submission. On the twenty-fifth (25th) day of each month the Contractor shall submit to the Department (with a copy to the COTR) 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.

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

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

5. the Contractor is otherwise in substantial breach of this Agreement.

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

ARTICLE 8 INDEMNIFICATION

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

ARTICLE 9 CHANGES CLAUSE

Section 9.1 Changes Authorized. The Department may, without invalidating this Agreement or any Task Order Agreement issued pursuant to this Agreement, and without notice to or approval of any surety, order changes in the Work released through any Task Order Agreement, including additions, deletions or modifications. Any such change must be conveyed by the Department to the Contractor via written Change Directive or Change Order.

Section 9.2 Executed Change Directive/Change Order Required. Only a written Change Directive or Change Order, executed by the Department, may make changes to the Agreement. In particular, but without limitation, a written Change Directive or Change Order executed by the Department is the only means by which changes may be made to the Substantial or Final Completion Date, or the Contract Sum.

Section 9.3 Department-Initiated Changes. If the Department wishes to make a change in the Work or to accelerate the Work, it will execute and issue to the Contractor a written Change Directive, either directing the Contractor to proceed at once with the changed Work or directing it to not to proceed, but to inform the Department, in writing, of the amount, if any, by which the Contractor believes that Substantial or Final Completion Date and/or the Contract Sum should be adjusted to take the Change Order or Change Directive into account.

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

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

Section 9.6 Reserved

Section 9.7 Failure to Agree. If the Contractor claims entitlement to a change in the Agreement, and the Department does not agree that any action or event has occurred to justify any change in time or compensation, or if the parties fail to agree upon the appropriate amount of the adjustment in time or compensation, the Department will unilaterally make such changes, if any, to the Agreement, as it determines to be appropriate pursuant to the Agreement. The Contractor shall proceed with the Work and the Department's directives, without interruption or delay, and shall make a claim as provided in Article 13, if needed. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Agreement and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

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

ARTICLE 10 LIQUIDATED DAMAGES

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

ARTICLE 11 INSURANCE AND BONDS

Section 11.1 Insurance Requirements shall be obtained from the office of risk management (“ORM”) and incorporated in within each RFTOP.

Section 11.12 Performance Bond and Payment Bond. If ad were determined applicable, will be incorporated, and obtained within each RFTOP.

Section 11.12.1 Trade Subcontractor Bonds (if applicable)

All trade subcontractors shall provide a payment and performance bond having a penal value equal to One Hundred Percent (100%) of the cost of the trade subcontract for any subcontract for a valued determined withing the Project specific RFTOP. All such bonds shall be written on a dual-oblige basis.

Section 11.12.2 Contractor’s Payment and Performance Bond (if applicable)

For a Task Order Agreement valued determined by a Project specific RFTOP, as applicable, the Contractor shall, at the time the Task Order Agreement, as applicable, is executed, provide to the Department a payment bond and performance bond, each with a penal sum equal to the Contract Sum of the Task Order Agreement, as applicable. Such bond shall remain in full force and effect until Final Completion is achieved and the Department shall be able to draw upon such bond regardless of the amount paid by the Department to the Contractor, even if such amount exceeds the penal value of such bond.

ARTICLE 12
ECONOMIC INCLUSION AND COMPLIANCE

Section 12.1 LSDBE Utilization. The Department requires that District of Columbia residents and Local, Small and Disadvantaged Business Enterprises (“LSDBEs”) participate in this Project to the greatest extent possible. The Contractor shall comply with the terms of the mandatory subcontracting requirements as follows:

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 50% of the dollar volume of the contract shall be subcontracted to qualified small business enterprises (SBEs).
2. If there are insufficient SBEs to completely fulfill the requirement of subsection 12.1.1, then the subcontracting may be satisfied by subcontracting 50% 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.
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 subsections 12.1.1 and 12.1.2 above.
4. Except as otherwise provided in D.C. Official Code § 2-218.46, a prime contractor that is a CBE and has been granted a bid 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, 50% of the subcontracting effort shall be with CBEs. A CBE 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.
5. Each CBE utilized to meet these subcontracting requirements shall perform at least 50% of its contracting effort with its own organization and resources.
6. A prime contractor that is a CBE and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the on-site work with its own organization and resources if the contract is \$1 million or less.
7. A list of Certified Business Enterprises can be found on the District of Columbia, Department of Small and Local Business Development website at <http://dslbd.dc.gov/DC/DSLBD>, click on “Doing Business in the District”, click on “Find CBE Certified Contractors.”

Section 12.2 Subcontracting Plan

Section 12.2.1 If the prime Contractor is required by law to subcontract under the Task Order Agreement, it must subcontract at least 50% of the dollar volume of this contract in accordance with D.C. Official Code § 2-218.91. The plan shall be submitted as part of the bid and may only be amended with the prior written approval of the CO and Director of Department of Small and Local Business Development. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the plan shall inure to the benefit of the District and the Department. Each subcontracting plan shall include the following:

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

Section 12.2.2 Copies of Subcontracts

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

Section 12.2.3 Subcontracting Plan Compliance Reporting

If the Contractor has a subcontracting plan required by law for the Task Order Agreement, the Contractor shall submit a quarterly report to the Contracting Officer (CO), City Administrator (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 shall 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 12.2.4 If the fully executed subcontract is not provided with the quarterly report, the Prime Contractor shall not receive credit toward its subcontracting requirements for that subcontract.

Section 12.2.5 Annual Meetings

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

Section 12.2.6 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 12.2.7 Enforcement and Penalties for Breach of Subcontracting Plan.

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

12.2.7.2 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.

12.2.7.3 If the CO determines the Prime 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 the Standard Contract Provisions, Neither the Prime Contractor nor its subcontractor may remove a subcontractor or tier-subcontractor if such subcontractor or tier-subcontractor is certified as an LSDBE company unless the Department approves of such removal, in writing. The Department may condition its approval upon the Prime Contractor developing a plan that is, in the Department’s sole and absolute judgment, adequate to maintain the level of LSDBE participation on the Project.

Section 12.3 First Source Agreement.

Section 12.3.1 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 12.3.2 The Contractor shall comply with subchapter III of Chapter II of Title 1, and subchapter II of Chapter II of Title 1 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The Contractor and all member firms, subcontractors, tier subcontractors, subconsultants, and suppliers with contracts in the amount of (\$100,000) or more shall be required to comply with the following: (i) enter into a First Source Employment Agreement with the D.C. Department of Employment Services (“DOES”) upon execution of the contract; (ii) submit an executed First Source Agreement to DOES prior to beginning work on the Project; (iii) make best efforts to hire at least (51%) District residents for all new jobs created by the Project; (iv) list all employment vacancies with DOES; (v) submit monthly compliance reports to DOES by the 10th of each month; (vi) at least (51%) apprentices and trainees employed must be residents of the District registered in program approved by the D.C. Apprenticeship Council; and (vii) trade contractors and subcontractors with contracts in the amount of (\$500,000) or more must register an apprenticeship program with the D.C. Apprenticeship Council.

The Contractor shall comply with First Source Employment Agreement Act of 1984 (D.C. Code §§ 2-219.01 *et seq.*), as amended, and subchapter X of Chapter II of Title 2, and all successor acts thereto, including by not limited to the *Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011*, and the rules and regulations promulgated thereunder, including, but not limited to the following requirements:

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

Section 12.3.3 The Contractor shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

Section 12.3.4 The Contractor shall be responsible for: (i) including the provisions of this Section 12.2 in all subcontracts; (ii) collecting the information required in this Section 12.2 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in any reports required to be submitted by the Contractor pursuant to this Section 12.2.

Section 12.4 Compliance with the Apprenticeship Act. The District of Columbia Apprenticeship Act of 1946, D.C. Official Code §§ 32-1401 *et seq.* (“Act”), as amended, may apply. All contractors must ensure that subcontractors selected to perform work under Task Order Agreements on a craft-by-craft basis shall be required to comply with this Act. All terms and conditions of the Act, D.C. Apprenticeship Council Rules and Regulations, as well as any federal requirements, shall be implemented. The contractors shall be liable for any subcontractor non-compliance.

Section 12.5 Equal Employment Opportunity and Hiring of District Residents
The Contractor shall comply with applicable laws, regulations and special requirements of the Contract project 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 C**. A contract award cannot be made to any contractor that has not satisfied the equal employment requirements.

ARTICLE 13 CLAIMS & DISPUTE RESOLUTION

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

ARTICLE 14 MISCELLANEOUS PROVISIONS

Section 14.1 Extent of Contract. The Agreement, which includes this Contract and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Department and Contractor and supersedes all prior negotiations representations or agreements, either written or oral. The Agreement may be amended only by written instrument signed by both the Department and Contractor. All of the documents comprising the Agreement should be read as complementary, so that what is called for by one is called for by all. Ambiguities shall be construed in favor of a broader scope of work, as the intent of the Agreement is, with specific identified exceptions, to require the Contractor to assume entire responsibility for the Project. If there is any inconsistency among the documents comprising the Agreement, the order of precedence among them is as follows, with the first listed document having the highest priority:

the Agreement and its Modifications; Change Orders and Exhibits (any Change Order issued and executed by the Department shall supersede those portions of earlier dated contract documents to which it pertains); Task Order Agreements and Exhibits; Standard Contract Provisions (any missing term in the Agreement, however, shall be addressed in accordance with the Standard Contract Provisions); Contractor's Offer/Award Form; and Sections A & B of the RFQ.

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

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

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

14.4.1 In accordance with the Buy American Act (41 U.S.C. § 10a-10d), and Executive Order 10582, December 17, 1954 (3 CFR, 1954-58 Comp., p. 230), as amended by Executive Order 11051, September 27, 1962 (3 CFR, 1059—63 Comp., p. 635), the Design-Builder 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.

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

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

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

Section 14.5 Davis-Bacon Act Provision. The Contractor agrees that the construction work performed under this Contract shall be subject to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-7), as applicable. The wage rates applicable to a given Task Order Agreement shall be attached thereto. The Contractor further agrees that it and all of its subcontractors shall comply with the regulations implementing the Davis-Bacon Act and such regulations are hereby incorporated by reference.

Section 14.6 Service Contract Act. The Contractor agrees that the construction work performed under this Contract shall be subject to the Service Contract Act, as applicable. The wage rates applicable to a given Task Order Agreement shall be attached thereto. The Contractor

further agrees that it and all of its subcontractors shall comply with the regulations implementing the Davis-Bacon Act and such regulations are hereby incorporated by reference.

Section 14.7 False Claims Act. The Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in District of Columbia Code § 2-381.02.

Section 14.8 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 14.9 Limitations. The Contractor agrees that any statute of limitations applicable to any claim or suit by the Department arising from this Contract or its breach shall not begin to run, or shall be deemed to be tolled, until Final Completion or, with respect to latent defects or nonconformities, such later time as the Department knew or should have known of the defect or nonconformity.

Section 14.10 Binding Effect; Assignment. The Agreement shall inure to the benefit of, and be binding upon and enforceable by, the parties and their respective successors and permitted assigns. The Contractor shall not assign its rights under the Agreement, including the right to all or a portion of its compensation, without the Department's prior written consent. Any delegation or assignment made contrary to the provisions of this Paragraph shall be null and void.

Section 14.11 Survival. All warranties, and representations of the Contractor contained in the Contract or in any certificate or document furnished pursuant to the Agreement shall survive termination or expiration of the Agreement.

Section 14.12 No Waiver. If the Department waives any power, right, or remedy arising from the Contract or any applicable law, the waiver shall not be deemed to be a waiver of the power, right, or remedy on the later recurrence of any similar events. No act, delay, or course of conduct by the Department shall be deemed to constitute the Department's waiver, which may be effected only by an express written waiver signed by the Department.

Section 14.13 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 14.14 Entire Agreement; Modification. The Agreement supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either

written or oral. No modifications to the Agreement shall be effective unless made in writing signed by both the Department and the Contractor, unless otherwise expressly provided to the contrary in the Contract.

Section 14.15 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 14.16 Anti-Deficiency Act. The Department's obligations and responsibilities under the terms of the Contract and the Contract Documents are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) the D.C. Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act. Neither the Contract nor any of the Contract Documents shall constitute an indebtedness of the 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 Department has levied or pledged any form of taxation. **IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE CONTRACT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.**

Section 14.17 Termination for Default. The Department may terminate the Agreement for default if the Contractor fails to perform any of its duties or obligations under the Agreement. The Department must provide the Contractor with written notice of its intent to terminate the Agreement under this provision seven (7) days before actually putting the termination into effect. If the Contractor has begun its curative action and has made progress satisfactory to the Department within the seven days, the Department may so notify the Contractor and the termination will not take effect. Otherwise, the termination shall take effect without further notice or opportunity to cure.

Section 14.18 Termination for Convenience The Department may, upon seven (7) days written notice to the Contractor, terminate the Agreement in whole or specified part, for its convenience, whether the Contractor is in breach of Contract or not. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions. The Contractor shall be entitled to receive only the following with respect to the terminated portion of the Project: (1) Cost of Work performed up to the date of termination; (2)

reasonable costs of terminating outstanding subcontracts and supply agreements and other similar wind-up costs in a reasonable amount; (3) a fair and reasonable portion of the overhead and profit attributable to the Work performed on the terminated portion of the Project, up to the time of termination. In the event of a termination for convenience, the Contractor shall not be entitled to profit on unperformed elements of the Work.

Section 14.19 Anti-Competitive Practices and Anti-Kickback Provisions.

Section 14.19.1 The Contractor recognizes the need for markets to operate competitively and shall observe and shall comply with all applicable law, rules, and regulations prohibiting anti-competitive practices. The Contractor shall not engage, directly or indirectly, in collusion or other anti-competitive practices that reduces or eliminates competition or restrains trade. The

Department shall report to the appropriate authority any activity that evidences a violation of the antitrust laws and take such other further action to which it is entitled or obligated under the law.

Section 14.19.2 The Contractor shall observe and comply with all applicable law, rules, and regulations prohibiting kickbacks and, without limiting the foregoing, the Contractor shall not (i) provide or attempt to provide or offer to provide any kickback; (ii) solicit, accept, or attempt to accept any kickback; or (iii) include, directly or indirectly, the amount of any kickback in the contract price charged by Contractor or a Subcontractor of the Contractor to the Department. The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in this subparagraph in its own operations and direct business relationships. The Department may take any recourse available to it under the law for violations of this anti-kickback provision.

Section 14.19.3 The Contractor represents and warrants that it did not, directly or indirectly, engage in any collusive or other anti-competitive behavior in connection with the bid, negotiation or award of the Agreement.

Section 14.20 Ethical Standards for the Departments' Employees and Former Employees.

Section 14.20.1 The Department expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed under the Agreement. The Contractor may not assign to any former Department or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former

Department personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Subcontractor or vendor.

Section 14.21 Gratuities and Officers Not To Benefit Provisions.

Section 14.21.1 If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any official, employee or agent of the Department or the District with a view toward securing the Agreement or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Agreement, the Department may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Agreement and may pursue such other rights and remedies provided by law and under the Agreement.

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

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

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

Section 14.22 Covenant Against Contingent Fees Provisions.

Section 14.22.1 The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement upon an agreement or understanding for a

Commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Department shall have the right to terminate the Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the Department, percentage, brokerage of contingent fee.

Section 14.23 Conformance with Laws. It shall be the responsibility of the Contractor to perform the Contract in conformance with the Department's Procurement Regulations (27 DCMR § 4700 *et seq.*) and all statutes, laws, codes, ordinances, regulations, rules, requirements and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Contractor to determine the Procurement Regulations, statutes, laws, codes, ordinances, regulations, rules, requirements and orders that apply and their effect on the Contractor's obligations thereunder. This Section 14.23 shall apply during both the Design and preconstruction phase and the Construction phase.

Section 14.24 Retention of Records: Inspections and Audits.

Section 14.24.1 The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under the Contract in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Contract.

Section 14.24.2 The Contractor shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Department and the required cost submissions in effect on the date of execution of the Department.

Section 14.24.3 The Department, the District of Columbia government, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Contractor for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection.

Section 14.24.4 The Contractor agrees to include the wording of this Section 14.24 in all its subcontracts in excess of Five Thousand Dollars (\$5,000.00) that directly relate to Project performance.

Section 14.24.5 Audits conducted pursuant to this Section will be in accordance with generally accepted auditing standards with the results prepared in accordance with generally

accepted accounting principles and established procedures and guidelines of the applicable reviewing or audit agency.

Section 14.24.6 The Contractor agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

Section 14.24.7 The Contractor shall preserve all records described herein from the effective date of the Contract completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

Section 14.25 Warranties and Representations

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

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

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

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

Section 14.27 Independent Contractor. In carrying out all its obligations under the Contract, the Contractor shall be acting as an independent contractor, and not as an employee

or agent of the Department, or joint ventures or partner with the Department. The Contractor shall have exclusive authority to manage, direct, and control the Work, and shall be responsible for all construction means, methods, techniques, sequences, and procedures, as well as for Project safety.

IN WITNESS WHEREOF, the Parties have executed this Agreement for DGS Services Schedule Pre-qualification of General Contractors, Skilled/Unskilled Trade Subcontractors & Related Facility Maintenance, Repair & Other Specialized Service Contractors IDIQ Bas (DCAM-21-NC-RFQuals-0002 as of the date last written below.

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

By:
Title:
Date:

Company Name

By:
Name:
Title:
Date: