GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES

SOLICITATION DCAM-22-CS-RFP-0011

REDEDVELOPMENT ST. ELIZABETHS EAST CAMPUS-MICROGRID PROJECT

AMENDMENT NO. 9

Amendment Number 9 is hereby issued and posted on the Department's web site September 23, 2022. The Amendment and all RFP documents are available at https://dgs.dc.gov/event/dcam-22-cs-rfp-0011-redevelopment-st-elizabeths-east-campus-%E2%80%93-microgrid-project Except as otherwise noted, all other terms and conditions of the solicitation remain unchanged.

1. **Section 1.15 Attachments, Attachment A4 Draft Power Purchase**
   Delete: In its entirety

   Insert: Attachment A4 Draft Power Purchase Agreement (Revised) provided as Exhibit 1 to Amendment 9.

2. **Section 5.3 Date and Time for Receiving Submissions,** first sentence

   Delete: September 27, 2022
   Insert: September 28, 2022

James H. Marshall
James H. Marshall
Contracting Officer

September 23, 2022
Date

End of Amendment No. 9

Exhibit 1

CONTRACT NO. DCAM-22-CS-RFP-0011

ST. ELIZABETHS EAST CAMPUS MICROGRID POWER PURCHASE AGREEMENT

Between

XXXXXXXXXXXXX
as Microgrid Partner/Owner

and

DISTRICT OF COLUMBIA as
Host Customer

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ST. ELIZABETHS EAST CAMPUS MICROGRID

POWER PURCHASE AGREEMENT

This St. Elizabeths East Campus Microgrid Power Purchase Agreement (this "Agreement") is made and entered into by and between _____ ("Microgrid Partner/Owner") a (State and type of business), and the District of Columbia, a municipal corporation acting by and through its Department of General Services ("Host Customer"). Each of the Microgrid Partner/Owner and Host Customer may be referred to herein as a "Party" and collectively, as the "Parties."

RECITALS

WHEREAS, Host Customer owns and/or controls certain properties located in the District of Columbia that use electricity and thermal energy, which properties are described in Exhibit A (the "Premises");

WHEREAS, Host Customer issued a Request for Proposals, Solicitation Number DCAM-22-CS-RFP-0011 as supplemented and amended from time to time, to solicit proposals for qualified developers to develop, design, construct, own, operate, maintain, and transfer a new resilient microgrid providing energy to St. Elizabeths East campus (the "Microgrid");

WHEREAS, Microgrid Partner/Owner submitted a proposal in response to the RFP to finance, design, construct, own, operate, maintain, and transfer the Microgrid;

WHEREAS, the Microgrid would satisfy a portion of Host Customer's energy requirements at the Premises, and Microgrid Partner/Owner desires to sell and Host Customer desires to purchase Output generated by the Microgrid under the terms and conditions of this Agreement;

WHEREAS, Host Customer is willing, under the terms and conditions of this Agreement, to provide Microgrid Partner/Owner with access to, and the right to occupy a portion of each of the Premises for the purpose of having Microgrid Partner/Owner design, construct, own, operate and maintain the Microgrid;

WHEREAS, Microgrid Partner/Owner and Host Customer agree that Microgrid Partner/Owner will obtain and retain all Environmental Credits and all Financial Incentives and Tax Benefits associated with the installation, ownership, operation, and Output of the Microgrid;

NOW, THEREFORE, in consideration of the agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

1.1 Definitions

Capitalized terms shall have the meanings set forth below.

"Administrative Liquidated Damages" has the meaning set forth in Section 17.27. "Agreement" means this St. Elizabeths East Campus Microgrid Power Purchase Agreement, and all exhibits, as the same may be modified or amended (including any and all modifications to the exhibits attached hereto from time to time in accordance with the provisions hereof).

"Ancillary Services" means any supplemental services necessary to support the transmission of electric power from a seller to a purchaser and available from the Systems from time to time, whether existing as of the Effective Date or thereafter.

"Anti-Deficiency Acts" has the meaning set forth in Section 17.13(a).

"Capacity" means energy generating capacity that is dependent upon the availability and operation of the Microgrid, measured in kilowatts.

"CBE" shall have the meaning set forth in the CBE Act for the term "Certified Business Enterprise".

"CBE Act" means the *Small, Local, and Disadvantaged Business Development and Assistance Act of 2005*, D.C. Law 16-33, as amended (codified at D.C. Official Code §§ 2-218.01 *et seq*.).

"CBE Utilization and Participation Plan" shall mean the plan submitted by Microgrid Partner/Owner regarding the utilization and participation of CBEs in connection with the design, installation, operation, and maintenance of the Microgrid.

"Chief Procurement Officer" shall mean either the Director of DGS or any individual to whom the Director has delegated his/her full contracting authority the Director of the Department of General Services.

"Commercial Service Commencement Date" means, with respect to the Microgrid, the date that Microgrid Partner/Owner notifies Host Customer as set forth in Section 4.9 concerning the successful completion of the installation, Microgrid commissioning and testing of the Microgrid such that the Microgrid is operational and producing metered Output for which due and payable invoices may be rendered to Host Customer under Section 4.1.4 and Section 9.6.

"Contract Appeals Board" shall mean the District of Columbia Contract Appeals Board or any successor thereto.

"Contracting Officer" shall mean the Director of the Department of General Services or his/her designee.

"Contract Year" means, with respect to the Microgrid, a period of twelve (12) consecutive months. The first Contract Year for the Microgrid commences on the Commercial Service Commencement Date for the Microgrid.

"Contractors" means the independent contractors engaged by Microgrid Partner/Owner to perform any of Microgrid Partner/Owner's obligations hereunder and shall include the independent contractors subcontracted by independent contractors engaged by Microgrid Partner/Owner as set forth in Section 4.4.

"Costs" means, with respect to termination of this Agreement with respect to the Microgrid (where the termination occurs prior to the occurrence of the applicable Commercial Service Commencement Date), all documented direct costs and expenses actually incurred by Microgrid Partner/Owner for the installation of the Microgrid prior to such termination. Notwithstanding the foregoing, the term "Costs" does not include any attorneys' fees, lost economic opportunity, return on investment, cancellation fees based upon lost economic opportunity or return on investment, or expected profits related to the prospective output or revenues from the Microgrid.

"Days" shall mean calendar days unless otherwise specified.

"DCADA" has the meaning set forth in Section 17.13(a).

"DCFOIA" has the meaning set forth in Section 17.2.1.

"Deemed Delivered Output" has the meaning set forth in Section 11.1.

"Defaulting Party" has the meaning set forth in Section 14.1.

"Delivery Point" means each physical location where Microgrid connects to the Host Customer's Site Energy Systems, as specified in Exhibit B.

"Dispute" means a dispute as defined in Section 17.1.

"Disqualified Person" means any of the following Persons:

(a) Any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony under any local, state, or federal criminal statute; or

(b) Any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the date hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the date hereof, Iran, Sudan, and Syria); or

(c) Any Person who has been identified by the United States Department of the Treasury or the United States Secretary of State as a person engaged in any dealings or transactions

(i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, the "Anti-Terrorism Order"), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time.

(d) Any Person with whom the conduct of business is precluded because they are on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control located at 31 C.F.R., Chapter V, Appendix A or because they are described in Section 1 of the Anti-Terrorism Order.

(e) Any Person identified on a list of contractors that have been debarred by the District of Columbia or the federal government or with whom Host Customer is prohibited from doing business by District law.

(f) Any Person who is an affiliate of any of the Persons described in paragraphs (a) through (e) above.

"Disruption of Delivery" has the meaning set forth in Section 11.4.

"Due Date" has the meaning set forth in Section 9.6.1.

"Effective Date" means the last date this Agreement is executed by the Department's Contracting Officer.

"Environmental Credits" means any and all federal, state, or local renewable energy or emissions credits, offsets, or green tags, whether related to any renewable portfolio standard, renewable energy purchase requirement, carbon cap or trade market, or otherwise, whether existing as of the Effective Date or enacted thereafter and whether available to Microgrid Partner/Owner as owner of the Microgrid or producer of Output or available to Host Customer as the purchaser or user of Output.

"Estimated Loads" has the meaning set forth in Exhibit F.

"Event of Default" means the events set forth in Section 14.1.

"Federal ADA" has the meaning set forth in Section 17.13(a).

"Financial Incentives and Tax Benefits" means any and all federal, state, or local rebates, tax credits, energy production credits, or depreciation incentives related to any renewable portfolio standard or other renewable energy purchase requirement or otherwise, whether existing as of the Effective Date or enacted thereafter and whether available to Microgrid Partner/Owner as producer of Output or available to Host Customer as the purchaser or user of Output.

"Force Majeure Event" means the events of Force Majeure described in Section 13.1.

"Host Customer" means the District of Columbia, a municipal corporation acting by and through its Department of General Services (DGS). Additionally, the terms "Department" and "Government" and "District" shall also refer to the Host Customer.

"Host Utility" means, for electricity, the electric distribution company serving electricity or connected to the Host Customer, or for natural gas, the natural gas distribution company serving natural gas or connected to the Host Customer.

"Installation Period" means, with respect to the Microgrid, the period commencing on the satisfaction of the pre-installation conditions of Section 3.1 and continuing until the relevant Commercial Service Commencement Date.

"March-In Rights" has the meaning set forth in Section 7.2 of this Agreement.

"Meter" means, with respect to the Microgrid, the revenue quality metering instrument(s) and equipment installed at the Site by Microgrid Partner/Owner as part of the Microgrid to be used to measure and record the Output delivered to the Host Customer at the Delivery Point.

"Microgrid Early Transfer Payment" means the amount with respect to the Microgrid as set forth in Exhibit G, which reflects the present value of the expected economic benefits to Microgrid Partner/Owner with respect to the Microgrid during the Service Term, and which Microgrid Partner/Owner certifies are accurate and complete; and, furthermore, subject to the terms and upon the conditions set forth in this Agreement, is only applicable (a) in the event of terminations of this Agreement (where the termination occurs on or after the occurrence of the applicable Commercial Service Commencement Date) by the District for convenience, (b) by Microgrid Partner/Owner due to a Host Customer Event of Default, or (c) due to and pursuant to the District's lack of access to appropriated funds. Each Party acknowledges and agrees that (i) the actual damages that Microgrid Partner/Owner would incur in connection with an early Transfer and termination of this Agreement under the foregoing circumstances would be difficult or impossible to predict with certainty, (ii) as such, the Values for Early Transfer set forth in Exhibit G are a reasonable approximation of such damages that Microgrid Partner/Owner would incur in such circumstances, and therefore do not represent a penalty, and (iii) the payment of the Values for Early Transfer in such circumstances is the exclusive remedy of Microgrid Partner/Owner in connection with a termination of this Agreement in the foregoing circumstances.

"Microgrid Energy Price" means, with respect to the Microgrid, the price specified in Exhibit C (Microgrid Energy Price) that Host Customer shall pay Microgrid Partner/Owner for the delivery of the Output.

"Microgrid Partner/Owner" has the meaning set forth in the preamble of this Agreement.

"Non-Defaulting Party" has the meaning set forth in Section 14.1.

"Non-Delivery Period" has the meaning set forth in Section 14.1.1.

"Output" means, and is limited to, for the Microgrid, the electrical or thermal energy produced by the System and delivered to Host Customer at the Delivery Point.

"Party" and "Parties" have the meanings set forth in the preamble of this Agreement.

"Performance Measurement Period" has the meaning set forth in Section 11.1.

"Permitted Transferee" means an affiliate of Microgrid Partner/Owner, or any Person that is (i) not a Disqualified Person, and (ii) technically and financially capable of performing, and who assumes, the obligations of Microgrid Partner/Owner under this Agreement.

"Person" means any natural person, Partner/Ownership, trust, estate, association, corporation, limited liability company, governmental authority, or agency or any other individual or entity.

"Premises" has the meaning set forth in the recitals of this Agreement.

"Schedule Milestones" has the meaning set forth in Exhibit L.

"Services" means the design, installation, and testing of the Microgrid and, upon successful completion of installation and testing, the operation, maintenance, and repair of the Microgrid, by Microgrid Partner/Owner as necessary to produce and deliver Output to Host Customer in accordance with the terms and conditions of this Agreement.

"Service Term" means, with respect to the Microgrid, the period commencing on the Commercial Service Commencement Date and continuing until the termination of this Agreement.

"Sites" means the areas on the Premises described in Exhibit A on which the Microgrid Partner/Owner will install each applicable System.

"Site Electrical Systems" means Host Customer's existing building electrical systems that are owned or leased, operated, maintained, and controlled by Host Customer, and which systems are interconnected with the Host Utility.

"Site Thermal Systems" means Host Customer's existing building thermal energy systems that are owned or leased, operated, maintained, and controlled by Host Customer or its contractors, and which systems are interconnected with the Host Utility, collectively with Site Electrical Systems, "Site Energy Systems".

"Tariff" means the tariff of the Host Utility that set forth interconnection, net metering standards, and other requirements for the Microgrid to operate and for Microgrid Partner/Owner to deliver Output to Host Customer in accordance with terms and conditions of this Agreement.

"Term" has the meaning set forth in Section 2.1.

"Termination Payment" means an amount due to Microgrid Partner/Owner, on the terms and subject to the conditions specified herein, in certain events of termination of this Agreement with respect to an applicable System, as follows:

(a) if the applicable termination occurs prior to the occurrence of the Commercial

Service Commencement Date, the applicable "Termination Payment" means a payment in the amount of Microgrid Partner/Owner's Costs, *provided* that Microgrid Partner/Owner must take all commercially reasonable steps to mitigate its damages; or

(b) if the applicable termination occurs on or after the occurrence of the Commercial Service Commencement Date, the applicable "Termination Payment" means a payment in the amount of the applicable Values for Early Transfer set forth in Exhibit G (Values for Early Transfer).

"Transfer" has the meaning set forth in Section 2.1.

1.2 Interpretation

In this Agreement, unless the context requires otherwise, the singular includes the plural and the plural the singular, words importing any gender include the other gender; references to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation" or "but not limited to" or words of similar import; references to articles, sections (or subdivisions of sections), exhibits, annexes or schedules are to those of this Agreement unless otherwise indicated; references to agreements and other contractual instruments shall be deemed to include all exhibits and appendices attached thereto and all subsequent amendments and other modifications to such instruments, and references to Persons include their respective successors and permitted assigns.

1.3 Service Contract

The Parties acknowledge and agree that, for accounting and tax purposes, this Agreement is not and shall not be construed as a capital lease, and that this Agreement is and shall be treated as a "service contract" within the meaning of pursuant to Section 7701(e) of the Internal Revenue Code.

1.4 Forward Contract

The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Host Customer and Microgrid Partner/Owner are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for purposes of this Agreement, the other Party is not a "utility" as such term is used in 11 U.S.C. § 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. § 366 or another provision of 11 U.S.C. § 101-1532.

ARTICLE II
TERM

2.1 Term

The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue in force and effect until the date that is fifteen (15) Contract Years following the Commercial Service Commencement Date of the Microgrid that is successfully installed, tested, and ready to deliver Output. At the expiration of the Term herein, unless otherwise agreed between the Parties, the Host Customer shall have the sole option of transferring ownership of the Microgrid to itself ("Transfer") for a purchase price of $1, in accordance with the procedures to be provided. The Microgrid Partner/Owner shall provide all information, documentation, and services that may be needed or reasonably requested to help the Host Customer transition to the next operator (as applicable). If the Host Customer declines to exercise this option, the option will be automatically renewed for potential exercise every two (2) years to the date (or next business day) thereafter.

ARTICLE III
SYSTEM DETAILED DESIGN

3.1 Pre-Installation Conditions

3.1.1 Completion of Detailed System Design

At the time of the execution of this Agreement, Host Customer will provide Microgrid Partner/Owner with the readily available drawings, specifications, and other documentation in Host
Customer's possession concerning the Premises, Sites and Site Energy Systems and shall continue to provide such drawings, specifications, and other documentation, where readily available, that The Microgrid Partner/Owner shall provide detailed system design to Host Customer for review and feedback at 30%, 60%, and 90% of design phase.

3.1.2 Receipt of Required Third Party Authorizations

As of the Effective Date, Host Customer is the owner of all Premises set forth on Exhibit A. In the event that any easements, leases, licenses, consents, acknowledgments, approvals and other rights and authorizations from third parties are required for Microgrid Partner/Owner to begin installation of the Microgrid, to produce and deliver Output to Host Customer to the Delivery Points, and to own, operate and maintain the Microgrid under this Agreement, Host Customer shall promptly obtain on behalf of itself and Microgrid Partner/Owner, such easements, leases, licenses, consents, acknowledgments, approvals and other rights and authorizations from third parties. Host Customer shall obtain and forward the foregoing authorizations and approvals to Microgrid Partner/Owner as each is received. Nothing in this Section 3.1.2 shall limit Microgrid Partner/Owner's obligation to obtain all necessary permits from local authorities and Host Utility under Section 3.1.3.

3.1.3 Receipt of all Necessary Construction and Other Permits

Microgrid Partner/Owner shall apply for, pay for, and obtain all necessary construction and other permits and approvals from local authorities and Host Utility. Host Customer shall reasonably cooperate with Microgrid Partner/Owner as necessary in the permitting process. Microgrid Partner/Owner shall deliver electronic copies of all permits obtained to Host Customer upon Host Customer's request, and where applicable, Host Customer shall do the same.

ARTICLE IV MICROGRID INSTALLATION

4.1 Microgrid Installation

4.1.1 Installation Schedule

The Microgrid Partner/Owner will have full responsibility for all phases of design, construction, and operations. Nonetheless, it is in the interest of all parties that the Microgrid Partner/Owner work with the Host Customer through a collaborative design process to develop a design for the Project in accordance with the requirements set forth in this Agreement. The Microgrid Partner/Owner shall engage in the necessary preconstruction efforts to ensure that the design is developed in a manner consistent with the Host Customer's goals for the Project (e.g., programmatic, schedule and quality); to develop an acceptable scope and schedule for the work; to implement the requisite construction and other work necessary in accordance with the Schedule Milestones, as specified in Exhibit L (Schedule Milestones); and to operate the facilities and deliver the required energy services in accordance with the terms of this Agreement.

4.1.2 Right of Access During Installation Period

Microgrid Partner/Owner and its Contractors shall have the right of access specified in Article VI during the Installation Period and will coordinate installation activities with Host Customer. Microgrid Partner/Owner and its Contractors will hold kick-off meetings with applicable Host Customer affiliates to discuss construction schedule and logistics. Microgrid Partner/Owner and Contractors will address and/or make adjustments to the installation schedule pending potential conflicting Host Customer's client agency scheduling. Any work that requires interruption of electricity to Host Customer's Premises will be identified in the installation schedule, and Microgrid Partner/Owner or its Contractors will receive approval from Host Customer prior to any such interruption.

4.1.3 Installation to Specifications and Standards

Upon satisfaction of the pre-installation conditions of Section 3.1 and the establishment of an installation schedule for the Microgrid in accordance with Section 4.1.1, Microgrid Partner/Owner shall begin installation. Microgrid Partner/Owner shall perform Services in a good and workmanlike manner and in compliance with all applicable laws and regulations, including System compliance with the Host Utility's interconnection and Tariff requirements. Microgrid Partner/Owner shall have the right but not the obligation, from time to time and at its own expense, to install upgrades or make other changes to a System so as to increase its efficiency or otherwise improve its operational characteristics.

4.1.4 First Source Agreement and CBE Utilization and Participation Plan

Microgrid Partner/Owner's installation of the Systems shall be in compliance with its obligations under the First Source Agreement and the CBE Utilization and Participation Plan in accordance with their respective terms.

4.1.5 Microgrid Performance Data

Microgrid Partner/Owner shall make Microgrid performance data available to the Host Customer in a form acceptable to Host Customer.

4.1.6 Connection of Microgrid to Site Energy Systems

Microgrid Partner/Owner shall be responsible for the connection of the Microgrid to Host Customer's Site Energy Systems and shall be solely responsible for all equipment, maintenance, and repairs associated with such connection equipment in accordance with the terms and conditions of this Agreement. Host Customer shall at all times own and be responsible for the operation and maintenance of the Site Energy Systems at, from and after the respective Delivery Points, as specified in Exhibit B.

4.2 Hazardous Materials and Refuse

4.2.1 Host Customer Representation

Host Customer represents that at the time it executes this Agreement, it has disclosed to Microgrid Partner/Owner any and all hazardous materials of which it has knowledge that exist at the Sites or Premises. Host Customer acknowledges that fly ash and other contaminants have been found at various locations on St. Elizabeths East Campus.

4.2.2 Microgrid Partner/Owner Responsibilities

During the Installation Period and thereafter, Microgrid Partner/Owner agrees and shall cause its Contractors to agree, as follows:

(a) To take reasonable measures to reduce or mitigate noise, dust, the spread of debris and installation materials;

(b) To remove all debris, extra materials, scaffolding, tools, machinery and other installation materials from the Sites and other work areas at the conclusion of the relevant Installation Periods;

(c) To reseed any damaged grass in a manner that returns grass to the original or improved condition;

(d) To use and dispose of any "hazardous materials" as defined in any applicable federal, District or state environmental laws brought to the Sites or the Premises in connection with Services being performed in accordance with all applicable laws.

4.2.3 Effect of Discovery of Hazardous Materials

If Microgrid Partner/Owner or its Contractors discover any hazardous materials existing on the Premises or a Site during the installation and testing of the Microgrid that Microgrid Partner/Owner reasonably believes may require removal or remediation, or that otherwise impairs or prevents installation and testing of the Microgrid, Microgrid Partner/Owner shall promptly notify Host Customer, and Microgrid Partner/Owner may, in its sole discretion, suspend installation or testing of the Microgrid until such time as Host Customer has removed the hazardous

materials and remediated the Premises to Microgrid Partner/Owner's reasonable satisfaction. Microgrid Partner/Owner shall have no responsibility or liability in respect of hazardous materials existing at the Premises (other than any hazardous materials brought to the Premises by or on behalf of Microgrid Partner/Owner).

4.3 Licenses, Permits and Inspections During Installation

Microgrid Partner/Owner shall maintain and shall ensure that its Contractors maintain all required licenses and permits during the Installation Period. Microgrid Partner/Owner and its Contractors shall obtain all inspections required by all authorities having jurisdiction during the Installation Period and during the Term. Certificates of inspection or other appropriate documentation by said authorities shall be delivered to Host Customer upon completion of the installation of the Microgrid.

4.4 Contractors

4.4.1 Identification of Contractors to Host Customer

All Contractors shall follow Host Customer's access protocols for a particular Site, including any applicable background or security checks, sign-in, security and safety orientation, before commencing any work at the Premises.

4.4.2 Host Customer Right to Remove Contractors from Site for Cause

Host Customer shall have the right to require the removal from the Site of any Contractor or the agents, employees, or subcontractors of such Contractor, who, in Host Customer's sole judgment, exhibit unsafe work practices, behavior inappropriate for the workplace or fail to comply with Host Customer's access protocols for the Site.

4.5 Safe Workplace

While at the Premises and the Site, Microgrid Partner/Owner and its Contractors will take all reasonable and customary steps to ensure the safety of workers and visitors in accordance with all applicable laws.

Items delivered under this contract shall conform to all requirements of the Occupational Safety and Health Act of 1970, as amended ("OSHA"), and Department of Labor regulations under OSHA, and all Federal requirements in effect at time of bid opening/proposal submission.

4.6 Internet Access

Internet access for the Microgrid shall be the sole responsibility of Microgrid Partner/Owner.

4.7 Notification of Commercial Service Commencement Date

Upon the successful completion of the installation and testing of the Microgrid and upon Host Utility approval to operate such System, Microgrid Partner/Owner shall provide Host Customer with notice (a) that the Microgrid is ready to deliver Output and (b) of the Commercial Service Commencement Date.

4.8 Installation of Meters

See Exhibit C.

ARTICLE V OPERATION AND MAINTENANCE OF THE PREMISES, MICROGRID, SITE, AND SITE ELECTRICAL SYSTEM

5.1 Microgrid Partner/Owner/Owner Operation, Maintenance and Repair of the Microgrid

5.1.1 Microgrid Partner/Owner/Owner shall maintain the Microgrid in good working condition, excluding ordinary wear and tear, and shall operate the Microgrid in accordance with all applicable laws, regulations, and ordinances. The Microgrid Partner/Owner/Owner will make ongoing investments as may be needed to maintain a state of good repair for assets within the Microgrid and will meet the Performance Criteria for a State of Good Repair at time of Microgrid Transfer as specified in Exhibit H.

5.1.2 Subject to Section 17.13, if any portion of the Microgrid is damaged or destroyed as a result of the acts of Host Customer or its agent, employees, tenants, or contractors or other Persons under Host Customer's control, or as a result of Host Customer's failure to provide security for the Premises in a reasonable manner, then Host Customer shall be liable for the required cost of repair of the Microgrid. Subject to Section 17.13, any repairs or replacement of the Host Customer's Premises or Site that involve or result in removal and/or replacement of the System pursuant to the previous sentence shall be at Host Customer's sole cost and expense and replacement of such damaged or destroyed System.

5.2 Microgrid Partner/Owner/Owner Operation and Maintenance Contractors

5.2.1 Contractor Requirements

Microgrid Partner/Owner/Owner may engage Contractors to operate, maintain and repair the Systems. Microgrid Partner/Owner/Owner shall require any such Contractors to have all licenses, permits and registrations and obtain inspections required for such service providers, and any such Contractors shall maintain insurance as required by Article XV.

5.2.2 Identification of Contractors to Host Customer

Microgrid Partner/Owner/Owner shall provide Host Customer with (a) the identification and an organizational chart of all Contractors with whom Microgrid Partner/Owner/Owner contracts to operate, maintain and repair the Microgrid, and (b) evidence that such Contractors have obtained and will maintain insurance as required by Article XV. Contractors shall follow Host Customer's access protocols for the applicable Premises, including sign-in, security and safety orientation and employee background checks, before commencing any work at such Premises.

5.2.3 Host Customer Right to Remove Contractors from Site for Cause

Host Customer shall have the right to require the removal from the Site of any Contractor or the agents, employees, or subcontractors of such Contractor, who, in Host Customer's sole judgment, exhibit unsafe work practices, unacceptable quality of workmanship, or behavior inappropriate for the workplace or contrary to the rules and regulations applicable to the particular Premises.

5.2.4 Safe Workplace

While at the Premises and the Sites, Microgrid Partner/Owner/Owner and its Contractors will take all reasonable and customary steps to ensure the safety of workers and visitors in accordance with all applicable laws.

5.3 Host Customer Operation, Maintenance and Repair of Premises and Site

5.3.1 Host Customer Responsibility and Coordination with Microgrid Partner/Owner/Owner

Except as otherwise provided in this Agreement, Host Customer shall be solely responsible for the operation, maintenance and repair of the Premises and the Sites. Host Customer will advise in writing prior to making any adjustments, modifications, or upgrades to the Premises or Sites to ensure that the Output of the Microgrid is not negatively impacted. The duration of any maintenance or repair that disrupts Microgrid Output shall constitute a Disruption of Delivery on the part of the Host Customer in accordance with Section 11.4, and shall not constitute a Non-Delivery Period by as set forth in Section 14.1.1; *provided*, that if the need for any such repair or maintenance is caused by the actions of , then the period required for maintenance or repair shall not constitute a Disruption of Delivery on the part of the Host Customer.

5.4 Host Customer Maintenance and Repair of Site Energy Systems

Host Customer shall maintain the Site Energy Systems in good working order, and shall perform such other maintenance, repair and upgrades as may be required including but not limited to such work required by the Host Utility or by applicable laws, regulations, ordinances, and codes.

The duration of any maintenance, repair, or upgrade that disrupts delivery of Output shall constitute a Disruption of Delivery on the part of the Host Customer in accordance with Section 11.4, and shall not constitute a Non-Delivery Period by Microgrid Partner/Owner/Owner as set forth in Section 14.1.1; *provided*, that if the need for any such repair or maintenance is caused by the negligence or intentional misconduct of Microgrid Partner/Owner/Owner, then the period required for such maintenance or repair shall not constitute a Disruption of Delivery on the part of the Host Customer. Host Customer and Microgrid Partner/Owner/Owner shall coordinate such activities so as to reasonably limit the disruption to the Microgrid in light of the nature and use of the Premises.

5.5 Continuing Responsibility for Internet Access and Remote Monitoring

Microgrid Partner/Owner/Owner shall be solely responsible for continuous remote monitoring of the Microgrid's operation and performance and shall make read-only continuous remote monitoring of the Microgrid's operation and performance easily available to Host Customer.

ARTICLE VI
ACCESS AND SPACE PROVISIONS

6.1 Adequate Space for Installation

Host Customer shall provide Microgrid Partner/Owner/Owner and its Contractors with adequate space on the Premises and Site during the Installation Period for Microgrid Partner/Owner/Owner's installation and testing of the Microgrid, including reasonable staging and lay down areas. The Microgrid Partner/Owner/Owner shall maintain safe and unobstructed access to any mechanical equipment or other existing systems located on the Premises.

6.2 Adequate Access for Microgrid Partner/Owner/Owner; Grant of License

6.2.1 Host Customer shall provide Microgrid Partner/Owner/Owner adequate access to the Premises and the Sites for Microgrid Partner/Owner/Owner's installation, operation, and maintenance, of the Microgrid. Host Customer shall provide Microgrid Partner/Owner/Owner access to the Premises during regular business hours, outside of regular business hours upon reasonable request of Microgrid Partner/Owner/Owner, and at any time in the event of an emergency as may be necessary for Microgrid Partner/Owner/Owner to fulfill its obligations under this Agreement. Any such access shall be subject to Host Customer's reasonable limitations and restrictions and such access shall be subject to reasonable supervision by Host Customer as Host Customer may require. Microgrid Partner/Owner shall use reasonable efforts to minimize disruption to
Host Customer's operations. For the avoidance of doubt, the Parties acknowledge that due to the nature of Host Customer's use at certain Premises, Microgrid Partner/Owner's access may at times be limited or even precluded.

6.2.2 This Agreement shall constitute a non-exclusive license throughout the Term granting Microgrid Partner/Owner reasonable access to, occupancy of, and use of the Premises for Microgrid Partner/Owner to exercise its rights and meet its obligations hereunder, as specified in the Lease Agreement hereby incorporated herein by reference (with the same force and effect as though fully set forth herein).

6.2.3 As used in this Article VI, access rights applicable to Microgrid Partner/Owner shall include access for Microgrid Partner/Owner's agents, Contractors, and assigns.

ARTICLE VII ADDITIONAL COVENANTS

7.1 Ownership of Microgrid by Microgrid Partner/Owner

7.1.1 Host Customer and Microgrid Partner/Owner (a) intend that the Systems shall at all times be the personal property of Microgrid Partner/Owner severable from the Sites and the Premises and shall not become a fixture and (b) shall each take such actions as are reasonably required by the other Party to ensure that the Systems constitutes the personal property of Microgrid Partner/Owner and shall not become a fixture.

7.1.2 Host Customer will at all times keep the Microgrid free from any legal process and any lien not attributable to any act or omission of Microgrid Partner/Owner and will give Microgrid Partner/Owner immediate notice if any legal process or lien is asserted or made against the Microgrid or against Host Customer where the Microgrid may be subject to any lien, attachment, or seizure by any Person.

7.2 March-In Rights

If, at any point during the term of the Agreement, the Microgrid Partner/Owner either (1) enters bankruptcy proceedings in such a manner that the operation of the Microgrid is at immediate risk; or (2) becomes financially unable to fulfill its duties, Host Customer may exercise its March-In Rights and either begin operating the Microgrid or solicit a new Partner/Owner to assume the Microgrid Partner/Owner's duties. Host Customer will have all rights necessary to engage another company as needed to ensure the continued, uninterrupted operation of the Microgrid. The exercise of these March-In Rights does not constitute a determination of Default, and Host Customer shall assume no liability for maintenance costs or damages incurred while ensuring continued access to the Microgrid Output.

7.3 Reserved

7.4 Status of Premises and Site

7.4.1 In the event that any or all of the Premises is or becomes subject during the Term to a new lease, security interest, lien or mortgage, Host Customer shall require that the lessor or the holder of such security interest, lien or mortgage enter into an agreement with Microgrid Partner/Owner, or provide an estoppel reasonably acceptable to Microgrid Partner/Owner and the lenders, acknowledging and recognizing Microgrid Partner/Owner's rights under this Agreement and acknowledging that the Microgrid is the personal property of Microgrid Partner/Owner severable from the Sites and not fixtures.

7.4.2 After the execution of this Agreement, Host Customer shall from time-to-time grant to Microgrid Partner/Owner easements, leases, licenses, consents, acknowledgments, and approvals and other rights as may be necessary or reasonably appropriate for the installation and testing of the Microgrid, production and delivery of Output to the Delivery Points, and the operation and maintenance of the Microgrid under this Agreement.

ARTICLE VIII
ENVIRONMENTAL CREDITS AND MICROGRID ATTRIBUTES

8.1 Microgrid Attributes

Microgrid Partner/Owner shall at all times during the Term own and retain exclusive rights to any and all attributes, products, or economic benefits attributable to the Microgrid or to the production and delivery of Output, including but not limited to Financial Incentives and Tax Benefits, Environmental Credits, Capacity, and Ancillary Services.

8.2 Environmental Credits and Financial Incentives and Tax Benefits

All Environmental Credits associated with the Microgrid, whether available directly or indirectly, shall be and shall remain the property of Microgrid Partner/Owner for the duration of this Agreement. All Financial Incentives and Tax Benefits associated with the Microgrid, whether available directly or indirectly, shall be and shall remain the property of Microgrid Partner/Owner for the Service Term. Microgrid Partner/Owner shall have sole use of such Environmental Credits and Financial Incentives and Tax Benefits and shall be permitted to use such Environmental Credits and Financial Incentives and Tax Benefits for itself, or to sell, grant, convey, or otherwise dispose of such Environmental Credits and Financial Incentives and Tax Benefits to any other Person, in Microgrid Partner/Owner's sole discretion. Host Customer hereby grants, makes, and conveys to
Microgrid Partner/Owner an absolute and irrevocable assignment of any and all right, title and interest Host Customer may at any time have in or to any Environmental Credits for the duration of this Agreement and the Financial Incentives and Tax Benefits associated with the Microgrid during the Service Term.

8.3 Documentation

At Microgrid Partner/Owner's request, Host Customer will complete any and all documentation reasonably required to substantiate the existence, nature, and/or quantity of Environmental Credits and/or Financial Incentives and Tax Benefits produced by or associated with the Microgrid or required to validate Microgrid Partner/Owner's rights to and ownership of the Environmental Credits and/or Financial Incentives and Tax Benefits.

ARTICLE IX PURCHASE AND SALE OF OUTPUT

Subject to the terms and conditions of this Agreement, on and after the Commercial Service Commencement Dates and through the end of the Service Term, Microgrid Partner/Owner shall deliver to, and sell to Host Customer, at the applicable Delivery Point, and Host Customer shall accept delivery and purchase at the applicable Delivery Point, all of the Output at the price and the terms and conditions set forth in Exhibit C.

9.1 Microgrid Energy Price

Beginning on the Commercial Service Commencement Dates, the Microgrid Energy Price paid by Host Customer for Output shall be as specified in Exhibit C (Microgrid Energy Price).

9.2 First Priority Service

Host Customer shall receive Output from the Microgrid on a first priority basis, displacing purchases, or on-site production from non-Microgrid sources of energy.

9.3 Sale Only to Host Customer

Except as otherwise provided in this Agreement, in no event shall Microsoft Partner/ Owner sell, or be deemed to have sold, Output to any Person other than Host Customer.

9.4 Reserved

9.5 Taxes

Microgrid Partner/Owner is responsible for local, state, and federal income taxes attributable to Microgrid Partner/Owner for income received under this Agreement and for any personal property taxes attributable to the Microgrid.

(a) The Government of the District of Columbia is exempt from and will not pay Federal Excise Tax, Transportation Tax, and the District of Columbia Sales and Use Taxes.

(b) Tax exemption certificates are no longer issued by the District for Federal Excise Tax. The following representation may be used by Microgrid Partner/Owner when claiming tax deductions for Federal Excise Tax exempt items sold to the District.

(1) The District of Columbia represents that it is Exempt from Federal Excise Tax –Registration No. 52-73-0206-K, Internal Revenue Service, Baltimore, Maryland. Exempt From Maryland Sales Tax, Registered With The Comptroller Of The Treasury As Follows:

(A) Deliveries to Glenn Dale Hospital – Exemption No. 4647

(B) Deliveries to Children's Center – Exemption No. 4648

(C) Deliveries to other District Departments or Agencies – Exemption No. 09339

(2) The District of Columbia further represents that it is Exempt from Sales and Use Tax –Registration No. 53-600, The District of Columbia Office of Tax and Revenue.

9.6 Invoice and Payment

Subject to the provisions in Section 9.1, following the end of each calendar month during the Service Term, Microgrid Partner/Owner shall prepare and provide Host Customer an invoice for the Output delivered in the prior month (or partial month if the Commercial Service Commencement Dates are not the first day of a month), and as directed by the Host Customer. Deliveries during the month of an anniversary date shall be prorated as to the applicable Microgrid Energy Price. The amount due for the Output shall be determined by multiplying the applicable Microgrid
Energy Price by the Output. A proper invoice shall contain all supporting documents reasonably required by the Contracting Officer and the Department's fiscal officer to process payment. The Host Customer's obligation to pay shall arise on the thirtieth (30^{th}) day after Host Customer has actually received a proper invoice from Microgrid Partner/Owner; provided, however, that Host Customer shall have no obligation to pay any invoice submitted more than thirty (30) days following the end of Host Customer's fiscal year in which the Output was delivered.

9.6.1 Payments

Subject to its contest rights set forth in Section 9.6.3, Host Customer shall pay the full amount of each invoice within thirty (30) calendar days, excluding legal holidays, after receipt of a proper invoice ("Due Date"). All payments made by Host Customer under this Agreement shall be by electronic funds transfer pursuant to the instructions to be established, or by check payable to Microgrid Partner/Owner (unless otherwise directed in writing by Microgrid Partner/Owner) at the address for notices set forth in Section 17.3, as such instructions or address may be modified by Microgrid Partner/Owner by notice to Host Customer in writing.

9.6.2 Quick Payment Act

The District will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code § 2-221.01 *et seq*., as amended, for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of at least 1.5% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before the required payment date. The required payment date shall be:

9.6.2.1 The date on which payment is due under the terms of the contract;

9.6.2.2 Not later than seven (7) calendar days, excluding legal holidays, after the date of delivery of meat or meat food products;

9.6.2.3 Not later than ten (10) calendar days, excluding legal holidays, after the date of delivery of a perishable agricultural commodity; or

9.6.2.4 Thirty (30) calendar days, excluding legal holidays, after receipt of a proper invoice for the amount of the payment due.

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

9.6.2.5.1 3rd day after the required payment date for meat or a meat food product;

9.6.2.5.2 5th day after the required payment date for an agricultural commodity; or

9.6.2.5.3 15th day after any other required payment date.

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

9.6.2.7 Payments to Subcontractors

9.6.2.7.1 The Contractor must take one of the following actions within seven (7) days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under the contract:

9.6.2.7.2 Pay the subcontractor(s) for the proportionate share of the total payment received from the District that is attributable to the subcontractor(s) for work performed under the contract; or

9.6.2.7.3 Notify the CO and the subcontractor(s), in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

9.6.2.7.4 The Contractor must pay any subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of at least 1.5% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before the:

9.6.2.7.4.1 3rd day after the required payment date for meat or a meat product;

9.6.2.7.4.2 5th day after the required payment date for an agricultural commodity; or

9.6.2.7.4.3 15th day after any other required payment date.

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

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

9.6.2.7.7 Subcontract requirements. The Contractor shall include in each subcontract under this contract a provision requiring the subcontractor to include in its contract with any lower tier subcontractor or supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code § 2-221.02(d).

9.6.3 Contest Rights

Within ninety (90) days after the date on which any invoice is received, Host Customer shall notify Microgrid Partner/Owner in writing of any defect in the invoice or delivered services or impropriety of any kind which would prevent the running of the time period specified in Section 9.6.2. The contested portion of any invoiced amount shall not relieve Host Customer of its obligation to pay the uncontested portion of such invoice as set forth in Section 9.6. Nothing herein shall be construed to prevent the Contracting Officer or the Department's fiscal officer from requiring the Microgrid Partner/Owner to produce supporting documentation for any invoice, reasonably required, prior to processing payment. In the event the Host Customer pays an invoice and later determined that it was improper, the Host Customer may recoup said payments from future sums due.

9.7 Event of Non-Appropriation

If funds are not appropriated or otherwise made available for the continued performance by the District of its payment obligations under this Agreement in a subsequent fiscal year, this Agreement shall be terminated pursuant to Section 9.8 and 9.9.

9.8 Early Transfer for Convenience

Host Customer may Transfer the Microgrid before the end of the Term and terminate this Agreement for the convenience of the District upon ninety (90) days' notice to Microgrid Partner/Owner. In the event of such a termination by Host Customer, Microgrid Partner/Owner's sole remedy for such termination shall be the payment by Host Customer of the applicable Early Transfer Payment.

Payment of the applicable Early Transfer Payment amount in respect of such Early Transfer shall be made to Microgrid Partner/Owner within thirty (30) business days after the termination date specified by the Host Customer. In accepting the Early Transfer Payment in respect of such Early Transfer, Microgrid Partner/Owner waives any and all claims, known or unknown, asserted, or un-asserted, relating to the termination of this Agreement. Upon payment of the Termination Payment by Host Customer to Microgrid Partner/Owner, ownership of the Microgrid shall transfer from Microgrid Partner/Owner to Host Customer (Microgrid Transfer).

9.9 Early Transfer

For the avoidance of doubt, as stated in the definitions of "Commercial Service Commencement Date" and "Termination Payment," the Values for Early Transfer set forth in Exhibit G for the Microgrid are only applicable where the subject Transfer occurs on or after the occurrence of the relevant Commercial Service Commencement Date. In no event shall Host Customer be liable hereunder for payment of the applicable Early Transfer Value set forth in

Exhibit G prior to the occurrence of the applicable Commercial Service Commencement Date. Furthermore, for the avoidance of doubt, as stated in the definitions of "Costs" and "Termination Payment," in the event where the applicable termination occurs prior to the occurrence of the applicable Commercial Service Commencement Date, Microgrid Partner/Owner shall only be entitled to payment in the amount of its Costs as its sole remedy. Furthermore, Microgrid Partner/Owner must take all commercially reasonable steps to mitigate its damages.

ARTICLE X
METERING

During the Service Term, Microgrid Partner/Owner shall, at its own expense, own, operate and maintain Meters and provide necessary Meter related services.

10.1 Meter Reading

Microgrid Partner/Owner shall cause the Electric, Hot Water and Chilled Water Meters for each Off-Taker to be read at the end of each calendar month and shall cause the Output delivered to Host Customer to be recorded. The reading shall be used as the basis for calculating the amount to be invoiced pursuant to Section 9.6 under this Agreement.

10.2 Alternative Measures in Event of Non-Operability

If a Meter is out of service or registers inaccurately, the Microgrid Partner/Owner shall not bill the Host Customer until the meter is certified to be in service and registering accurately unless there is an alternative or back-up meter that Microgrid Partner/Owner or Host Utility may have installed, if registering accurately.

10.3 Calibration

10.3.1 Microgrid Partner/Owner shall notify Host Customer of the time it will test and calibrate the Meters and Host Customer may witness such testing. Microgrid Partner/Owner shall routinely test the Meters in accordance with the manufacturer's recommendations. Host Customer may request Microgrid Partner/Owner to re-test and re-calibrate any Meter at Microgrid Partner/Owner's expense, and any such testing shall be at Microgrid Partner/Owner expense. Host Customer may witness any re-tests.

10.3.2 If, upon testing, any Meter is found to be in error, such Meter shall be promptly adjusted to record correctly.

10.3.3 If, upon testing, any Meter shall be found to be inaccurate, then such Meter shall be promptly repaired or adjusted to record properly and any previous readings from such Meter used to compute invoices for the associated Output shall be corrected to zero error. If no reliable information exists as to the period over which such Meter registered inaccurately, Microgrid Partner/Owner shall credit the expenses for any amount previously paid.

10.3.4 If upon testing, any Meter shall be found to be inaccurate, then the payments for the associated Output made since the previous test of such Meter shall be adjusted to reflect the corrected readings as determined in accordance with Section 10.3.3. If the difference in the previously invoiced amounts minus the adjusted payment is a positive number (Meter has over registered Output), that difference will offset amounts owing by Host Customer to Microgrid Partner/Owner in subsequent month(s). If the difference is a negative number (Meter has under-registered Output), the difference shall be added to the next month's invoice and paid by Host Customer to Microgrid Partner/Owner on the Due Date of such invoice. Notwithstanding, the foregoing, in the event of a meter under-registering Output, an adjustment may not be retroactive for more than 60 days and may not cross fiscal years.

10.4 Data

Microgrid Partner/Owner shall provide Host Customer with access to data regarding the Microgrid and its Output.

ARTICLE XI
PERFORMANCE CRITERIA AND OUTPUT INTERRUPTIONS

11.1 Performance Criteria

Host Customer acknowledges and understands that Microgrid Partner/Owner shall have control over the construction, implementation, and operations of the Microgrid. In return, Microgrid Partner/Owner shall deliver Output subject to the Performance Criteria specified in Exhibit H. Each Performance Criterion has an associated monetary Performance Commitment.

For each Performance Commitment in Exhibit H that does not specify Host Customer's actual incurred costs, the monetary compensation shall be provided in the form of discounts against subsequent monthly bills for Output provided. The amount of the discount shall be capped at 50% of each bill, tracked individually until the balance is brought to zero.

Host Customer does not have specific legal authority to accept payments or revenues from Microgrid Partner/Owner, and nothing in this Agreement shall be construed as providing for guaranteed savings or payments to the District or its agencies.

Microgrid Partner/Owner shall provide an annual report to Host Customer summarizing the Microgrid's success or deficiencies in meeting each Performance Criterion and documenting any monetary compensation or discounts provided in the course of the previous year.

11.2 Safe Operations

Microgrid Partner/Owner shall not be required to supply Output to Host Customer at any time Microgrid Partner/Owner reasonably believes a Site or Site Energy System to be unsafe, but in no event will Microgrid Partner/Owner have any responsibility to inspect or approve any Site Energy System. Nonetheless, monthly invoices in accordance will Section 9.6 shall continue to be based on the meter readings for delivered Output as specified in Section 10.1. Similarly, Host Customer, should it deem the Microgrid to be in an unsafe condition, shall have the right to direct Microgrid Partner/Owner to disconnect the Microgrid, or, in the case of imminent danger caused by such unsafe condition, Host Customer may disconnect the Microgrid from its Site or Site Energy System without penalty to any Party under this Agreement. In such an occurrence, Host Customer shall notify Microgrid Partner/Owner of said unsafe condition and of the emergency disconnection without delay.

11.3 Reserved

11.4 Cost to Restore Service Following Interruption

Microgrid Partner/Owner shall bear any costs associated with restoring service following any interruption of the supply of the Output from the Microgrid as a result of Microgrid Partner/Owner's operation of the Microgrid or the condition of the Microgrid. Host Customer shall bear the direct costs associated with the restoration of the delivery of Output if an interruption is caused by the direct actions of Host Customer or the condition of the relevant Premises, Site, or Site Energy Systems.

ARTICLE XII
REPRESENTATIONS

12.1 Host Customer Representations

Host Customer makes the following representations and warranties to Microgrid Partner/Owner:

12.1.1 Host Customer is, under the laws of the United States of America, a duly created and validly existing government constituted as a body corporate for municipal purposes.

12.1.2 Host Customer has the power to contract and to be contracted with, to sue and to be sued and to exercise all other powers of a municipal corporation not inconsistent with the Constitution and laws of the United States of America and the provisions of the District of Columbia Code.

12.1.3 Host Customer has the power, authority and legal right under the Home Rule Act and the laws of the District of Columbia, to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Host Customer's performance under this Agreement.

12.1.4 The execution, delivery and performance of this Agreement by Host Customer has been duly authorized by all necessary action on the part of Host Customer and does not and will not require the consent of any third party.

12.1.5 The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Host Customer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any applicable law presently in effect having applicability to Host Customer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Host Customer is a party or by which any of its property is bound.

12.1.6 This Agreement has been duly executed and delivered by Host Customer. This Agreement is a legal, valid, and binding obligation of Host Customer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

12.1.7 The information provided to Microgrid Partner/Owner by Host Customer pursuant to this Agreement as of the Effective Date is true and accurate to the best of Host Customer knowledge, however, it is the obligation of the Microgrid Partner/Owner to verify field conditions.

12.2 Microgrid Partner/Owner Representations

Microgrid Partner/Owner makes the following representations and warranties to Host Customer:

12.2.1 Microgrid Partner/Owner is a corporation, duly organized, validly existing and in good standing under the laws of [_____] and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Microgrid Partner/Owner.

12.2.2 Microgrid Partner/Owner has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement. The execution, delivery and performance of this Agreement by Microgrid Partner/Owner has been duly authorized by all necessary corporate action on the part of Microgrid Partner/Owner and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Microgrid Partner/Owner or any other party to any other agreement with Microgrid Partner/Owner.

12.2.3 No authorization, approval, order, license, permit, franchise or consent, and no registration, declaration or filing with any governmental authority is required on the part of Microgrid Partner/Owner in connection with the execution and delivery of this Agreement except those which Microgrid Partner/Owner anticipates will be timely obtained in the ordinary course of performance of this Agreement.

12.2.4 The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Microgrid Partner/Owner with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any applicable law presently in effect having applicability to Microgrid Partner/Owner, the documents of formation of Microgrid Partner/Owner or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Microgrid Partner/Owner is a party or by which any of its property is bound.

12.2.5 This Agreement has been duly executed and delivered by Microgrid Partner/Owner. This Agreement is a legal, valid, and binding obligation of Microgrid Partner/Owner enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

12.2.6 Microgrid Partner/Owner has no knowledge of any facts or circumstances that could materially adversely affect its ability to perform its obligations hereunder including its creditworthiness.

12.2.7 The information provided to Host Customer by Microgrid Partner/Owner pursuant to this Agreement as of the Effective Date is true and accurate in all material respects.

12.2.8 Microgrid Partner/Owner is not a Disqualified Person.

ARTICLE XIII
FORCE MAJEURE

13.1 Definition of Force Majeure, Force Majeure Events

A "Force Majeure Event" means any circumstance not within the reasonable control, directly or indirectly, of the Party affected, but only if and to the extent that (a) such circumstance, despite the exercise of due diligence, cannot be or be caused to be prevented, avoided or removed by such Party, (b) such event is not due to such Party's negligence or intentional misconduct, (c) such event is not the result of any failure of such Party to perform any of its obligations under this Agreement, (d) such Party has taken all reasonable precautions, due care, and reasonable alternative measures to avoid the effect of such event and to mitigate the consequences thereof, and (e) such Party has given the other Party prompt notice describing such event, the effect thereof and the actions being taken to comply with this Agreement. Subject to the foregoing conditions, Force Majeure Events may include strikes; weather conditions and acts of nature that physically damage the Microgrid facilities themselves; earthquakes; and riot or civil unrest; *provided*, that Force Majeure Events shall not include any inability to make any payments that are due hereunder or to any third party or to procure insurance required to be procured hereunder. Because the Parties are motivated by a desire for resiliency at critical facilities, Force Majeure Events shall exclude other adverse weather conditions, an inability to obtain diesel fuel, or extended weather conditions that interfere with solar production.

If the Microgrid Partner/Owner, because of a Force Majeure Event, is rendered wholly or partly unable to perform its obligations when due under this Agreement, Microgrid Partner/Owner may be excused from whatever performance is affected by the Force Majeure Event to the extent so affected. In order to be excused from its performance obligations under this Agreement by reason of Force Majeure Event, pursuant to Section 13.3 Microgrid Partner/Owner must promptly provide the Contracting Officer written notice of its inability to perform as well as a description of the Force Majeure Event and its effect on its performance obligations; but in any event within 72 hours of the occurrence or event. The Contracting Officer will have the right to cause the inspection of the Site to determine the validity of the Microgrid Partner/Owner's assertion of its inability to perform. If the Contracting Officer agrees that Microgrid Partner/Owner is wholly or partly unable to perform its obligations under the Agreement a decision will be issued indicating the extent to which Microgrid Partner/Owner is excused from its performance obligations. In no event will Microgrid Partner/Owner be entitled to money damages from the Government due to Force Majeure Event.

13.2 No Default

Neither Microgrid Partner/Owner nor Host Customer shall be considered to be in default in the performance of its obligations under this Agreement to the extent that performance of any such obligation is prevented or delayed by a Force Majeure Event. Notwithstanding any provision herein to the contrary, the Host Customer shall not be obligated to make payments under this Agreement for any period during which the Microgrid Partner/Owner is unable to deliver Output by reason of a Force Majeure Event.

13.3 Notice and Cure

If a Party is prevented or delayed in the performance of any such obligation by a Force Majeure Event, then such Party shall promptly provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The Party affected by a Force Majeure Event shall use commercially reasonable efforts to remove or repair the cause of the Force Majeure Event and shall resume performance of its obligations as soon as reasonably practicable.

13.4 Termination for Force Majeure

The Host Customer shall be entitled to terminate this Agreement upon ninety (90) days prior written notice to the Microgrid Partner/Owner if any Force Majeure Event affecting this Agreement has been in existence for a period of two hundred (200) consecutive days or longer. Termination due to Force Majeure will not result in any liability of the parties.

13.5 Special Provisions Related to the COVID Emergency

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

13.5.2 The Contractor is required to comply with City Administrator's Order 2021-4, Resumption of Requirement for All Persons to Wear a Mask Inside District Government Buildings and While on Duty as a District Government Employee or Contractor, dated July 30, 2021, and all substantially similar mask requirements including Section VI of Mayor's Order 2021-147, dated December 20, 2021, (requiring boosters) and Section V of Mayor's Order 2022-029, dated February 14, 2022, (affirming continuation of those vaccine requirements for contractors) and any modifications to these Orders, unless and until they are rescinded or superseded."

ARTICLE XIV DEFAULT, REMEDIES AND LIMITATIONS, RELEASE AND DISCLAIMER

14.1 Default

Each Party (the "Defaulting Party"), with respect to the Microgrid, shall be liable to the other Party (the "Non-Defaulting Party") for the following "Events of Default," as applicable.

14.1.1 Failure to Perform or to Meet a Material Obligation

(a) With respect to the Microgrid, Microgrid Partner/Owner fails to perform any material provision of this Agreement or fails to make progress as to endanger performance of any material provision of this Agreement, which may include delay in the installation schedule provided pursuant to Section 4.1.1 and in either circumstance, Microgrid Partner/Owner (a) does not cure such failure within thirty (30) business days after written notice of such nonperformance or endangered performance from Contracting Officer or (b) does not commence an action to cure.

(b) Host Customer's failure to pay a proper invoice following the Due Date, and such failure continues for a period of thirty (30) days after Microgrid Partner/Owner provides written notice of such nonpayment to Host Customer.

(c) Host Customer's failure to correct a condition of unsafe operations, as specified in Section 11.3, and such failure continues for a period of thirty (30) days after Microgrid Partner/Owner provides written notice of such condition to Host Customer.

(d) Microgrid Partner/Owner's failure to perform fully any other material obligation under a provision of this Agreement including but not limited to those provisions explicitly set forth in this Section 14.1.1 and either (a) such failure continues for a period of ninety (90) business days after written notice of such nonperformance from the Host Customer or (b) if Microgrid Partner/Owner commences an action to cure such failure to perform within such period, and thereafter proceeds with all due diligence to cure such failure, but such failure is still not cured within ninety (90) days after the expiration of the initial period.

14.1.2 Material Misrepresentation

Any representation, warranty or other statement made by the Microgrid Partner/Owner herein is false or misleading in any material respect when made or when deemed made or repeated, whether as of the Effective Date or thereafter, and such misrepresentation is not cured within ten (10) business days from the earlier of (a) notice from Host Customer of the misrepresentation and (b) the discovery or determination by Microgrid Partner/Owner of its misrepresentation; *provided*, that if Microgrid Partner/Owner commences an action to cure such misrepresentation within such ten (10) business day period, and thereafter proceeds with all due diligence to cure such failure, the cure period shall extend for an additional thirty (30) days after the expiration of the initial ten (10) business day period.

14.1.3 Bankruptcy

The Microgrid Partner/Owner (a) voluntarily or involuntarily files or has filed against it a bankruptcy or other similar petition, (b) enters into an assignment of its assets for the benefit of its creditors or (c) otherwise is unable to pay its debts as they become due.

14.2 Remedies

Subject to Article XIII and the expiration of the applicable cure period specified in Section 14.1, upon the occurrence and notice to the Defaulting Party of an Event of Default under Section 14.1, the Non-Defaulting Party shall have the right (but not the obligation) to take any one or more of the following remedial steps:

(a) seek pursuant to Section 17.1 any direct damages arising as a result of a breach of this Agreement; and/or

(b) seek any equitable remedies permitted by this Agreement; and/or (c)

terminate this Agreement in accordance with Section 14.3.

14.3 Termination

Upon the occurrence of, and during the continuation without cure of, an Event of Default, the Non-Defaulting Party shall have the option, but not the obligation, to terminate this Agreement, and the Defaulting Party shall be liable to the Non-Defaulting Party for damages for such Event of Default as set forth hereunder.

Notwithstanding the foregoing, Host Customer may terminate this Agreement for the convenience of the Government pursuant to Section 9.8, *provided* that Host Customer pays the applicable Early Transfer Payment.

14.3.1 Termination by the Government Generally

Termination by the Government, whether for default or convenience, is not a Government claim.

14.3.2 Termination by the Government For Default

A termination for default is a final decision of a Contracting Officer. Prior to making such decision, Contracting Officer shall provide thirty (30) days' notice to Microgrid Partner/Owner that Contracting Officer intends to find that Microgrid Partner/Owner is the Defaulting Party. In the event of a termination due to a Microgrid Partner/Owner Event of Default, the Microgrid Partner/Owner shall not be entitled to payment of any Termination Payment or actual costs incurred. In order to contest a termination for default, Microgrid Partner/Owner must submit a certified request to convert the termination for default to a termination for convenience pursuant to Section 9.8 with all documents supporting such conversion and comply with all contract provisions and laws relating to terminations for convenience, including the submission of a certified termination for convenience settlement proposal. The submission of the certified request for conversion to a termination for convenience and certified termination settlement proposal to the Contracting Officer must occur prior to ninety (90) days from the date of the Contracting Officer's final decision.

If a Microgrid Partner/Owner Event of Default occurs, then Host Customer shall have the right to terminate this Agreement as set forth hereunder and in accordance with District of Columbia laws. Nothing herein shall be construed to limit the Government's rights or remedies in the event of a termination for default. The rights and remedies of the District provided in this clause

shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

14.3.3 Termination by the Government For Convenience

(a) The District may terminate this Agreement if the Contracting Officer determines that an Early Transfer is in the District's interest pursuant to Section 9.8. The Contracting Officer shall initiate the Transfer by delivering to Microgrid Partner/Owner a notice of Early Transfer specifying the effective date. The sole compensation due to the Microgrid Partner/Owner resulting from an Early Transfer for convenience shall be as set forth in Section 9.8.

(b) After receipt of a notice of Early Transfer for convenience, and except as directed by the Contracting Officer, Microgrid Partner/Owner shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Mitigate any damages or loss, which may include stopping work, placing no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as minimally necessary to continue or restore Microgrid operations; and

(2) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of Host Customer property.

(c) In the event Microgrid Partner/Owner was terminated for default and it asserts that it is entitled to an Early Transfer for convenience, its certified request for the conversion of the default termination to one for convenience and its certified termination settlement proposal must be submitted to the Contracting Officer prior to the expiration of ninety (90) days from the date of the default termination. Nothing herein shall be construed to extend the time for the submission of a claim hereunder for a defaulted Microgrid Partner/Owner beyond ninety (90) days from the date of the default termination. Upon failure of Microgrid Partner/Owner to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the Government's procedures in effect as of the date of execution of the Agreement, determine, on the basis of information available to him, the amount, if any, due to Microgrid Partner/Owner by reason of the termination and shall thereupon pay to the Microgrid Partner/Owner the amount so determined.

(d) Defaulted Microgrid Partner/Owner shall have the right of appeal from any determination made by the Contracting Officer, except that if Microgrid Partner/Owner failed to submit the certified request for conversion and the certified termination settlement proposal within the time provided.

(e) Unless otherwise provided in this Agreement or by statute, Microgrid Partner/Owner shall maintain all records and documents relating to the terminated portion of this Agreement for three (3) years after final settlement. This includes all books and other evidence bearing on Microgrid Partner/Owner's costs and expenses under this Agreement. Microgrid Partner/Owner shall make these records and documents available to the District, at Microgrid Partner/Owner's office, at all reasonable times, without any direct charge. If approved by the

Contracting Officer, photographs, micrographs, or other authentic reproductions may be maintained instead of original records and documents.

For avoidance of doubt, if a Microgrid Partner/Owner Event of Default occurs, then Host Customer shall have the right to terminate this Agreement as set forth in Section 14.3.2.

14.3.4 Termination by Microgrid Partner/Owner for Default

If a Host Customer Event of Default occurs, Microgrid Partner/Owner shall have the right to terminate this Agreement upon two hundred (200) days prior written notice to Host Customer. Upon termination for a Host Customer Event of Default, Microgrid Partner/Owner shall be entitled to the applicable Termination Payment. Notwithstanding receipt of the Termination Payment, Microgrid Partner/Owner shall retain its ownership interest in the Microgrid and its status as the personal property of Microgrid Partner/Owner shall not be affected.

14.4 Limitation of Liability

While the Defaulting Party shall be liable to the Non-Defaulting Party for actual, direct damages caused by an Event of Default, neither Party shall be liable to the other Party for any special, indirect, punitive, or consequential damages arising out of the performance or nonperformance of this Agreement, whether caused by negligence, tort, strict liability, breach of contract, or breach of warranty.

14.5 Reservation of Rights

Neither termination nor the exercise of any other right or remedy by a Non-Defaulting Party hereunder shall eliminate the Non-Defaulting Party's right to pursue any other remedy given under this Agreement now or hereafter existing at law, in equity or otherwise. Unless otherwise provided for in this Agreement, the effect of termination does not discharge either Party from any preexisting obligations.

14.6 Release of Liens and Claims

Microgrid Partner/Owner shall hold harmless Host Customer from all liens and claims filed or asserted by Microgrid Partner/Owner's independent contractors, second-tier contractors or other third parties against Host Customer or the Premises for services performed or material furnished to Microgrid Partner/Owner by such parties. Microgrid Partner/Owner shall, at no cost to Host Customer, promptly release, discharge, or otherwise remove any such lien or claim by bonding, payment or otherwise and shall notify Host Customer of such release, discharge, or removal. If Microgrid Partner/Owner does not timely cause any such lien or claim to be released, discharged, or otherwise removed, Host Customer shall have the right (but not the obligation) to pay all sums necessary to obtain releases, discharges, or removals (including the settlement of any lien or claim). In such event, Host Customer shall have the right to deduct all amounts so paid (plus reasonable attorneys' fees) from amounts due Microgrid Partner/Owner hereunder. Alternatively, upon reasonable demand by Host Customer, Microgrid Partner/Owner shall reimburse Host Customer for such amounts.

14.7 Disclaimer of Warranties

EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PERFORMANCE OF ITS OBLIGATIONS HEREUNDER (INCLUDING ANY SERVICES, GOODS, MATERIALS OR OTHER ITEMS SUPPLIED HEREUNDER), INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PURPOSE.

14.8 Indemnification

Except in instances of gross negligence or willful misconduct by the Host Customer, Microgrid Partner/Owner agrees to defend, indemnify and hold harmless the District, its officers, agencies, departments, agents, and employees (collectively the "District Indemnitees") from and against any and all claims, losses, liabilities, penalties, fines, forfeitures, demands, causes of action, suits, costs and expenses incidental thereto (including cost of defense and attorneys' fees), resulting from, arising out of, or caused by activities or work performed by the Contractor, Contractor's officers, employees, agents, servants, subcontractors, or any other person acting by permission of the Microgrid Partner/Owner in performance of this Agreement. Microgrid Partner/Owner assumes all risks for direct and indirect damage or injury to the property or persons used or employed in performance of this Agreement. Microgrid Partner/Owner shall also repair or replace any District Indemnitee's property that is damaged by Microgrid Partner/Owner, Microgrid Partner/Owner's officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of Microgrid Partner/Owner while performing work hereunder.

The indemnification obligation under this section shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Microgrid Partner/Owner or any subcontractor and shall survive the termination of this Agreement. The Host Customer agrees to give Microgrid Partner/Owner written notice of any claim of indemnity under this section. Additionally, Microgrid Partner/Owner shall have the right and sole authority to control the defense or settlement of such claim, provided that no contribution or action by the Host Customer is required in connection with the settlement. Monies due or to become due the Microgrid Partner/Owner under the contract may be retained by the Host Customer as necessary to satisfy any outstanding claim which the Host Customer may have against the Microgrid Partner/Owner.

Disputes between Microgrid Partner/Owner and any subcontractors, material suppliers, or any other third parties over payments allegedly owed by Microgrid Partner/Owner to a third party shall be resolved exclusively between the Microgrid Partner/Owner and the third party; the Microgrid Partner/Owner shall permit no pass-through suits to be brought against the Host Customer by a third party in the Microgrid Partner/Owner's name.

ARTICLE XV INSURANCE AND SECURITY

15.1 Microgrid Partner/Owner's Insurance

At all times relevant to this Agreement, Microgrid Partner/Owner (or "Contractor for the purpose of this Section 15.1) shall maintain (or shall cause its Contractors to maintain), with a company or companies licensed or qualified to do business in the District of Columbia and rated A / VIII or above by A.M. Best, the following insurance coverage. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO.

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

The Government of the District of Columbia shall be included in all policies required hereunder to be maintained by the Contractor and its subcontractors (except for workers' compensation and professional liability insurance) as an additional insureds for claims against The Government of the District of Columbia relating to this contract, with the understanding that any affirmative obligation imposed upon the insured Contractor or its subcontractors (including without limitation the liability to pay premiums) shall be the sole obligation of the Contractor or its subcontractors, and not the additional insured.

The additional insured status under the Contractor's and its subcontractors' Commercial General Liability insurance policies shall be effected using the ISO Additional Insured Endorsement form CG 20 10 11 85 (or CG 20 10 07 04 **and** CG 20 37 07 04) or such other endorsement or combination of endorsements providing coverage at least as broad and approved by the CO in writing. All of the Contractor's and its subcontractors' liability policies (except for workers' compensation and professional liability insurance) shall be endorsed using ISO form CG 20 01 04 13 or its equivalent so as to indicate that such policies provide primary coverage (without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an Additional Insured) for all claims against the additional insured arising out of the performance of this Statement of Work by the Contractor or its subcontractors, or anyone for whom the Contractor or its subcontractors may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

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

1. **Commercial General Liability Insurance** ("CGL") - The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims- made) basis, on Insurance Services Office, Inc. ("ISO") form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor, including ongoing and completed operations under all subcontracts, and covering claims for

bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than $1,000,000 each occurrence, a $2,000,000 general aggregate (including a per location or per project aggregate limit endorsement, if applicable) limit, a $1,000,000 personal and advertising injury limit, and a $2,000,000 products-completed operations aggregate limit.

The vendor should be named as an additional insured on the applicable manufacturer's/distributer's Commercial General Liability policy using Insurance Services Office, Inc. ("ISO") form CG 20 15 04 13 (or another occurrence-based form with coverage at least as broad).

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

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

4. **Employer's Liability Insurance** - The Contractor shall provide evidence satisfactory to the CO of employer's liability insurance as follows: $500,000 per accident for injury; $500,000 per employee for disease; and $500,000 for policy disease limit. All insurance required by this paragraph shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.

5. **Crime Insurance (3rd Party Indemnity)** - The Contractor shall provide a Crime policy including 3rd party fidelity to cover the dishonest acts of Contractor~~'s~~, its employees and/or volunteers which result in a loss to the District. The Government of the District of Columbia shall be included as loss payee. The policy shall provide a limit of $50,000 per occurrence.

6. **Cyber Liability Insurance** - The Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, with limits not less than $2,000,000 per occurrence or claim, $2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information,

alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. This insurance requirement will be considered met if the general liability insurance includes an affirmative cyber endorsement for the required amounts and coverages.

7. **Environmental Liability/Contractors Pollution Liability Insurance** - The Contractor shall provide evidence satisfactory to the CO of environmental liability insurance covering losses caused by pollution or other hazardous conditions arising from ongoing or completed operations of the Contractor. Such insurance shall apply to bodily injury, property damage (including loss of use of damaged property or of property that has been physically injured), clean-up costs, transit, and non-owned disposal sites. Coverage shall extend to defense costs and expenses incurred in the investigation, civil fines, penalties and damages or settlements. There shall be neither an exclusion nor a sublimit for mold or fungus-related claims. The minimum limits required under this paragraph shall be equal to the greater of (i) the limits set forth in the Contractor's pollution liability policy or (ii) $2,000,000 per occurrence and $2,000,000 in the annual aggregate. If such coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverages under the policy precedes the Contractor's performance of any work under the Contract and that continuous completed operations coverage will be maintained for at least ten (10) years or an extended reporting period shall be purchased for no less than ten (10) years after completion.

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

8. **Employment Practices Liability** - The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the operations performed to cover the defense of claims arising from employment related wrongful acts including but not limited to: Discrimination, Sexual Harassment, Wrongful Termination, or Workplace Torts, whether between employees of contractor or against third parties. Employment Practices Liability coverage must specifically state Third Party Liability coverage is included. Contractor will indemnify and defend the District of Columbia should it be named codefendant or be subject to or party of any claim. Coverage shall also extend to Temporary Help Firms and Independent Contractors hired by Contractor. The policy shall provide limits of not less than $1,000,000 for each wrongful act and $2,000,000 annual aggregate for each wrongful act.

9. **Professional Liability Insurance (Errors & Omissions)** - The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of $2,000,000 per claim or per occurrence for each wrongful act and $4,000,000 annual aggregate. The Contractor

warrants that any applicable retroactive date precedes the date the Contractor first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services.

10. **Commercial Umbrella or Excess Liability** - The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits equal to the greater of (i) the limits set forth in the Contractor's umbrella or excess liability policy or (ii) $15,000,000 per occurrence and $15,000,000 in the annual aggregate, following the form and in excess of all liability policies. **All** liability coverages must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.

A. **Construction Projects Controlled by the District**

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

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

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

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

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

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

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

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

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

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

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

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

H. **CERTIFICATES OF INSURANCE.** The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Certificates of insurance must reference the corresponding contract number. Evidence of insurance shall be submitted electronically to james.marshall@dc.gov .

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

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

15.2 Bonding Requirements

Microgrid Partner/Owner acknowledges that it must comply with the bonding requirements set forth in D.C. Code § 2-201.01, and any other relevant laws. Host Customer agrees that Microgrid Partner/Owner shall comply with such requirements as to this Agreement by furnishing a payment bond with a surety or sureties satisfactory to the Government for the protection of all persons supplying labor and material in the prosecution of the work provided for in said contract for the use of each such person in the sum of $2,500,000. This payment bond shall be maintained in full force and effect throughout the Installation Period of the Microgrid.

If any surety upon any bond furnished in connection with this Agreement becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, Microgrid Partner/Owner shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by the Agreement. If Microgrid Partner/Owner fails to furnish such additional security within ten (10) days after written notice so to do, all payments under this Agreement will be withheld until such additional security is furnished.

ARTICLE XVI
ASSIGNMENT

16.1 Assignment by Host Customer

Other than any statutory successor, Host Customer shall not assign this Agreement without the consent of Microgrid Partner/Owner, such consent not to be unreasonably withheld, conditioned, or delayed.

16.2 Assignment by Microgrid Partner/Owner

Microgrid Partner/Owner may, with the prior written consent of Host Customer which consent shall not be unreasonably withheld, assign its interest in this Agreement. Any assignment of this Agreement without the prior written consent of the Host Customer is not valid. Any assignment of this Agreement shall be in accordance with applicable DC law and regulation.

ARTICLE XVII
MISCELLANEOUS

17.1 Disputes

17.1.1 All disputes arising under or relating to this Agreement shall be resolved as provided herein.

17.1.2 Claims by a Microgrid Partner/Owner against the Government

(a) "Claim," as used in this Section 17.1.2, means a written assertion by Microgrid Partner/Owner seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this Agreement. A Claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

(1) All Claims by Microgrid Partner/Owner against the Government arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision.

(2) Within 120 days after receipt of a claim, the Contracting Officer shall issue a decision, whenever possible taking into account factors such as the size and complexity of the claim and the adequacy of the information in support of the Claim provided by the Microgrid Partner/Owner.

(3) Any failure by the Contracting Officer to issue a decision on a Claim within the required time period shall be deemed to be a denial of the Claim and shall authorize the commencement of an appeal on the Claim as otherwise provided.

(4) (A) If Microgrid Partner/Owner is unable to support any part of its Claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of Microgrid Partner/Owner, Microgrid Partner/Owner shall be liable to the Government for an amount equal to the unsupported part of the Claim in addition to all costs to the Government attributable to the cost of reviewing that part of the Microgrid Partner/Owner's Claim.

(B) Liability under this section shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.

(5) All cost data, pricing data, and task data of claims hereunder must be certified as accurate, complete, required, and necessary to the best of the Microgrid Partner/Owner's knowledge and belief. Further, all task or work data in the claim must be described therein to the smallest unit of work or task. The Contracting Officer may require any additional certifications, descriptions, or explanations of the claim.

(6) The Parties agree that time is of the essence and all claims hereunder must be presented to the Contracting Officer for a final decision within thirty (30) days of the

occurrence of the circumstances giving rise to such claim or within thirty (30) days of when Microgrid Partner/Owner knew or should have known of the circumstances giving rise to such Claim, otherwise compensation for that Claim is waived.

(b) Microgrid Partner/Owner's Claim shall contain at least the following:

(1) A description of the Claim and the amount in dispute;

(2) Any data or other information in support of the claim;

(3) A brief description of Microgrid Partner/Owner's efforts to resolve the dispute prior to filing the Claim; and

(4) Microgrid Partner/Owner's request for relief or other action by the Contracting Officer.

(5) The certification of the accuracy, completeness, requirement, and necessity of all aspects of the Claim.

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

(d) Pending final decision of an appeal, action, or final settlement, Microgrid Partner/Owner shall proceed diligently with performance of Agreement in accordance with the decision of the Contracting Officer.

17.1.3 Claims by the Government against Microgrid Partner/Owner

(a) "Claim," as used in this Section 17.1.3, means a written demand or written assertion by the Government, including the Contracting Officer, seeking the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to this Agreement. A Claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. Nothing herein shall be construed to require the Government to notify the Contractor prior to the issuance of the Contracting Officer's final decision.

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

(c) The decision shall be supported by reasons and shall inform Microgrid Partner/Owner of Microgrid Partner/Owner's rights. Specific findings of fact shall not be required.

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

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

(f) Pending final decision of an appeal, action, or final settlement, Microgrid Partner/Owner shall proceed diligently with performance of the Agreement in accordance with the decision of the Contracting Officer.

17.1.4 Appeals

Appeals from any decision of the Contract Appeals Board shall be made to the District of Columbia Court of Appeals in accordance with D.C. Official Code § 2-360.05.

17.2 Confidentiality

17.2.1 The following provisions are applicable to requests filed under the *District of Columbia Freedom of Information Act of 1976*, as amended (D.C. Official Code §§ 2-531 et seq.) ("DCFOIA") or any similar applicable law for information regarding this Agreement or any communications, documents, agreements, information, or records with respect to this Agreement:

(a) Communications, documents, agreements, information and records that qualify as "Confidential Information" under DCFOIA or other applicable law provided to Host Customer by Microgrid Partner/Owner under or pursuant to this Agreement shall be maintained by Host Customer as confidential, and Host Customer shall not disclose such information to any persons other than the appropriate attorneys, accountants, underwriters, financial advisors, bond insurers, rating agencies, auditors, consultants and employees of Host Customer.

(b) As required by the terms of this Agreement, Microgrid Partner/Owner shall provide to Host Customer certain documentation and information on a strictly confidential basis. Host Customer acknowledges that such documentation and information is generally held by Microgrid Partner/Owner in strict confidence and is not of the kind that would customarily be released to the general public by Microgrid Partner/Owner because the disclosure thereof could cause substantial harm to the competitive position of Microgrid Partner/Owner. Host Customer further acknowledges and agrees that Microgrid Partner/Owner will be considered as a "submitter" of such documentation and information for purposes of the DCFOIA. Accordingly, if a person files a request under the DCFOIA or any similar applicable law for any such documentation or information (a "Request"), Host Customer shall promptly, and in any event not more than five (5) days following the receipt of the Request, notify Microgrid Partner/Owner of the Request and allow Microgrid Partner/Owner a sufficient, and not less than a reasonable, period of time (and, in any event, prior to the disclosure of any documentation or information ("Requested Information") that would be disclosed pursuant to the Request) within which to object to Host Customer, and any other relevant judicial or administrative body, to the disclosure of any of the Requested Information. If, following receipt of Microgrid Partner/Owner's objection to the release of the Requested Information, or not less than ten (10) days following receipt of the Request, Host Customer reasonably determines that the Requested Information is exempt from disclosure pursuant to the DCFOIA or other applicable law, Host Customer shall promptly, and in any event, within the time limits mandated under the DCFOIA, assert such exemption from disclosure and decline to provide such information. If, following receipt of Microgrid Partner/Owner's objection to the release of the Requested Information, or not less than ten (10) days following receipt of the

Request, Host Customer reasonably determines that the information sought by the Request is not exempt from disclosure pursuant to the DCFOIA or other Applicable Law, Host Customer shall promptly notify Microgrid Partner/Owner of such determination, and shall refrain from making such disclosure for not less than five (5) days following notice to Microgrid Partner/Owner in order to afford Microgrid Partner/Owner an opportunity to seek an injunction or other appropriate remedy if Microgrid Partner/Owner believes that Host Customer's determination is erroneous. The term "days" as used in this Section, shall be determined in the manner provided in the DCFOIA.

17.2.2 Microgrid Partner/Owner shall endeavor to clearly mark each page of all documents which Microgrid Partner/Owner wishes to designate as Confidential Information "Confidential Trade Secret Information, Contact Microgrid Partner/Owner Before Any Disclosure" and shall also include a reference to this Agreement; provided, however, that Microgrid Partner/Owner's failure to mark any document shall not foreclose Microgrid Partner/Owner from asserting that a document should be designated as Confidential Information.

17.2.3 Nothing in this Agreement shall limit or restrict Host Customer from disclosing any information, communication, or record to the United States Congress, the Council of the District of Columbia, the District of Columbia Inspector General or the District of Columbia Auditor; provided that Host Customer shall use all reasonable measures to prevent further dissemination of such information to the extent such information is Confidential Information.

17.2.4 DCFOIA requires Host Customer to make available for inspection and copying any record produced or collected pursuant to a contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If Microgrid Partner/Owner receives a request for such information, Microgrid Partner/Owner shall immediately send the request to Host Customer who will provide the request to Host Customer's FOIA Officer in accordance with DCFOIA. If Host Customer receives a request for a record maintained by Microgrid Partner/Owner pursuant to this Agreement, Host Customer will forward a copy to Microgrid Partner/Owner. Microgrid Partner/Owner is required by law to provide all responsive records to Host Customer within the timeframe designated by Host Customer. Host Customer's FOIA Officer will determine the releasability of the records. Host Customer will reimburse Microgrid
Partner/Owner for the costs of searching and copying the records in accordance with D.C. Official Code § 2-532 and Chapter 4 of Title 1 of the D.C. Municipal Regulations.

17.2.5 Notwithstanding anything to the contrary set forth herein or in any other agreement to which the Parties are parties or by which they are bound, the obligations of confidentiality contained herein and therein, as they relate to the transaction, shall not apply to the U.S. federal tax structure or U.S. federal tax treatment of the transaction, and each Party (and any employee, representative, or agent of any Party hereto) may disclose to any and all persons, without limitation of any kind, the U.S. federal tax structure and U.S. federal tax treatment of the transaction. The preceding sentence is intended to cause the transaction not to be treated as having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) (or any successor provision) of the Treasury Regulations promulgated under Section 6011 of the Code and shall be construed in a manner consistent with such purpose. In addition, each Party acknowledges that it

has no proprietary or exclusive rights to the tax structure of the transaction, or any tax matter or tax idea related to the transaction.

17.3 Notices

All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered (i) personally by hand delivery on the date delivered, (ii) by recognized air or overnight courier on the next business day after delivered to such overnight courier, (iii) by registered or certified mail, return receipt requested, and postage prepaid, five (5) business days after delivered to the post office or (iv) by email, on the date delivered provided delivery must also be given as a copy in accordance with clause (i), (ii) or (iii) above. In each case, delivery shall be to each Party at its address set forth below, or at such other address(es) as such Party may specify from time to time by written notice to the other Party:

If to Microgrid Partner/Owner:

[NAME]
[ADDRESS]
Attention: [CONTACT NAME]
Email: [EMAIL]
Telephone: [TELEPHONE NUMBER]

If to Host Customer:

Department of General Services
2000 14th Street, NW
8th Floor
Washington, DC 20009
Attention: Director
Email: dgs@dc.gov

With a copy to:

Department of General Services
2000 14th Street, NW
8th Floor
Washington, DC 20009
Attention: Associate Director of Sustainability and Energy Division
Email: [EMAIL]

17.4 Applicable Law and Jurisdiction; Waiver

17.4.1 This Agreement is made and shall be interpreted and enforced in accordance with the laws of the District of Columbia, without regard to the choice of law rules thereof that would result in the application of the laws of any other jurisdiction. The Parties hereby consent and submit to the personal jurisdiction and venue of the Contract Appeals Board and the courts located within the District of Columbia.

17.4.2 EACH OF MICROGRID PARTNER/OWNER AND HOST CUSTOMER HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION.

17.4.3 (a) The bidder/offeror or contractor (whichever the case may be) does hereby irrevocably designate and appoint the Clerk of the District of Columbia Superior Court and his successor in office as the true and lawful attorney of the Contractor for the purpose of receiving service of all notices and processes issued by any court in the District of Columbia, as well as service of all pleadings and other papers, in relation to any action or legal proceeding arising out of or pertaining to this contract or the work required or performed hereunder.

(b) The bidder/offeror or contractor (whichever the case may be) expressly agrees that the validity of any service upon the said Clerk as herein authorized shall not be affected either by the fact that the contractor was personally within the District of Columbia and otherwise subject to personal service at the time of such service upon the said Clerk or by the fact that the contractor failed to receive a copy of such process, notice or other paper so served upon the said Clerk provided the said Clerk shall have deposited in the United States mail, registered and postage prepaid, a copy of such process, notice, pleading or other paper addressed to the bidder/offeror or contractor at the address stated in this contract.

17.5 Entire Agreement

This Agreement and any documents expressly incorporated herein by reference shall constitute the entire Agreement between the Parties regarding the subject matter hereof and supersedes all prior agreements, understandings, representations, and statements, including any marketing materials and sales presentations whether oral or written. There are no agreements, understandings, or covenants between the Parties of any kind, expressed or implied, or otherwise, pertaining to the rights and obligations set forth herein that have not been set forth in this Agreement.

17.6 Amendments and Modifications

No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both Parties.

17.7 Invalidity

The invalidity or unenforceability, in whole or in part, of any portion or provision of this Agreement will not affect the validity and enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision. Notwithstanding the provisions of the preceding sentence, should any term or provision of this Agreement be found invalid or unenforceable, the Parties shall promptly renegotiate in good faith such term or provision of this Agreement to effectuate the same intent and to eliminate such invalidity or unenforceability.

17.8 Counterpart Execution

This Agreement may be executed and delivered by the Parties in any number of counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

17.9 Neutral Interpretation

The Parties acknowledge that this is a negotiated Agreement and, in the event of any dispute over its meaning or application, this Agreement shall be interpreted fairly and reasonably and neither more strongly for, nor more strongly against, either Party.

17.10 Headings

Any headings or captions contained in this Agreement are for reference purposes only and are in no way to be construed to interpret, define, or limit the scope, extent or intent of this Agreement or any provision hereof.

17.11 No Waiver

No waiver of any of the terms and conditions of this Agreement shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such Party's right in the future to insist on such strict performance.

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

17.12 Survival

Any provisions that are necessary to give effect to the intent of the Parties hereunder after the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

17.13 Anti-Deficiency Limitations

The following limitations exist as to each and every purported obligation of Host Customer set forth in this Agreement, whether or not expressly conditioned:

(a) The obligations of Host Customer to fulfill financial obligations pursuant to this Agreement or any subsequent agreement entered into pursuant to this Agreement or referenced herein (to which Host Customer is a party) are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 and 1511-1519 (2004) (the

"Federal ADA"), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2001); (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (2004 Supp.) (the "DCADA" and (i) and (ii) collectively, as amended from time to time, the "Anti-Deficiency Acts"); and (iii) § 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2001). Pursuant to the Anti-Deficiency Acts, nothing in this Agreement shall create an obligation of Host Customer in anticipation of an appropriation by Congress for such purpose, and Host Customer's legal liability for the payment of any of its obligations under this Agreement shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress.

(b) Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of Host Customer shall have any personal liability in connection with the breach of the provisions of this Section or in the event of an Event of Default by Host Customer.

17.14 Host Customer Employees Not To Benefit

No officer or employee of Host Customer will be admitted to any share or part of this Agreement or to any benefit that may arise therefrom, and any contract made by any Host Customer employee authorized to execute contracts in which they or another employee of Host Customer will be personally interested shall be void, and no payment shall be made thereon by Host Customer or any officer thereof.

17.15 Exhibits; Recitals

All exhibits and schedules referred to herein and attached hereto are incorporated by reference into this Agreement. The Recitals of this Agreement are incorporated herein by this reference and made a substantive part of this Agreement between the Parties.

17.16 Time Periods

Any time period hereunder that expires on, or any date hereunder that occurs on, a day that is not a business day shall be deemed to be postponed to the next business day.

17.17 No Individual Liability

No officer, employee, director, member, or other natural person of either of the Parties shall be personally liable to the other Party, or any successor in interest, in the event of any default or breach by a Party or for any amount that may become due to the other Party, or any successor in interest, or on any obligations under the terms of this Agreement or in any manner arising hereunder.

17.18 Hiring of District Residents, Living Wage, Davis Bacon, Buy American

In addition to the requirements set forth in the First Source Employment Agreement (Exhibit P), Microgrid Partner/Owner and the Contractors shall comply with all applicable provisions of the *Living Wage Act of 2006,* as amended (codified at D.C. Official Code §§ 2-220.01 et seq.) and its implementing regulations (Exhibit N). Notwithstanding any other provision of this Agreement, the provisions of the Davis-Bacon Act, 40 U.S.C. § 276(a), shall be applicable to the

construction of the Microgrid (Exhibit M). Microgrid Partner/Owner shall also comply with all applicable provisions of the Buy American Act, 41 U.S.C. §10a.

17.19 No Impairment of District's Regulatory or Police Powers

For the avoidance of doubt, nothing in this Agreement shall restrict, limit, or impair any regulatory or police power of the District of Columbia that otherwise would be applicable to any System or its operation.

17.20 Records

(a) Microgrid Partner/Owner shall establish and maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting principles and practices which sufficiently and properly reflect all revenues and expenditures of funds provided by Host Customer under this Agreement. Microgrid Partner/Owner shall retain all records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement and its performance thereof for a period of three (3) years after termination of this Agreement, or if an audit has been initiated and audit findings have not been resolved at the end of three (3) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this Agreement.

(b) Microgrid Partner/Owner shall assure that these records shall be subject at all reasonable times to inspection, review, or audit by Federal. District, or other personnel duly authorized by Host Customer. The Host Customer's Contracting Officer, the Inspector General and the District of Columbia Auditor, or any of their duly authorized representatives shall, until three (3) years after final payment, have the right to examine any directly pertinent books, documents, papers, and records of Microgrid Partner/Owner involving transactions related to this Agreement and Microgrid Partner/Owner's performance thereunder.

17.21 Reserved

17.22 Covenant Against Contingency Fees

Microgrid Partner/Owner warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Microgrid Partner/Owner for the purpose of securing business, for which the District will have any liability. For breach or violation of this warranty, the District will 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 commission, percentage, brokerage, or contingent fee.

17.23 Recovery of Debts Owed the District

Microgrid Partner/Owner hereby agrees that the District may use all or any portion of any payment, consideration or refund due Microgrid Partner/Owner under the present contract to satisfy, in whole or part, any debt due the District.

17.24 Non-Discrimination Clause

(a) Microgrid Partner/Owner shall not discriminate in any manner against any employee or applicant for employment that would constitute a violation of the District of Columbia Human Rights Act, approved December 13, 1977, as amended (D.C. Law 2-38; D.C. Official Code §21402.11) (2001 Ed.) ("Act" as used in this Section). Microgrid Partner/Owner shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. In addition, Microgrid Partner/Owner agrees, and any subcontractor shall agree to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause as provided in Section 251 of the Act.

(b) Pursuant to rules of the Office of Human Rights, published on August 15, 1986 in the D.C. Register, Mayor's Order 2002-175 (10/23/02), 49 DCR 9883 and Mayor's Order 2006151 (11/17/06), 52 DCR 9351, the following clauses apply to this contract:

(1) Microgrid Partner/Owner shall not discriminate against any employee or applicant for employment because of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act.

(2) Microgrid Partner/Owner agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business.

The affirmative action shall include, but not be limited to the following:

(a) employment, upgrading or transfer;

(b) recruitment, or recruitment advertising;

(c) demotion, layoff, or termination;

(d) rates of pay, or other forms of compensation; and

(e) selection for training and apprenticeship.

(3) Microgrid Partner/Owner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Agency, setting forth the provisions in subsections (b)(1) and (b)(2) concerning nondiscrimination and affirmative action.

(4) Microgrid Partner/Owner shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in subsection (b)(2).

(5) Microgrid Partner/Owner agrees to send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of that contractor's commitments under this nondiscrimination clause and the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) Microgrid Partner/Owner agrees to permit access to his books, records and accounts pertaining to its employment practices, by the Chief Procurement Officer or designee, or the Director of Human Rights or designee, for purposes of investigation to ascertain compliance with this chapter, and to require under terms of any subcontractor agreement each subcontractor to permit access of such subcontractors' books, records, and accounts for such purposes.

(7) Microgrid Partner/Owner agrees to comply with the provisions of this chapter and with all guidelines for equal employment opportunity applicable in the District of Columbia adopted by the Director of the Office of Human Rights, or any authorized official.

(8) Microgrid Partner/Owner shall include in every subcontract the equal opportunity clause, subsections (b)(1) through (b)(9) of this section, so that such provisions shall be binding upon each subcontractor or vendor.

(9) Microgrid Partner/Owner shall take such action with respect to any subcontract as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided, however, that in the event Microgrid Partner/Owner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, Microgrid Partner/Owner may request the District to enter into such litigation to protect the interest of the District.

17.25 Termination of Contracts for Certain Crimes and Violations

(a) The District may terminate without liability any contract and may deduct from the contract price or otherwise recover the full amount of any fee, commission, percentage, gift, or consideration paid in violation of this section and applicable law if:

(1) Microgrid Partner/Owner has been convicted of a crime arising out of or in connection with the procurement of any work to be done or any payment to be made under the contract; or

(2) There has been any breach or violation of:

(A) Any provision of the Procurement Practices Reform Act of 2011, as amended, or

(B) The contract provision against contingent fees.

(b) If a contract is terminated pursuant to this section, Microgrid Partner/Owner:

(1) May be paid only the actual costs of the work performed to the date of termination, plus termination costs, if any; and

(2) Shall refund all profits or fixed fees realized under the contract.

(c) The rights and remedies contained in this are in addition to any other right or remedy provided by law, and the exercise of any of them is not a waiver of any other right or remedy provided by law.

17.26 Delay Liquidated Damages

If the Microgrid Partner/Owner fails to achieve complete installation of the System by the Commercial Service Commencement Date, the Parties acknowledge and agree that the actual damage to the Host Customer for the delay will be impossible to determine, and in lieu thereof, the Microgrid Partner/Owner shall credit to the Host Customer (invoice total), as fixed, agreed and liquidated delay damages in the amount set forth in Exhibit L for failure to meet the Commercial Service Commencement Date.

The Microgrid Partner/Owner and the Host Customer agree that the liquidated damages set forth in this Section 17.26 do not constitute, and shall not be deemed, a penalty but represent a reasonable approximation of the damages to the Host Customer associated with a delay in the installation. These damages shall not apply if the delay is caused by Host Customer or is the result of force majeure and the Microgrid Partner/Owner otherwise complies with the provisions set forth in the Agreement.

17.27 Educational Opportunity Programs

On or before Commercial Service Commencement Date of any System included in this Agreement, the Parties shall in good faith negotiate an agreement to develop one or more programs for students and residents of the District of Columbia, which programs may include but shall not be limited to educational opportunities such as: (a) Microgrid site visits; (b) paid or unpaid internships; (c) energy education curriculum; (e) presentations to Parent-Teacher Associations (PTA), students, and other District government stakeholders; and (d) information from the Microgrid systems visually displayed in an agreed upon public exhibition. Such agreement shall establish the appropriate insurance policies Microgrid Partner/Owner shall maintain in connection with each such program. The Parties agree that in no event shall the failure of the Parties to successfully negotiate a separate agreement as provided in this Section 17.27 constitute an Event of Default under this Agreement.

17.28 Applicability of Standard Contract Provisions

The Department of General Services Standard Contract Provisions (General Provisions) Architect and Engineering Contracts (Attachment O.1) and Construction Contracts (Attachment O2) are incorporated into the agreement.

ARTICLE XVIII EXHIBITS

While the District hopes it will be able to negotiate an agreement with UHS for the Microgrid Partner/Owner to be the sole provider of energy to the Cedar Hill Regional Medical Center Hospital including both the Hospital and the Ambulatory Pavilion (the "Hospital"), we make no assertion or promise that such an agreement shall be reached. While the parties hope that the Microgrid Project will be the sole provider of power for the Cedar Hill Regional Medical Center as well as other offtakers, the ultimate decision will depend on the terms of the District's agreement with the microgrid developer and the ultimate implementation date of the Microgrid Project.

Exhibit A	Listing of Premises
Exhibit B	Delivery Points
Exhibit C	Microgrid Energy Price
Exhibit D	Reserved
Exhibit E	Reserved
Exhibit F	Estimated Loads
Exhibit G	Values for Early Transfer
Exhibit H	Performance Criteria
Exhibit I	Reserved
Exhibit J	Reserved
Exhibit K	Reserved
Exhibit L	Scheduled Milestones
Exhibit M	Department of Labor Wage Determinations Davis Bacon Act
Exhibit N	Living Wage Act
Exhibit O1	District of Columbia Department of General Services Standard Contract Provisions (General Provisions) Architect and Engineering Contracts)
Exhibit O2	District of Columbia Department of General Services Standard Contract Provisions (General Provisions) Construction Contracts
Exhibit P	First Source Employment Agreement (approved)
Exhibit Q	SBE Subcontracting Plan (approved)
Exhibit R	Request for Proposal DCAM-22-CS-RFQ-0001 as amended

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have each executed this St. Elizabeths East Campus Microgrid Power Purchase and Sale Agreement as of the Effective Date.

MICROGRID PARTNER/OWNER

By: _____

Name: _____

Title: _____

Date: _____

HOST CUSTOMER:

DISTRICT OF COLUMBIA, acting by and through the Department of General Services

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A

Exhibit A
Listing of Premises

Unified Communication Center

801 East Shelter

Cedar Hill Regional Medical Center

See Request for Proposal DCAM-22-CS-RFP-0011 Attachment A7

While the District hopes it will be able to negotiate an agreement with UHS for the microgrid developer to be the sole provider of energy to the Hospital, we make no assertion or promise that such an agreement shall be reached. While the parties hope that the Microgrid Project will be the sole provider of power for the Cedar Hill Regional Medical Center, including both the Hospital and the Ambulatory Pavilion (the "Hospital") as well as other off-takers, the ultimate decision will depend on the terms of the District's agreement with the microgrid developer and the ultimate implementation date of the Microgrid Project. The successful completion of Hospital construction and start of Hospital operations ("Hospital Schedule") will therefore be critically dependent on the prompt completion of the Microgrid. To be clear, the intent is that the Microgrid Project proceed whether the microgrid provider is ultimately the sole power provider for the hospital, or not.

Exhibit B

Exhibit B Delivery Points

Delivery Points for each Output at each Off-Taker is provided in this Exhibit, to be periodically updated if Host Energy Systems are updated or if new Off-Takers are added to the Microgrid. These Delivery Points are for descriptive purposes only, and by themselves do not constitute an agreement to receive Output from the Microgrid. All equipment on the Off-Taker side of the Delivery Points shall be considered as part of the Site Energy Systems, and thus the responsibility of the Host Customer as specified in Section 5.4.

Unified Communication Center:

The Delivery Points for Hot Water and Chilled Water shall be the Off-Taker side of each Energy
Transfer Station (owned and maintained by the Microgrid Partner/Owner), located inside the UCC at [basement room numbers].

Cedar Hill Regional Medical Center:

The Delivery Points for Electricity shall be the low side of the 13kV / 480V transformers, located at [outdoor locations outside the electrical room] Cedar Hill Regional Medical Center:

The Delivery Points for Hot Water and Chilled Water shall be the Off-Taker side of the Energy Transfer Stations (owned and maintained by the Microgrid Partner/Owner), located inside the Cedar Hill Regional Medical Center at [basement room number].

The Delivery Points of Electricity shall be each of the two designated switchgear bays in the Cedar Hill Regional Medical Center switchgear line-up located in the outdoor electrical yard.

801 East Shelter:

The Delivery Point for Hot Water shall be the Off-Taker side of the Energy Transfer Station (owned and maintained by the Microgrid Partner/Owner), located inside the 801 East Shelter at the boiler room, located on the first floor in the northeast corner.

There shall be no Delivery Point for Chilled Water at the 801 East Shelter.

The Delivery Point for Electricity shall be the low side of the 13kV / 480V transformer, located at [outdoor location just outside the electrical room] in the northwest corner at the 801 East Shelter.

Exhibit C

Exhibit C Microgrid Energy Price

Setting and Updating Prices for Electricity, Hot Water, and Chilled Water

Microgrid Partner/Owner shall provide Output to Host Customer to the Delivery Points on a Take-or-Pay basis as specified in Section 11. Pricing in this Exhibit is established using an avoided cost approach, as specified below, intending that Off-Takers do not pay more for energy services from the Microgrid than they would have paid without the Microgrid.

Electricity:

Microgrid Partner/Owner shall supply Host Customer with sufficient electricity to meet all electric loads for all Off-Takers. Microgrid Partner/Owner may select one of two pricing Alternatives, defined below. Under Alternative A, the charge per kWh is the Department's average District-wide price for electricity during the prior fiscal year (the "Benchmark Price") minus a 10% discount. This price includes all costs, such as supply, delivery, and transmission.

Under Alternative B, the gas cost is passed through to Host Customer, and the remaining electricity charge is a fixed cost defined below, with the accompanying Generator Efficiency Criterion as specified in Exhibit H. Under either Alternative, electricity will be delivered at customer voltages at the designated Delivery Points.

Any electricity supplied to the Microgrid by Pepco will be fully paid for by Microgrid Partner/Owner under any third-party supply contracts entered into by Microgrid Partner/Owner and under the applicable tariffs, including standby service charges if any.

Chilled Water:

Microgrid Partner/Owner shall supply Host Customer with sufficient Chilled Water to meet all cooling loads for chilled-water Off-Takers. Peak cooling loads may be met in conjunction with existing cooling capacity at the UCC facility. Microgrid Partner/Owner shall charge the avoided electricity cost of producing each refrigeration ton (RT), assuming the Benchmark Price minus a 10% discount and a Coefficient of Performance (COP) of 4, plus 10 cents per RT, representing the avoided capital and operating costs. The latter cost will escalate annually, indexed to the CPI. Microgrid Partner/Owner may at its sole option offer pricing incentives for Off-Taker Delta-T, which Host Customer shall not be obligated to accept.

Hot Water:

Microgrid Partner/Owner shall supply Host Customer with sufficient Hot Water to meet all heating and domestic hot-water loads for hot-water Off-Takers. Peak heating loads may be met in conjunction with existing heating capacity at the UCC facility. Microgrid Partner/Owner shall charge the avoided energy cost per MMBtu, based on the Department's Benchmark Price for natural gas, minus a 10% discount, and assuming 95% efficiency, plus $5 per delivered MMBtu, representing the avoided capital and operating costs. The latter cost will escalate annually, indexed to the CPI. For planning purposes, the Department's 2020 Benchmark Price was $10.20 per MMBtu.

Any natural gas supplied to the Microgrid by Washington Gas will be fully paid for by the Microgrid Partner/Owner under any third-party supply contracts entered into by the Partner/Owner and under the applicable tariffs.

Metering and Billing:

Microgrid Partner/Owner shall install and maintain revenue-grade meters at each Delivery Point for each Output, audited upon request up to twice annually. Microgrid Partner/Owner present a consolidated monthly bill to Host Customer, payable within 30 days, itemizing total and peak usage for each Output provided to each Off-Taker, with hourly interval data recorded and available electronically upon request.

Definition of Electricity Cost, Alternative A

Microgrid Partner/Owner shall charge the Benchmark Price minus a 10% discount. For planning purposes, the Department's 2020 Benchmark Price was 12.8 cents for electricity supplied via Pepco and 7 cents for electricity supplied under a solar PPA.

Definition of Electricity Cost, Alternative B

Microgrid Partner/Owner shall charge an electricity price for output from the CHP on-site generation that includes a pass-through for gas costs, plus a fixed-cost adder per kWh. Gas costs shall be paid by Host Customer. The fixed-cost adder is based on a one-time calculation utilizing the Department's District-wide 2020 average electricity price, as follows:

Given the Department's 2020 Benchmark Price of 12.8 cents per kWh minus a 10% discount, and given a 2020 cost of gas delivered under the CHP tariff (Schedule 7) of $6/MMBtu, then assuming a heat rate of 7,300btu/kWh HHV for a 2 MW engine, 4.4 cents of each kWh would have been attributable to the cost of natural gas, and the fixed cost component of the electricity price is 7.1 cents per kWh.

This fixed cost will be escalated annually at the same rate as the Department's electricity Benchmark Price. To ensure that the District is only paying for the amount of gas that is actually required, the heat rate will be backed by the Microgrid Partner/Owner's Generator Efficiency Criterion specified in Exhibit H.

For electricity generated from solar capacity owned or under contract to Microgrid Partner/Owner, the Microgrid Partner/Owner is authorized to charge the amount defined under Alternative A for electricity supplied under a solar PPA.

Exhibit D

Reserved

Exhibit E

Reserved

Exhibit F

Exhibit F
Estimated Loads

The following annual loads represent the expected total across the three Off-Takers (UCC, Hospital, and 801 East Shelter)

Electricity:	16,478,340 kWh
Hot Water:	58,162 MMBTU
Chilled Water:	1,495,531 Ton Hours

Exhibit G

Exhibit G
Values for Early Transfer

The Stipulated Value for Early Transfer shall be the Microgrid Partner/Owner's net investment multiplied by the appropriate percentage derived from the table below. In the event that the PPA is for any reason extended, then the last percentage figure shown below shall control throughout any such extended term, as defined in Section 2.1.

Year	Percentage
1	115%
2	110%
3	100%
4	95%
5	90%
6	82%
7	74%
8	66%
9	58%
10	50%
11	42%
12	34%
13	24%
14	14%
15	0% ($1)

Exhibit H

Exhibit H
Performance Criteria

1. Resiliency Performance Criteria

The inception of the St. Es microgrid is the need for high levels of resiliency at critical facilities: Cedar Hill Regional Medical Center a hospital that includes an emergency room and well over a hundred beds, and the District's Unified Communication Center (UCC) which includes a 911 call center and emergency communications. These facilities must maintain operations under all circumstances. Diesel-engine emergency power is insufficient, with too many start-up failures and difficulties with fuel re-supply during extended emergencies.

FEMA's award of a BRIC grant to HSEMA for the microgrid project was based on assumptions about the availability of the individual components of the microgrid, and about the performance of the microgrid as a whole in preventing loss of power even under extreme conditions. These Performance Criteria therefore covers both aspects – component availability, for components under the control of the Microgrid, even if component failures do not lead to any customer consequences; and the ultimate result of maintaining service for critical loads.

A) Component Availability Criteria

- Each on-site generator should maintain annual availability of at least 95%, including both planned and unplanned maintenance outages.
- Common-cause failures affecting the availability of more than one on-site generator should be limited to at most 1% of the total outage hours.
- The combination of solar and the BESS should result in at least 800kW being available (though not necessarily dispatched) for at least 50% of the hours in a year.
- When utility service is available through the Pepco feeders, then planned and unplanned maintenance issues or failures *within* the Microgrid (outside of Pepco's responsibilities) should not prevent utilization of a single Pepco service for more than 1% of the hours in a year, and should not prevent utilization of all Pepco services for more than 0.04% of the hours in a year.
- If the diesel engines owned and maintained by OUC at the UCC are needed to meet critical loads for a particular occasion, and if the engines successfully start, then planned and unplanned maintenance issues or failures *within* the Microgrid should not prevent utilization of a single engine for more than 1% of occasions, and both engines simultaneously for more than 0.04% of occasions.

Note that availability metrics include any time required to restore normal functioning to the affected component(s), so it is in the Microgrid Partner/Owner's interest to minimize such response times. Note also that the solar and BESS availability includes solar resources that feed their output to the Microgrid or the Off-Takers, even if they are not owned by the Microgrid Partner/Owner. The Microgrid Partner/Owner will be responsible for tracking and recording component availability statistics, including on an hourly basis where applicable, sufficient to determine compliance with these Component Availability Criteria.

Performance Commitment:

Failure to meet the availability metrics in any given calendar year caused by the action(s) or inaction(s) of the Microgrid Partner/Owner will result in $10,000 per MW in annual future discounts to monthly billing as specified in Section 11, intended to provide a financial incentive to monitor and maintain the Microgrid facilities as needed to meet the larger resiliency objectives of the Project. In addition, if any of the Component Availability Criteria are not met in a given year, the Microgrid Partner/Owner will be required to perform a full root-cause failure analysis, validated by an independent third-party, accounting for the higher failure rates, and to undertake successful Cures to whatever issues the failure analysis identifies. The analysis and Cure will be fully documented and provided to the Department within 90 days of the violation of any of the Component Availability Criteria.

Regardless of the cause or party at fault, failure analyses shall always be performed in order to improve future resiliency.

B) Microgrid Availability Criteria

Critical loads served by the microgrid must never lose power. The purpose of the Project and of the associated FEMA grant is prevent this outcome from ever occurring under all foreseeable circumstances.

Performance Commitment:

If there is a sequence of events, excluding Host Customer Default or Force Majeure Events, that leads to a complete loss of power for the Hospital, including the Emergency Room, and for the UCC, including the 911 call center, then the Microgrid Partner/Owner shall fulfill its resiliency commitment to the District and its residents via an amount calculated under FEMA's BCA methodology, pro-rated for the actual duration of the outage, as specified herein. These costs are based on the lost value of service (per day), and on the expected displacement costs to replicate the lost service in other locations (a one-time cost for any outage in excess of two hours).

Hospital:	$1.6 million per day, plus $360k displacement cost
UCC:	$615k per day (OUC and HSEMA), plus $220k displacement cost

This Performance Commitment will be fulfilled via discounts to the affected off-taker(s) on their future monthly billing, as specified in Section 11, and shall be capped at the equivalent of a three day (72 hour) outage.

2. Generator Efficiency Criterion

If the Microgrid Partner/Owner opts to adopt Alternative B for electricity pricing, which includes gas cost pass-through, then Microgrid Partner/Owner commits to a heat rate not to exceed 8,500 Btu / kWh (Higher Heating Value).

Testing Protocol: The verified heat rate will be based on volumetric gas consumption, with the additional step that no less than annually, the Microgrid Partner/Owner will send a gas sample for a thirdparty laboratory test of Btu content, in conjunction with a one-hour test of engine output, to confirm the actual heat rate.

Performance Commitment:

The Microgrid Partner/Owner commits to covering the additional cost of the increased amount of purchased gas, above what would have been required had the generators met the heat rate criterion, plus other incurred expenses, plus an additional one-year discount on monthly billing equivalent to 20% of these incurred costs. This Performance Commitment shall be calculated on an annual basis.

3. Air Quality Performance Criterion

On-site generation will emit a maximum NOx level of 0.45 lbs per MWh (equivalent to the 2019 PJM system average), or the level required under Microgrid Partner/Owner's air quality permits, whichever is lower. Use of emergency diesel engines during a utility outage will not be included in this measurement.

Testing Protocol: As required under Microgrid Partner/Owner's air quality permits.

Performance Commitment:

Additional NOx emissions at the estimated marginal social cost for NOx pollution in an urban setting, plus 20% adder, or $10 per pound, whichever is higher, calculated on an annual basis, and provided as a future discount as specified in Section 11.

Note: In the event of changes or disagreements leading to any dispute between the Parties concerning this Performance Criterion, the Parties agree to follow the methodology specified in Step 3 of Jeffrey Shrader, Burçin Ünel &Avi Zevin, "Valuing Pollution Reductions: How to Monetize Greenhouse Gas and Local Air Pollutant Reductions from Distributed Energy

Resources", Institute for Policy Integration, NYU School of Law (March 2018), available at https://policyintegrity.org/files/publications/valuing_pollution_reductions2.pdf.

4. Power Quality Performance Criteria

The electricity distributed to Host Customer's Delivery Points shall be at least comparable in power quality to that provided by Pepco service, including meeting the grounding (3-wire or 4wire) requirements of each Off-Taker at their Delivery Points. Power quality shall be monitored and a report provided to the Department at least annually, or upon request in the wake of suspected equipment malfunction or damage due to power quality issues.

Testing Protocol: IEEE 1159-2019

Performance Commitment:

Any documented damage to end-user facilities or equipment due to insufficient power quality shall be compensated by the Microgrid Operator.

5. Energy Transfer Station Performance Criteria

Supply Temperatures:
Hot Water delivered to the Microgrid-owned energy transfer station at each off-taker's designated Delivery Point shall maintain supply temperatures and flow sufficient to achieve a minimum customer-side temperature of 170F, unless a lower temperature is requested by that off-taker.

Chilled Water delivered to the Microgrid-owned energy transfer station at each off-taker's designated Delivery Point shall maintain supply temperatures and flow sufficient to achieve a maximum customer-side temperature of 44F, unless a higher temperature is requested by that offtaker.

Performance Commitment:

Microgrid Partner/Owner shall compensate Host Customer for documented incurred costs associated with correcting for insufficient heating or cooling supply, including but not limited to the supplementary operation of Site Thermal Systems, and in extreme cases of uninhabitable facilities, the cost of business interruption.

6. Performance Criteria for a State of Good Repair at Time of Transfer

At the time of Transfer, the average equipment availability and average annual maintenance costs will have been recorded at the major-component level over the previous five years of

operations. Microgrid Partner/Owner shall post a bond sufficient to cover 50% higher maintenance costs for two years after Transfer. Microgrid Partner/Owner shall also be required to provide transition services to help Host Customer move to the next operator (as applicable)

Performance Commitment:

Maintenance costs over and above the previously-recorded annual average shall be split evenly between the bond or other security and the party or parties responsible for post-Transfer operations, for those maintenance activities necessary to achieve the previously-recorded average equipment availability.

Exhibit I

Reserved

Exhibit J

Reserved

Exhibit K

Reserved

Exhibit L
Schedule Milestones

In the event the District and the Hospital are able to reach agreement such that the Microgrid Project will be the sole provider of energy resources to the new Cedar Hill Regional Medical Center, the following exhibit would apply.

The Microgrid Project will be the sole provider of energy resources to the new Hospital, among other off-takers. The successful completion of Hospital construction and start of Hospital operations ("Hospital Schedule") as defined herein will therefore be critically dependent on the prompt completion of the Microgrid.

Universal Health Services Inc. ("UHS") in its role in the Public Private Partner/Ownership for the Hospital has made binding schedule commitments for delivering the Hospital. UHS's ability to meet critical milestones for the Hospital project are dependent on services from the Microgrid being available at the required times. The Microgrid Partner/Owner will cover UHS's risk from the Microgrid Project by ensuring timely delivery of Output as defined by the Hospital's construction schedule.

The key dates for the Hospital Schedule are:

- Permanent Power date, for the purpose of completing Hospital construction, available by January 2, 2024 or the date needed by the Hospital, whichever is later. Permanent Power at that time may consist solely of Pepco supply, and need not include redundancy, resiliency, or on-site power generation.

- Weathertight date, for the purpose of completing Hospital construction, with heating for freeze protection available by September 1, 2023 and cooling available for interior construction by March 1, 2024, or the dates needed by the Hospital, whichever is later. Heating and cooling may be provided by temporary boilers and chillers if necessary, with the expense borne solely by the Microgrid Partner/Owner.

- Commissioning and TAB Verification date, with all services available by April 16, 2024.

- Hospital Occupancy, by September 6, 2024, beginning with the Ambulatory Care Center and Parking Garage, to be followed by the Hospital Tower by December 6, 2024.

Output at that time shall include redundancy sufficient to meet the Hospital's Joint Commission certification requirements, and shall be backed by the Resiliency Performance Criteria specified in Exhibit H.

The Microgrid Partner/Owner shall be responsible for meeting all dates, and in the event that a service is not available by the specified date, shall make provision to provide temporary service as a substitute, including covering all direct costs and compensating the Hospital for any additional incurred costs.

In the event that a lack of energy services from the Microgrid causes a delay in the delivery of the Hospital, and the delay is not caused by the Hospital, the District, or a Force Majeure event, damages caused shall be deducted from future monthly billing to the Hospital, up to a cap of $1 million, as specified in Section 11.

Exhibit M

"General Decision Number: DC20220002 09/09/2022

Superseded General Decision Number: DC20210002

State: District of Columbia

Construction Type: Building

County: District of Columbia Statewide.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least $15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least $11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at https://www.dol.gov/agencies/whd/government-contracts.

Modification Number	Publication Date
0	01/07/2022
1	01/14/2022

2	02/11/2022
3	02/18/2022
4	02/25/2022
5	03/25/2022
6	04/01/2022
7	04/08/2022
8	05/20/2022
9	06/03/2022
10	06/24/2022
11	07/01/2022
12	07/08/2022
13	07/22/2022
14	07/29/2022
15	08/05/2022
16	09/02/2022
17	09/09/2022

ASBE0024-007 04/01/2021

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR	$ 39.27	18.67+a

Includes the application of all insulating materials, protective coverings, coatings and finishes to all types of mechanical systems

a. PAID HOLIDAYS: New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day,the day after Thanksgiving and Christmas Day provided the employee works the regular work day before and after the paid holiday.

ASBE0024-008 04/01/2021

	Rates	Fringes
ASBESTOS WORKER: HAZARDOUS MATERIAL HANDLER	$ 24.46	8.69+a

Includes preparation, wetting, stripping, removal, scrapping, vacuuming, bagging and disposing of all insulation materials, whether they contain asbestos or not, from mechanical systems

a. PAID HOLIDAYS: New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day,the day after Thanksgiving and Christmas Day provided the employee works the regular work day before and after the paid holiday.

ASBE0024-014 04/01/2021

	Rates	Fringes
FIRESTOPPER	$ 29.41	8.73+a

Includes the application of materials or devices within or around penetrations and openings in all rated wall or floor assemblies, in order to prevent the pasage of fire, smoke of other gases. The application includes all components involved in creating the rated barrier at perimeter slab

edges and exterior cavities, the head of gypsum board or concrete walls, joints between rated wall or floor components, sealing of penetrating items and blank openings.

a. PAID HOLIDAYS: New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day,the day after Thanksgiving and Christmas Day provided the employee works the regular work day before and after the paid holiday.

BRDC0001-002 05/01/2022

	Rates	Fringes
BRICKLAYER	$ 35.20	12.85

CARP0197-011 05/01/2022

	Rates	Fringes
CARPENTER, Includes Drywall Hanging, Form Work, and Soft Floor Laying-Carpet	$ 31.40	13.86

CARP0219-001 05/01/2022

	Rates	Fringes
MILLWRIGHT	$ 36.00	14.07

CARP0441-001 05/01/2022

	Rates	Fringes
PILEDRIVERMAN	$ 34.62	13.45

ELEC0026-016 12/06/2021

	Rates	Fringes
ELECTRICIAN, Includes Installation of HVAC/Temperature Controls	$ 50.00	20.49

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* ELEC0026-017 09/07/2022

	Rates	Fringes
ELECTRICAL INSTALLER (Sound & Communication Systems)	$ 33.95	11.39

SCOPE OF WORK: Includes low voltage construction, installation, maintenance and removal of teledata facilities (voice, data and video) including outside plant, telephone and data inside wire, interconnect, terminal equipment, central offices, PABX, fiber optic cable and equipment, railroad communications, micro waves, VSAT, bypass, CATV, WAN (Wide area networks), LAN (Local area networks) and ISDN (Integrated systems digital network).

WORK EXCLUDED: The installation of computer systems in industrial applications such as assembly lines, robotics and computer controller manufacturing systems. The installation of conduit and/or raceways shall be installed

by Inside Wiremen. On sites where there is no Inside Wireman employed, the Teledata Technician may install raceway or conduit not greater than 10 feet. Fire alarm work is excluded on all new construction sites or wherever the fire alarm system is installed in conduit. All HVAC control work.

ELEV0010-001 01/01/2022

	Rates	Fringes
ELEVATOR MECHANIC	$ 50.27	36.885+a+b

a. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Day and the Friday after Thanksgiving.

b. VACATIONS: Employer contributes 8% of basic hourly rate for 5 years or more of service; 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

IRON0005-005 06/01/2022

	Rates	Fringes
IRONWORKER, STRUCTURAL AND ORNAMENTAL	$ 34.85	24.95

IRON0005-012 05/01/2022

	Rates	Fringes
IRONWORKER, REINFORCING	$ 29.85	23.18

LABO0011-009 06/01/2022

	Rates	Fringes
LABORER: Skilled	$ 27.48	8.98

FOOTNOTE: Potmen, power tool operator, small machine operator, signalmen, laser beam operator, waterproofer (excluding roofing), open caisson, test pit, underpinning, pier hole and ditches, laggers and all work associated with lagging that is not expressly stated, strippers, operator of hand derricks, vibrator operators, pipe layers, or tile layers, operators of jackhammers, paving breakers, spaders or any machine that does the same general type of work, carpenter tenders, scaffold builders, operators of towmasters, scootcretes, buggymobiles and other machines of similar character, operators of tampers and rammers and other machines that do the same general type of work, whether powered by air, electric or gasoline, builders of trestle scaffolds over one tier high and sand blasters, power and chain saw operators used in clearing, installers of well points, wagon drill operators, acetylene burners and licensed powdermen, stake jumper,demolition.

MARB0002-004 05/01/2022

	Rates	Fringes

MARBLE/STONE MASON.....$ 42.06 19.75

INCLUDING pointing, caulking and cleaning of All types of masonry, brick, stone and cement EXCEPT pointing, caulking, cleaning of existing masonry, brick, stone and cement (restoration work)

MARB0003-006 05/01/2022

	Rates	Fringes
TERRAZZO WORKER/SETTER.....$	32.31	12.61

MARB0003-007 05/01/2022

	Rates	Fringes
TERRAZZO FINISHER.....$	26.80	11.56

MARB0003-008 05/01/2022

	Rates	Fringes
TILE SETTER.....$	32.31	12.61

MARB0003-009 05/01/2022

	Rates	Fringes
TILE FINISHER.....$	26.80	11.56

PAIN0051-014 06/01/2022

	Rates	Fringes
GLAZIER		
Glazing Contracts $2 million and under.....$	29.92	13.35
Glazing Contracts over $2 million.....$	34.16	13.35

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* PAIN0051-015 06/01/2022

	Rates	Fringes
PAINTER		
Brush, Roller, Spray and Drywall Finisher.....$	26.61	11.41

PLAS0891-005 07/01/2021

	Rates	Fringes
PLASTERER (Including Fireproofing).....$	30.53	7.93

PLAS0891-006 02/01/2020

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...$	28.82	11.68

PLUM0005-010 08/01/2022

	Rates	Fringes
PLUMBER	$ 48.00	20.75+a

a. PAID HOLIDAYS: Labor Day, Veterans' Day, Thanksgiving Day and the day after Thanksgiving, Christmas Day, New Year's Day, Martin Luther King's Birthday, Memorial Day and the Fourth of July.

PLUM0602-008 08/01/2022

	Rates	Fringes
PIPEFITTER, Includes HVAC Pipe Installation	$ 47.98	23.12+a

a. PAID HOLIDAYS: New Year's Day, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and the day after Thanksgiving and Christmas Day.

ROOF0030-016 07/01/2022

	Rates	Fringes
ROOFER	$ 32.26	14.71

SFDC0669-002 04/01/2022

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers)	$ 38.67	24.66

SHEE0100-015 11/01/2021

	Rates	Fringes
SHEET METAL WORKER (Including HVAC Duct Installation)	$ 44.37	21.33+a

a. PAID HOLIDAYS: New Year's Day, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and Christmas Day

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* SUDC2009-003 05/19/2009

	Rates	Fringes
LABORER: Common or General	$ 13.04 **	2.80
LABORER: Mason Tender - Cement/Concrete	$ 15.40	2.85
LABORER: Mason Tender for pointing, caulking, cleaning of existing masonry, brick, stone and cement structures (restoration work); excludes pointing, caulking and cleaning of new or replacement masonry, brick,		

stone and cement.....$ 11.67 **

POINTER, CAULKER, CLEANER,
Includes pointing, caulking,
cleaning of existing masonry,
brick, stone and cement
structures (restoration
work); excludes pointing,
caulking, cleaning of new or
replacement
masonry, brick, stone or
cement.....$ 18.88

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 ($15.00) or 13658 ($11.25). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at https://www.dol.gov/agencies/whd/government-contracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or

""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on

a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISIO"

Exhibit N

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR

DR. UNIQUE MORRIS-HUGHES
DIRECTOR

LIVING WAGE ACT FACT SHEET

The Living Wage Act of 2006, D.C. Code §§ 2-220.01 – 2-220.11, provides that District of Columbia government contractors and recipients of government assistance (grants, loans, tax increment financing), in the amount of $100,000 or more, shall pay affiliated employees wages at no less than the current living wage rate.

Effective January 1, 2022 until June 30, 2022, the living wage rate is $15.50 per hour.
Effective July 1, 2022, the District's Minimum Wage will increase again based on the CPI as of December 31, 2021.

Subcontractors of D.C. government contractors, who receive $15,000 or more from the contract, and subcontractors of the recipients of government assistance, who receive $50,000 or more from the assistance, are also required to pay their affiliated employees no less than the current living wage rate.

"Affiliated employee" means any individual employed by a recipient who receives compensation directly from government assistance or a contract with the District of Columbia government, including any employee of a contractor or subcontractor of a recipient who performs services pursuant to government assistance or a contract. The term "affiliated employee" does not include those individuals who perform only intermittent or incidental services with respect to the government assistance or contract, or who are otherwise employed by the contractor, recipient or subcontractor.

Exemptions – The following contracts and agreements are exempt from the Living Wage Act:

1. Contracts or other agreements that are subject to higher wage level determinations required by federal law (i.e., if a contract is subject to the Service Contract Act and certain wage rates are lower than the District's current living wage, the contractor must pay the higher of the two rates);

2. Existing and future collective bargaining agreements, provided that the future collective bargaining agreement results in the employee being paid no less than the current living wage;

3. Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;

4. Contracts for services needed immediately to prevent or respond to a disaster or imminent threat to public health or safety declared by the Mayor;

5. Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services, provided that the trainees do not replace employees subject to the Living Wage Act;

6. An employee, under 22 years of age, employed during a school vacation period, or enrolled as full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than 25 hours per week; provided that students not replace employees subject to the Living Wage Act;

7. Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District of Columbia;

8. Employees of nonprofit organizations that employ not more than 50 individuals and qualify for taxation exemption pursuant to Section 501 (c) (3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68 A Stat. 163; 26. U.S.C. §501(c)(3));

9. Medicaid provider agreements for direct care services to Medicaid recipients, **provided, that** the direct care service is not provided through a home care agency, a community residence facility, or a group home for persons with intellectual disabilities as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983; D.C. Official Code § 44-501; and

10. Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

Enforcement

The Department of Employment Services (DOES) Office of Wage-Hour and the D.C. Office of Contracting and Procurement share monitoring responsibilities.

Home Care Final Rule: The Department of Labor extended overtime protections to home care workers and workers who provide companionship services. Employers within this industry are now subject to recordkeeping provisions.

If you learn that a contractor subject to this law is not paying at least the current living wage, you should report it to the contracting officer. If you believe that your employer is subject to this law and is not paying at least the current living wage, you may file a complaint with the DOES Office of Wage - Hour, located at 4058 Minnesota Avenue, N.E. Suite 3600, Washington, D.C. 20019, call (202) 671-1880, or file your claim on-line: www.does.dc.gov. Go to "File a Claim" tab.

For questions and additional information, contact the Office of Contracting and Procurement at (202) 727-0252 or the Department of Employment Services on (202) 671-1880.

Please note: *This fact sheet is for informational purposes only as required by Section 106 of the Living Wage Act. It should not be relied on as a definitive statement of the Living Wage Act or any regulations adopted pursuant to the law.*

THE LIVING WAGE ACT OF 2006

D.C. Code §§ 2-220.01 – 2-220.11

Recipients of new contracts or government assistance shall pay affiliated employees and subcontractors who perform services under the contracts no less than the current living wage.

Effective January 1, 2022 until June 30, 2022, the living wage rate is $15.50 per hour.

Effective July 1, 2022, the District's Minimum Wage will increase again based on the CPI as of December 31, 2021.

The requirement to pay a living wage applies to:

- **All recipients of contracts in the amount of $100,000 or more, and all subcontractors that receive $15,000 or more from the funds received by the recipient from the District of Columbia, and**
- **All recipients of government assistance in the amount of $100,000 or more, and all subcontractors of these recipients that receive $50,000 or more from the government assistance received by the recipient from the District of Columbia.**

"Contract" means a written agreement between a recipient and the District government.
"Government assistance" means a grant, loan, or tax increment financing that result in a financial benefit from an agency, commission, instrumentality, or other entity of the District government.
"Affiliated employee" means any individual employed by a recipient who received compensation directly from government assistance or a contract with the District of Columbia government, including employees of the District of Columbia, any employee of a contractor or subcontractor of a recipient who performs services pursuant to government assistance or contract. The term "affiliated employee" does not include those individuals who perform only intermittent or incidental services with respect to the contract or government assistance or who are otherwise employed by the contractor, recipient, or subcontractor.

Certain exemptions apply: 1) Contracts or agreements subject to wage determinations required by federal law which are higher than the wage required by this Act; 2) Existing and future collecting bargaining agreements, provided that the future agreement results in employees being paid no less than the current living wage; 3) contracts for electricity, telephone, water , sewer performed by regulated utilities; 4) contracts for services needed immediately to prevent or respond to a disaster or imminent threat declared by the Mayor; 5) contracts awarded to recipients that provide trainees with services, including but not limited to case management and job readiness services, provided the trainee does not replace employees; 6) employees under 22 years of age employed during a school vacation period, or enrolled as a full-time student who works less than 25 hours per week; 7) tenants or retail establishments that occupy property constructed or improved by government assistance, provided there is no receipt of direct District government assistance; 8) employees of nonprofit organizations that employ not more than 50 individuals and qualify for 501(c)(3) status; 9) Medicaid provider agreements for direct care services to Medicaid recipients, provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for persons with intellectual disabilities as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983; D.C. Official Code § 44-501; and 10) contracts or agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

Home Care Final Rule: The Department of Labor extended overtime protections to home care workers and workers who provide companionship services. Employers within this industry are now subject to recordkeeping provisions.

Each recipient and subcontractor of a recipient shall provide this notice to each affiliated employee covered by this notice, and shall also post this notice in a conspicuous site in its place of business. All recipients and subcontractors shall retain payroll records created and maintained in the regular course of business under District of Columbia law for a period of at least 3 years.

To file a claim, visit: Department of Employment Services , Office of Wage-Hour, 4058 Minnesota Avenue, NE, Suite 3600, Washington, D.C. 20019; call: (202) 671-1880; or file your claim on-line: does.dc.gov. Go to "File a Claim" tab.

Exhibit O1

District of Columbia Department of General Services

Standard Contract Provisions

GENERAL PROVISIONS

(Architectural & Engineering Services Contract)

Released May 2016

ARTICLE 1. DEFINITIONS

A. "Contracting Officer" as used herein means the District official authorized to execute and administrate the Contract on behalf of the District. Within DGS, the Director is the Chief Contracting Officer. The Director may make delegations of procurement authority to additional contracting officers within DGS.

B. "District" as used herein means the District of Columbia District of General Services, (DGS), a party to the Contract.

C. "Architect-Engineer" means the individual, individuals, and or firm identified as the "Architect-Engineer" In the preamble of a contract.

D. "Agreement" shall also mean "Contract" and vice versa and shall include any Addenda, Contract Form, Standard Contract Provisions, Instructions to Bidders, General Provisions, Labor Provisions, Performance and Payment Bonds, Specifications, Special Provisions, Contract Drawings, manufacturer's specifications, industry standards, Contract Documents, approved written Change Orders and Agreements required to acceptably complete the Contract, including authorized extensions thereof.

ARTICLE 2. GENERAL

A. The Contracting Officer shall have authority to take any action provided for herein on behalf of the District, including approval, certifications, vouchers, acceptance and changes within the scope of work.

B. The Architect-Engineer's period of performance shall commence on the effective date as agreed and as specified in the scope of work or in each task order issued by the Contracting Officer and ends on the date all required services are satisfactorily completed and products delivered.

C. All work shall be prosecuted under the full time direction of a principal officer or responsible representative of the Architect-Engineer, approved by the Contracting Officer. The design of architectural, structural, mechanical, plumbing, electrical, or other engineering features of the work shall be accomplished and/or reviewed and certified by architects or engineers registered to practice in the District of Columbia in the particular professional field involved.

D. The Architect-Engineer shall furnish sufficient technical, supervisory and administrative personnel to insure the efficient prosecution of the work in accordance with the approved Project Schedule.

E. The Architect-Engineer agrees that duly authorized representatives of the District shall have access at all reasonable times, to inspect and make copies of all notes, designs, drawings, specifications or other technical or non-technical data including but not limited to payroll of personnel on this Contract pertaining to the work to be performed under the Contract.

ARTICLE 3. PROGRESS SCHEDULES AND REPORTS

A. Generally. In addition to the requirements set forth in the Scope of Work and to the requirements set forth elsewhere in the Contract, the Architect-Engineer shall furnish progress reports monthly, biweekly and with each payment request, describing accomplishments,

decisions and overall progress made during the period covered by the report and including the most recent Project Schedule and as set forth in more detail in this Article 3.

B. Monthly Reports. The Architect-Engineer shall provide written reports to the District, at a minimum on a monthly basis, 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 Work in Primavera format in the latest available version or as designated by the Contracting Officer. The monthly written reports shall also include, at a minimum, Work accomplished, problems encountered, cost updates, an economic inclusion report, cash flow updates, quality assurance reports and other similar relevant data as the District may reasonably require.

C. Biweekly Updates. The Architect-Engineer shall also provide written update reports to the District on a biweekly basis which shall reflect actual conditions of Project progress as of the date of the update. The update shall reflect the actual progress of designs or construction, as the case may be, identify developing delays, regardless of their cause, and reflect the Architect-Engineer'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 Architect-Engineer shall identify the causes of any potential delay and state what, in the Architect-Engineer's judgment, must be done to avoid or reduce that delay. The Architect-Engineer 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 the latest version of Primavera format and reasonably acceptable to the District. The District 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 District's receipt of, and lack of objection to, any schedule update showing Substantial Completion or Final Completion later than the dates agreed upon shall not be regarded as the District's agreement that the Architect-Engineer may have an extension of time, or as a waiver of any of the District's rights, but merely as the Architect-Engineer'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. Changes to the scheduled completion dates may be made only in the circumstances and only by the methods set forth in the Contract.

D. Condition Precedent to Payment. All payments to Architect-Engineer are contingent upon satisfactory performance of the terms and conditions set forth in the Contract as determined by the Contracting Officer. Requisitions for payment shall be accompanied by a Project Progress Report which shall include the information set forth in this Article 3 and a statement indicating the percentage of completion of all required services for the Project.

ARTICLE 4. RESPONSIBILITY OF THE ARCHITECT-ENGINEER

A. Quality. The Architect-Engineer shall be responsible for the professional quality, technical accuracy and the coordination of all designs, drawing, specifications, and other services

furnished. The Architect-Engineer shall, without additional compensation correct or revise any errors or deficiencies in his designs, drawings, specification and other services.

B. Scope of Work. The Architect-Engineer shall accomplish the design services required pursuant to the scope of work or under each task order. These services shall include but not limited to the services required to enable the District to award the related construction contract pursuant to standard District procedures, for the construction of the facilities designed at a price that does not exceed the estimated construction contract price set forth in the Contract.

1. If bids or proposals are not solicited within 180 days following the District's acceptance of the services to be provided under the scope of work or task order, shall prepare an estimate of constructing the design submitted and such estimate will be used in lieu of bids or proposals to determine compliance with the funding limitation.

2. If the bids or proposals for the construction contract received exceed such estimated price, the Architect-Engineer shall perform such redesign and other services as are necessary to permit contract award within such funding limitation. Such redesign services shall be performed at no increase in the price of the Contract. However, the Architect-Engineer shall not be required to perform such additional services at no cost to the District, if the unfavorable bids or proposals are the results of unforeseeable causes beyond the control and without the fault and negligence of the Architect-Engineer.

C. Designing to Budget. The Architect-Engineer shall promptly advise the Contracting Officer if the Architect-Engineer finds that the Project design will exceed or is likely to exceed the funding limitations and the Architect-Engineer is unable to design a usable facility within these limitations. Upon receipt of such information, the Contracting Officer will review the Architect-Engineer's revised estimate of construction cost. The Contracting Officer may, if he determines that the estimated construction contract price set forth in the scope of work or task order is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope of materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth elsewhere in the Contract or he may adjust such estimated construction contract price.

D. Project Management and Inspection Entity. In the event the Contract requires the Architect-Engineer to provide construction period services, the Architect-Engineer shall also, at intervals of no less than once per week, be responsible for:

1. *Visits to Site and Observation of Construction.* An Architect-Engineer representative who is knowledgeable of the Project and competent in each discipline which has trade activities and stages of construction being performed shall visit the site at intervals to observe as an experienced and qualified design professional the progress and quality of the various aspects of the contractor's Work. Based on information obtained during such visits and on such observations, the Architect-Engineer shall endeavor to determine whether such Work is proceeding in accordance with the Contract Documents and shall keep the District informed of the general progress of the Work in relation to the overall schedule. The Architect-Engineer shall document the site visit in writing and shall submit his findings in accordance with the report requirements set forth in Article 3 herein.

2. *Inspections of Work in Progress by the Architect-Engineer.* During his periodic visits to the Site to observe the Work in progress, the Architect-Engineer shall, as a minimum, spot check the Work installed and the Work in progress to determine compliance with the requirements of the Contract Documents and the codes and installation/workmanship standards listed therein. Defective and noncompliant Work shall be noted in the Architect-Engineer's reports and pointed out to the Contracting Officer and Program Manager. The Architect-Engineer shall identify for the Project Manager any specific checks or inspections to be made. The results of these inspections shall be made a part of the Project's daily log and reports. The Architect-Engineer shall document the inspection in writing.

3. *Supplemental Inspections and Tests.* For Work not in compliance with the Contract Documents, the Architect-Engineer shall, with the agency's approval, require additional or supplemental inspection or testing. The Architect-Engineer shall receive and review all certificates of inspections, tests and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents and shall determine whether their content complies with the requirements of each. The Architect-Engineer shall also determine whether the results certified indicate compliance with the Contract Documents. The Architect-Engineer shall document the inspection in writing.

4. *Defective Work.* During its site visits and based on its observation during such visits, the Architect-Engineer may disapprove or reject contractor's Work, or any portion thereof, while the Work is in progress if Architect-Engineer believes that such Work does not conform to the Contract Documents, including the approved shop drawings or other submittals. The Architect-Engineer may also recommend that the District reject any Work which it believes will not result in a completed Project that conforms generally to the Contract Documents or that it believes will prejudice the integrity of the design as reflected in the Contract Documents. The Architect-Engineer shall document the Defective Work in writing.

E. Code and Regulatory Compliance. The Architect-Engineer is responsible for designing the project and administering the construction phase of the Project in accordance with applicable District of Columbia Codes and other regulatory requirements applicable to the Project. Nothing contained herein shall be construed as relieving any Architect-Engineer, professional design consultant, contractor, supplier or any other participant from any professional or legal responsibility for performance. Reviews, comments and approvals by the District of General Services and its Divisions, or any employee or official of the District, in no way absolve any other person, firm or corporation involved in the Project from their full responsibilities under the applicable laws, codes and professional practice as required in projects for the District of Columbia. Lack of comment by a District of Columbia reviewer does not relieve the Architect-Engineer from designing to meet the applicable Code or Architect-Engineer Manual requirements or applicable regulations related to water, sewer, fire department service, and other utilities.

1. *Additional Costs.* If the correction of a Code or regulatory violation results in a Change Order during construction, any additional costs incurred shall be borne by the party responsible for the violation. The District shall bear only the costs attributable to the actual Code or regulation-required enhancement of the Project.

2. *Code Interpretation.* If the Architect-Engineer believes that a Code or a regulation is unclear as to meaning, he shall request a written opinion as to the applicable interpretation

from the applicable regulatory agency, as appropriate. The Architect-Engineer shall be entitled to rely on the written opinion, if any, which he receives.

F. As-Built Drawings. At completion of the Project, the Architect-Engineer shall prepare a full set of record drawings showing the "as-built" condition of the Project and including the locations of all utilities based on his own records and upon information supplied by the Construction Manager or Design-Builder on which the Architect-Engineer may rely. These drawings will consist of the original working drawings and the original of supplemental drawings and details modified to show the "as built" conditions both in paper, tracings, and electronic media. "As-built" drawings shall be turned over to the District as a condition precedent to Substantial Completion; final payment of the Architect-Engineer's fees shall not be due until the building is accepted by the District, the final Application for Payment is made to, in acceptable form, and accepted by the District, and record drawings and "as-built" drawings in the form of paper, tracings, and electronic media in the form of Compact Discs in latest version of AutoCAD. The District reserves the right to occupy the building, or portions thereof, prior to final acceptance.

G. No Waiver. Neither the District's review, approval or acceptance of, nor payment for, any of the services required under this Contract shall be construed to operate as a waiver or any rights under this Contract or of any cause of action arising out of the performance of this agreement, and the Architect-Engineer shall be and remain liable to the District in accordance with applicable law for all damages to the District caused by the Architect-Engineer's negligent or intentionally wrongful act, omission or default while performing any of the services under this Contract.

H. Remedies Inclusive. The rights and remedies of the District provided for under the contract are in addition to any other rights and remedies provided by law.

ARTICLE 5. PAYMENTS

A. Invoices. The Architect-Engineer shall submit an invoice to the District along with District-required documentation. The invoice shall generally itemize the various phases or parts of the Total Contract Amount, the value of the various phases or parts, the previously invoiced and approved amounts for payment, and the amount of the current invoice. The invoice shall also include a certification statement signed by the Architect-Engineer stating that the Architect-Engineer has paid its consultants, subcontractors and suppliers their individual proportional share of all previous payments, including interest, received from the District. Invoices for reimbursables shall include documentation of costs for which reimbursement is sought. Invoices for Architect-Engineer Services being performed on an hourly rate basis shall show the technical classifications, names of the persons performing the Architect-Engineer Services, man hours expended, marked up hourly rates for the classification, and the extended cost amount.

B. Invoice Disputes. Unless there is a dispute about the compensation due the Architect-Engineer including, but not limited to, claims by the District against the Architect-Engineer, then within thirty (30) days after receipt by the District of the Architect-Engineer's acceptable invoice, which shall be considered the invoice receipt date, the District shall pay to the Architect-Engineer the amount approved less any retainage and less any prior payments or advances made to Architect-Engineer. The date on which payment is due shall be referred to as the Payment Date.

C. Frequency. Invoices prepared the Architect-Engineer relating to the amount and value of work and services performed by the Architect-Engineer under the Contract shall be made periodically (not more often than monthly) and sent to the District for payment, accompanied by such documentation and supporting data as may be required by the Contracting Officer.

D. Retainage. Upon approval of such invoice amounts by the Contracting Officer and presentation of proper documentation by the Architect-Engineer, payment of the invoice amount as determined above less agreed upon retainage and all previous payments shall be made as soon as practicable. Unless otherwise provided for in the Contract the retained payment percentage shall be 5%, provided, however, that if the Contracting Officer determines that the work is Substantially Complete and that the amount of retained percentages is in excess of the amount considered by him to be adequate for the protection of the District, he may in his discretion release to the Architect-Engineer such excess amount.

E. Final Payment. Upon the satisfactory completion of the Work and formal notification of its final acceptance by the Contracting Officer, the Architect-Engineer shall be paid the unpaid balance of any money due hereunder, including retained percentages. Prior to such final payment under the Contract or prior to settlement upon termination of the Contract and as a condition precedent thereto, the Architect-Engineer shall execute and deliver to the Contracting Officer a release of all claims against the District arising under or by virtue of the Contract other than such claims, if any, as may be specifically excepted by the Architect-Engineer from the operation of the release in stated amounts to be set forth therein.

F. Document Ownership. All drawings, designs, specifications, architectural designs of buildings and structures, notes and other Architect-Engineer Work produced in the performance of this contract, or in contemplation thereof, and all as-built drawings produced after completion of the work shall be and remain the sole property of the District and may be used on any other work without additional cost to the District. With respect thereto the Architect-Engineer agrees not to assert any rights or to establish any claim under the design patent or copyright laws and not to publish or reproduce such matter in whole or in part or in any manner or form or authorize others so to do without the written consent of the District, until such time as the District may have released such matter to the public. Further, with respect to any architectural design which the District desires to protect by applying for and prosecuting a design patent application or otherwise, the Architect-Engineer agrees to furnish the Contracting Officer such duly executed instruments and other papers (prepared by the District) as are deemed necessary to vest in the District the rights granted it under this clause. The Architect-Engineer agrees to furnish and provide access to the originals or copies of all such materials on the request of the Contracting Officer for a period of three (3) years after completion for the project.

G. Corrections of Work Post-Payment. Notwithstanding the acceptance and approval by the District of any Services performed or Materials provided, the Architect-Engineer shall be responsible for the professional quality, technical accuracy and the coordination of all Materials, and Services furnished by the Architect-Engineer under the Contract. The Architect-Engineer shall, without additional compensation, correct or revise any errors or deficiencies or omissions in the Architect-Engineer's Materials and Services.

H. Payment Not Waiver. The District's review, approval or acceptance of, or payment for, any of the Materials and Services required under the Contract shall not constitute any representation, warranty or guaranty by the District as to the substance or quality of the matter reviewed,

approved or accepted and shall not be construed to operate as a waiver or estoppel of any of the District's rights or privileges under the Contract or of any cause of action arising out of the performance of the Contract. No person or firm shall rely in any way on such review, approval or acceptance by the District. The Architect-Engineer shall be and remain liable in accordance with Applicable Law for all damages to the District caused by the Architect-Engineer. Review, approval or acceptance by the District or the Contracting Officer under the Contract shall not constitute approval otherwise required by any of the District departments, boards, commissions, or other regulatory agencies in the exercise of their independent regulatory authority.

I. Errors and Omissions. Without limiting the Architect-Engineer's responsibility set forth above, such responsibility, by way of illustration shall include the following: If any error or omission in the Construction Documents submitted by the Architect-Engineer requires a change in the Scope of Services or any portion thereof, the Architect-Engineer shall promptly complete such change at no additional cost to the District.

J. Compensation Disputes. Disputes regarding the compensation due the Architect-Engineer may include, but are not limited to, the amount due, the value or percentage of the Architect-Engineer Services completed, defects or deficiencies in the Architect-Engineer Services, quality of the Architect-Engineer Services, compliance with the Contract Documents, completion itself, or negligent performance of professional services on the part of the Architect-Engineer. In the event of disputes, payment shall be mailed on or before the Payment Date for amounts and Architect-Engineer Services not in dispute, subject to any setoffs claimed by the District.

K. Adjustments. All prior payments, whether based on estimates or otherwise, may be corrected and adjusted in any payment and shall be corrected and adjusted in the final payment. In the event that any invoice by the Architect-Engineer contains a defect or impropriety which would prevent payment by the Payment Date, the District shall notify the Architect-Engineer in writing of such defect or impropriety within ten (10) days after the invoice receipt date. Any disputed amounts determined by the District to be payable to the Architect-Engineer shall be due thirty (30) days from the date the dispute is resolved.

L. Payments to Subcontractors. The Architect-Engineer shall make a payment to each of its Consultants, Subcontractors and Suppliers, not later than seven (7) calendar days after receipt of amounts paid to the Architect-Engineer by the District, in an amount equal to the proportionate share of the total payment, including any interest, received from the District attributable to the Architect-Engineer Services performed by Consultants and Subcontractors and materials furnished by Suppliers less a retainage of not more than five percent (5%), said retainage being the same money, not additional money, retained by the District from the payment to the Architect-Engineer.

ARTICLE 6. CHANGES

A. Generally. The Contracting Officer may at any time by written order make changes to the scope of services to be performed under each task order. If such changes cause an increase or decrease in the Architect-Engineer's cost of or time required for performance of any service under the Contract, upon approval of the Contracting Officer, an equitable adjustment shall be made and the Contract shall be modified in writing by the Contracting Officer accordingly. Any claim of the Architect-Engineer for adjustment under this clause must be made in writing to the Contracting Officer within ten (10) days from the date of receipt by the Architect-Engineer of the

notification of change unless the Contracting Officer grants a further period of time before the date of final payment under this contract. If the Architect-Engineer requests changes to the Scope of Services, the Architect-Engineer must demonstrate to the satisfaction of the District that the changes are necessary and not due to the acts or omissions of the Architect-Engineer. Generally, the time of performance of the Contract and/or any task order may be extended for the administrative convenience of the District or for other purposes whenever the Contracting Officer determines such action will not be a cause for additional fee or other related cost.

B. Additional Compensation. Compensation to the Architect-Engineer beyond the monetary limits set forth in the Contract shall only be made if and when a Change Order to the Contract is duly executed by the Parties. Nothing herein shall limit the District's ability to make changes to the Contract unilaterally.

C. Designated Change Orders. The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract, including but not limited to changes

1. In the Contract drawings and specifications;

2. In the method or manner of performance of the work;

3. In the District furnished facilities, equipment, materials or services; or

4. Directing acceleration in the performance of the work.

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

D. Other Change Orders. Any other written order or an oral order (which term as used in this Section shall include direction, instruction, interpretation, or determination) from the Contracting Officer which causes any such change, shall be treated as a Change Order under this Article, provided that the Architect-Engineer gives the Contracting Officer written notice stating the date, circumstances and sources of the order and that the Architect-Engineer regards the order as a Change Order.

E. General Requirements. Except as herein provided, no order, statement or conduct of the Contracting Officer shall be treated as a change under this Article or entitle the Architect-Engineer to an equitable adjustment hereunder. If any change under this Article causes an increase or decrease in the Architect-Engineer's cost of, or the time required for, the performance of any part of the work under this Contract whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any change under (B) above shall be allowed for any cost incurred more than 20 days before the Architect-Engineer gives written notice as therein required unless this 20 days is extended by the Contracting Officer and provided further, that in case of defective drawings and specifications, the equitable adjustment shall include any increased cost reasonably incurred by the Architect-Engineer in attempting to comply with such defective drawings and specifications.

1. If the Architect-Engineer intends to assert a claim for an equitable adjustment under this Article, he must, within 30 days after receipt of a written Change Order under (A) above or

the furnishing of a written notice under (D) above, submit to the Contracting Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Contracting Officer. The statement of claim hereunder may be included in the notice under (D) above.

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

F. Change Order Breakdown. Contract prices shall be used for Change Order work where work is of similar nature; no other costs, overhead or profit will be allowed.

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

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

a) *Labor*—Payment will be made for direct labor cost plus indirect labor cost such as insurance, taxes, fringe benefits and welfare provided such costs are considered reasonable by the District. Indirect costs shall be itemized and verified by receipted invoices. If verification is not possible, up to 18 percent of direct labor costs may be allowed. In addition, up to 20 percent of direct plus indirect labor costs may be allowed for overhead and profit.

b) *Bond*—Payment for additional bond cost will be made per bond rate schedule submitted to the District with the executed Contract.

c) *Materials*—Payment for cost of required materials will be F.O.B. destination (the job site) with an allowance for overhead and profit.

d) *Rented Equipment*—Payment for required equipment rented from a third party company that is neither an affiliate of, nor a subsidiary of, the Architect-Engineer will be based on receipted invoices which shall not exceed rates given in the current edition of the Rental Rate Blue Book for Construction Equipment published by Data Quest. If actual rental rates exceed manual rates, written justification shall be furnished to the Contracting Officer for consideration. No additional allowance will be made for overhead and profit. The Architect-Engineer shall submit written certification to the Contracting Officer that any required rented equipment is neither owned by nor rented from the Architect-Engineer or an affiliate of or subsidiary of the Architect-Engineer.

e) *Architect-Engineer's Equipment*—Payment for required equipment owned by the Architect-Engineer or an affiliate of the Architect-Engineer will be based solely on an

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

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

g) *Subcontract Work*—Payment for additional necessary subcontract work will be based on applicable procedures in a) through f), to which total additional subcontract work, up to an additional 10 percent, may be allowed for the Architect-Engineer's overhead and profit.

ARTICLE 7. EQUITABLE ADJUSTMENT OF CONTRACT TERMS

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

A. Differing Site Conditions.

1. During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the Architect-Engineer, upon discovering such conditions, shall promptly notify the Contracting Officer in writing of the specific differing conditions before they are disturbed and before the affected work is performed.

2. Upon written notification, the Contracting Officer will investigate the conditions, and if he/she determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding loss of anticipated profits, will be made and the contract modified in writing accordingly. The Contracting Officer will notify the Architect-Engineer of his/her determination whether or not an adjustment of the contract is warranted.

3. No contract adjustment which results in a benefit to the Architect-Engineer will be allowed unless the Architect-Engineer has provided the required written notice; a failure to notify the Contracting Officer of the changed conditions prior to work being disturbed by said conditions shall constitute a permanent waiver of all right to compensation related to the changed conditions by the Architect-Engineer.

4. No contract adjustment will be allowed under this clause for any effects caused on unchanged work.

B. Suspension of Work Ordered by Contracting Officer.

1. If the performance of all or any portion of the work is suspended or delayed by the Contracting Officer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Architect-Engineer believes that additional compensation and/or contract time is due as a result of such suspension or delay, the Architect-Engineer shall submit to the Contracting Officer in writing a request for equitable

adjustment within seven (7) calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

2. Upon receipt, the Contracting Officer will evaluate the Architect-Engineer's request. If the Contracting Officer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control or and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Contracting Officer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Contracting Officer will notify the Contract of his/her determination whether or not an adjustment of the contract is warranted.

3. No contract adjustment will be allowed unless the Architect-Engineer has submitted the request for adjustment within the time prescribed; a failure to submit a request for adjustment in the time prescribed shall constitute waiver of all right to compensation related to the suspension of work by the Architect-Engineer.

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

C. Significant Changes in Character of Work.

1. The Contracting Officer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the Architect-Engineer agrees to perform the work as altered.

2. If the alterations or changes in quantities significantly change the character of the work under the contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Architect-Engineer in such amount as the Contracting Officer may determine to be fair and reasonable.

3. If the alterations or changes in quantities significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

4. The term "significant change" shall be construed to apply only to the following circumstances:

a. When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or

b. When an item of work is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in the case of a decrease below 75 percent, to the actual amount of work performed.

If the parties fall to agree upon the adjustment to be made, the dispute shall be processed as provided in Article 10 hereof entitled "Disputes". Nothing provided in this section shall excuse the Architect-Engineer from proceeding with the prosecution of work so changed.

ARTICLE 8. TERMINATION

A. Termination for Default. Termination, whether for default or convenience is not a Government claim. The Contracting Officer may terminate the Contract for default, in whole or in part, if the termination is in the best interests of the Government, and the Architect-Engineer does any of the following:

1. Fails to deliver the goods or complete the work or services within the time specified in the contract or any modification;

2. Fails to make sufficient progress on contract performance so as to endanger performance of the contract within the time specified or in the manner specified in the contract;

3. Fails or refuses to go forward with the work in accordance with the direction of the Contracting Officer;

4. Expresses through word or conduct an intention not to complete the work in accordance with the directions of the Contracting Officer;

5. Fails to perform any of the other provisions of the contract;

6. Materially deviates from the representations and capabilities set forth in the Architect-Engineer's response to the solicitation.

B. Final Decision of Contracting Officer. A termination for default is a final decision of a contracting officer. In order to contest a termination for default, the contractor must submit a certified request to convert the termination for default to a termination for convenience with all documents supporting such conversion and comply with all contract provisions and laws relating to terminations for convenience, including the submission of a certified termination for convenience settlement proposal. The submission of the certified request for conversion to a termination for convenience and certified termination settlement proposal to the contracting officer must occur prior to 90 days from the date of the contracting officer's final decision.

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

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

2. The Architect-Engineer's right to proceed shall not be so terminated nor the Architect-Engineer charged with resulting damage if:

a) The delay in the completion the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Architect-Engineer, including but not restricted to acts of God, acts of the public enemy, acts of the District in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the District, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, climatic conditions beyond the normal which could be anticipated, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Architect-Engineer and such subcontractors or suppliers (the term subcontractors or suppliers shall mean subcontractors or suppliers at any tier); and

b) The Architect-Engineer, within 72 hours from the beginning of any such delay, (unless the Contracting Officer grants a further period of time before the date of final payment under the Contract) notifies the Contracting Officer in writing of the causes of delay.

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

4. If, after notice of termination of the Architect-Engineer's right to proceed under the provisions of this Article, it is determined for any reason that the Architect-Engineer was not in default under the provisions of this Article, or that the delay was excusable under the provisions of this Article, the rights and obligations of the parties shall be in accordance with Article 6 herein. Failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of Article 7 herein.

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

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

D. Termination for Convenience of the Government

1. The performance of work under the Contract may be terminated by the District in accordance with this Article in whole, or in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the District. Any such termination shall be effected by delivery to the Architect-Engineer of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.

2. After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Architect-Engineer shall:

a) Stop work under the Contract on the date and to the extent specified in the Notice of Termination.

b) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract as is not terminated.

c) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.

d) Assign to the District, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title and interest of the Architect-Engineer under the orders and subcontracts so terminated, in which case the District shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

e) Settle all outstanding liabilities and all claims arising out of such termination of orders or subcontracts, with the approval or ratification of the Contracting Officer to the extent he may require, which approval or ratification shall be final for all purposes of this Article.

f) Transfer title to the District and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer:

(i) fabricated or unfabricated parts, work in progress, completed work, supplies, and other material procured as a part of, or acquired in connection with, the performance of the work terminated by the Notice of Termination, and

(ii) completed, or partially completed plans, drawings information and other property which, if the Contract bad been completed, would have been required to be furnished to the District.

g) Use his best efforts to sell, in the manner, at the terms, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in 6 above provided, however, that the Architect-Engineer:

(I) shall not be required to extend credit to any purchaser, and
(ii) may acquire any property under the conditions prescribed and at a price or prices approved by the contracting officer, and
(iii) provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the district to the architect-engineer under the contract or shall otherwise be credited to the price or cost of the work covered by the contract or paid in such other manner as the contracting officer may direct.

h) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.

i) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Architect-Engineer and in which the District has or may acquire an interest.

j) The Architect-Engineer shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the cost, or any item of reimbursable cost, under this Article.

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

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

3. After receipt of a Notice of Termination, the Architect-Engineer shall submit to the Contracting Officer his termination claim, in the form with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than 90 days from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Architect-Engineer made in writing within such 90 day period or authorized extension thereof. In the event the Architect-Engineer was terminated for default and it asserts that it is entitled to a termination for convenience, its certified request for the conversion of the default termination to one for convenience and its certified termination settlement proposal must be submitted to the Contracting Officer prior to the expiration of 90 days from the date of the default termination. With respect to a termination for convenience, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 90 day period or extension thereof. Nothing herein shall be construed to extend the time for the submission of a claim hereunder for a defaulted Architect-Engineer beyond 90 days from the date of the default termination. Upon failure of the Architect-Engineer to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the District's procedures in effect as of the date of execution of the Contract, determine, on the basis of information available to him, the amount, if any, due to the Architect-Engineer by reason of the termination and shall thereupon pay to the Architect-Engineer the amount so determined.

4. Subject to the provisions of Section 3 above, and subject to any review required by the District's procedures in effect as of the date of execution of the Contract, the Architect-Engineer and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Architect-Engineer by reason of the total or partial termination of

work pursuant to this Article, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract shall be amended accordingly, and the Architect-Engineer shall be paid the agreed amount. Nothing in Section 5 below prescribing the amount to be paid to the Architect-Engineer in the event of failure of the Architect-Engineer and the Contracting Officer to agree upon the whole amount to be paid to the Architect-Engineer by reason of the termination of work pursuant to this Article, shall be deemed to limit, restrict or otherwise determine or effect the amount or amounts which may be agreed upon to be paid to the Architect-Engineer pursuant to this paragraph.

5. In the event of the failure of the Architect-Engineer and the Contracting Officer to agree as provided in Section 4 above upon the whole amount to be paid to the Architect-Engineer by reason of the termination of work pursuant to this Article, the Contracting Officer shall, subject to any review required by the District's procedures in effect as of the date of execution of the Contract, determine, on the basis of information available to him, the amount, if any, due the Architect-Engineer by reason of the termination and shall pay to the Architect-Engineer the amounts determined by the Contracting Officer, as follows, but without duplication of any amounts agreed upon in accordance with Section 4 above:

a) With respect to all Contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:

i) The cost of such work;

ii) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in Section 2(e) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under the Contract, which amounts shall be included in the cost on account of which payment is made under on Section 5(a)(i) above; and

iii) A sum, as profit on Section 5(a)(i) above, determined by the Contracting Officer to be fair and reasonable; provided however, that if it appears that the Architect-Engineer would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subparagraph and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and provided further that profit shall be allowed only on preparations made and work done by the Architect-Engineer for the terminated portion of the Contract but may not be allowed on the Architect-Engineer's settlement expenses. Anticipatory profits and consequential damages shall not be allowed. Any reasonable method may be used to arrive at a fair profit, separately or as part of the whole settlement.

b) The reasonable cost of the preservation and protection of property incurred pursuant to Section 2(i); and any other reasonable cost incidental to termination of work under the Contract including expense incidental to the determination of amount due to the Architect-Engineer as the result of the termination of work under the Contract.

6. The total sum to be paid to me Architect-Engineer under Section 5(a) above shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. Except for normal spoilage, and except to the extent that the District shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Architect-Engineer under Section 5(a) above, the

fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the District, or to a buyer pursuant to Section to 2(g) above.

7. The Architect-Engineer shall have the right of appeal, under Article 9 herein, from any determination made by the Contracting Officer under Sections 3 or 5. above, except that, if the Architect-Engineer has failed to submit his claim within the time provided in Section 3 above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under Sections 3 or 5. above, the District shall pay to the Architect-Engineer the following:

a) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or

b) If an appeal had been taken, the amount finally determined on such appeal.

8. In arriving at the amount due the Architect-Engineer under this Article there shall be deducted:

a) all unliquidated advance or other payments on account theretofore made to the Architect-Engineer, applicable to the terminated portion of the Contract;

b) any claim which the District may have against the Architect-Engineer in connection with the Contract; and

c) the agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by the Architect-Engineer or sold, pursuant to the provisions of this Article and not otherwise recovered by or credited to the District.

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

10. The District may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Architect-Engineer in connection with the terminated portion of the Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Architect-Engineer will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Article, such excess Shall be payable by the Architect-Engineer to the District upon demand, together with interest computed at the rate of 6 percent per annum for the period from the date such excess is received by the Architect-Engineer to the date on which such excess is repaid to the District; provided however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Architect-Engineer's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

11. Unless otherwise provided in the Contract or by applicable statute, the Architect-Engineer, from the effective date of termination and for a period of three years after final settlement under the Contract, shall preserve and make available to the District at all reasonable times at the office of

the Architect-Engineer, but without direct charge to the District, all his books, records, documents and other evidence bearing on the costs and expenses of the Architect-Engineer under the Contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs and other authentic reproductions thereof.

12. By virtue of a Termination for Convenience, the Architect-Engineer shall not become entitled to payment for defective work, deficient work, rejected work or work not in accordance with the plans or specifications set forth in the Contract.

ARTICLE 9. DISPUTES

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

B. Claims by the Architect-Engineer against the District.

1. Claim, as used in this Section B. of Article 9, means a written assertion by the Architect-Engineer seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

a) All claims by the Architect-Engineer against the District arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision.

b) Within 120 days after receipt of a claim, the Contracting Officer shall issue a decision, whenever possible taking into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Architect-Engineer.

c) Any failure by the Contracting Officer to issue a decision on a contract claim within the required time period shall be deemed to be a denial of the claim and shall authorize the commencement of an appeal on the claim as otherwise provided.

i) If the Architect-Engineer is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Architect-Engineer, the Architect-Engineer shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Architect-Engineer's claim.

ii) Liability under this section shall be determined within 6 years of the commission of the misrepresentation of fact or fraud.

d) All cost data, pricing data, and task data of claims hereunder must be certified as accurate, complete, required, and necessary to the best of the Architect-Engineer's knowledge and belief. Further, all task or work data in the claim must be described therein to the smallest unit of work or task. The Contracting Officer may require any additional certifications, descriptions or explanations of the claim.

e) The parties agree that time is of the essence and all claims hereunder must be presented to the Contracting Officer for a final decision within thirty (30) days of the occurrence of the circumstances giving rise to such claim or within thirty (30) days of when the Architect-Engineer knew or should have known of the circumstances giving rise to such claim, otherwise compensation for that claim is waived.

f) The parties agree that there shall be no claims for unabsorbed home office overhead.

2. The Architect-Engineer's claim shall contain at least the following:

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

b) Any data or other information in support of the claim;

c) A brief description of the Architect-Engineer's efforts to resolve the dispute prior to filing the claim; and

d) The Architect-Engineer's request for relief or other action by the Contracting Officer.

e) The certification of the accuracy, completeness, requirement, and necessity of all aspects of the claim.

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

4. Pending final decision of an appeal, action, or final settlement, the Architect-Engineer shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

C. Claims by the District Against the Architect-Engineer.

1. Claim as used in this Section C of Article 9, means a written demand or written assertion by the District, including the Contracting Officer, seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. Nothing herein shall be construed to require the District to notify the Architect-Engineer prior to the issuance of the Contracting Officer's final decision.

2.

a) All claims by the District against the Architect-Engineer arising under or relating to a contract shall be decided by the Contracting Officer, who shall issue a decision in writing and furnish a copy of the decision to the Architect-Engineer.

b) The decision shall be supported by reasons and shall inform the Architect-Engineer of his or her rights. Specific findings of fact shall not be required.

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

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

5. Pending final decision of an appeal, action, or final settlement, the Architect-Engineer shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

6. The Contracting Officer may enter into a voluntary exclusion agreement with the Architect-Engineer in order to settle any claim or dispute between the parties.

ARTICLE 10. RETENTION AND EXAMINATION OF RECORDS

Unless otherwise provided in the Contract, or by applicable statute, the Architect-Engineer, from the effective date of Contract completion and for a period of three years after final settlement under the Contract, shall preserve and make available to the District at all reasonable times at the office of the Architect-Engineer but without direct charge to the District, all his books, records, documents, and other evidence bearing on the costs and expenses of the Architect-Engineer under the Contract.

ARTICLE 11. COVENANT AGAINST CONTINGENT FEES

The Architect-Engineer warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Architect-Engineer for the purpose of securing business. For breach or violation of this warranty, the District shall have the right to terminate the Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

ARTICLE 12. OFFICIALS NOT TO BENEFIT

A. District Employees Not To Benefit. Unless a determination is made as provided herein, no officer or employee of the District will be admitted to any share or part of this contract or to any benefit that may arise therefrom, and any contract made by the Contracting Officer or any District employee authorized to execute contracts in which they or an employee of the District will be personally interested shall be void, and no payment shall be made thereon by the District or any officer thereof, but this provision shall not be construed to extend to the Contract if made with a corporation for its general benefit. A District employee shall not be a party to a contract with the District and will not knowingly cause or allow a business concern or other organization owned or substantially owned or controlled by the employee to be a party to such a contract, unless a written determination has been made by the head of the procuring agency that there is a compelling reason for contracting with the employee, such as when the District's needs cannot reasonably otherwise be met in accordance with DC Procurement Practices Act of l985, D.C. Law 6-85, D.C. Official Code, section 2-310.01, and Chapter 18 of the DC Personnel Regulations. The Architect-Engineer represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or

degree with the performance of its services hereunder. The Architect-Engineer further covenants not to employ any person having such known interests in the performance of the Contract.

B. Anti-Competitive Practices and Anti-Kickback Provisions.

1. The Architect-Engineer 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 Architect-Engineer shall not engage, directly or indirectly, in collusion or other anti-competitive practices that reduces or eliminates competition or restrains trade. The District 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.

2. The Architect-Engineer shall observe and comply with all applicable law, rules, and regulations prohibiting kickbacks and, without limiting the foregoing, Architect-Engineer 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 Architect-Engineer or a Subcontractor of the Architect-Engineer to the District. The Architect-Engineer 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 District may take any recourse available to it under the law for violations of this anti-kickback provision.

ARTICLE 13. CONFLICT OF INTEREST AND ETHICS

A. Former Employees Generally. Pursuant to Public Law 95-521, as amended, no former employee of the United States District or the District of Columbia:

1. Shall knowingly represent the Architect-Engineer before any District agency through personal appearance or communication in connection with a matter involving specific parties to this Contract where the former District employee participated personally and substantially in this matter while employed with the District.

2. Shall within two (2) years after terminating District employment knowingly represent the Architect-Engineer before any District agency through personal appearance or communication in connection with a matter involving specific parties to this Contract were the matter was pending under the official responsibility of the former employee within one (1) year prior to termination of District service.

B. Former Senior Employees. Pursuant to Public Law 95-591, as amended, no former senior level officer or former senior level employee of the United States District or the District of Columbia District named in or designated by the Contracting Officer of the Office of District Ethics under Section 207(d) of Title 18 USC:

1. Shall, within two (2) years after terminating District employment knowingly represent or aid counsel, advise, consult or assist in representing any other person by personal presence at any formal or informal appearance before any District agency in connection with a matter involving specific parties where the former employee participated personally aid substantially in that matter while employed with the District.

2. Shall, within one (1) year after terminating District employment knowingly act as an agent or attorney for or otherwise represent anyone in any formal or informal appearance before or with the intent to influence make any written or oral communication on behalf of anyone to (1) his or her former District or agency or any of its officers or employees or (2) in connection with any particular District matter, whether or not involving a specific party which is pending before such District or agency or in which it has a direct and substantial interest.

C. Conflict of Interest. The Architect-Engineer represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. The Architect-Engineer represents and warrants that in the performance of the Contract no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the District or District, nor any person whose salary is payable, in whole or in part, from the District Treasury, shall participate in any decision relating to the Contract which affects his personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this Contract or in the proceeds thereof.

D. No Kick-Backs. The Architect-Engineer shall not offer or receive any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with this project. The Architect-Engineer shall not confer on any public employee having official responsibility for this project any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value.

E. No Contractor Employment. No official or employee of the District of Columbia whose duties as such official or employee include matters relating to or affecting the subject matter of the Contract shall, during the pendency and term of this Contract and/while serving as an official or employee of the District of Columbia, become or be an employee of the Architect-Engineer or any entity that is a subcontractor on this Contract.

ARTICLE 14. DISMISSALS & REPLACEMENT OF KEY PERSONNEL

A. Dismissals by the District. Should the continued employment of any person or persons in the Architect-Engineer's organization under this Contract be deemed by the Contracting Officer to be prejudicial to the interests of the District, such person or persona shall be immediately removed from the work hereunder. The Architect-Engineer shall make every effort in the selection of his employees and in the prosecution of the work under this Contract to safeguard all drawings and specifications and to prevent the theft conversion or unauthorized use of the same.

B. Replacement of Key Personnel. No substitutions for Key Personnel shall be permitted unless approved by the Contracting Officer. Any proposed replacement for Key Personnel must possess qualifications substantially similar to those of the Key Personnel being replaced and are subject to the prior written approval of the Contracting Officer. In addition, at the Contracting Officer's request at any time, the Architect-Engineer shall remove any Key Personnel or other personnel and substitute another employee of the Architect-Engineer or its subcontractors reasonably satisfactory to the Contracting Officer. The Contracting Officer may request such substitution at any time, in his sole discretion.

C. Liquidated Damages. In order to maintain project continuity the District expects that the Architect-Engineer will assign the same project managers to all phases of the Project and that such personnel will be available to oversee and coordinate the Work throughout the Project. Accordingly, the Architect-Engineer's designated Key Personnel shall be subject to liquidated damages for their removal or reassignment by the Architect-Engineer. In each instance where the Architect-Engineer removes or reassigns one of its Key Personnel (but excluding instances where such personnel become unavailable due to death, disability or separation from the employment of the Architect-Engineer or any affiliate of the Architect-Engineer) without the prior written consent of the Contracting Officer, the Architect-Engineer shall pay to the District an amount set forth in the Contract as liquidated damages and not a penalty, to reimburse the District for its administrative costs arising from the Architect-Engineer's failure to provide the Key Personnel. The foregoing liquidated damage amount shall not bar recovery of any other damages, costs or expenses other than the District's internal administrative costs. In addition, the District shall have the right, to be exercised in its sole discretion, to remove, replace or to reduce the scope of services of the Architect-Engineer in the event that a member of the Key Personnel has been removed or replaced by the Architect-Engineer without the consent of the District. In the event the District exercises the right to remove, replace or to reduce the scope of services of the Architect-Engineer, the District shall have the right to enforce the terms of this Contract and to keep-in-place those members of the Architect-Engineer's team not removed or replaced and the remaining members shall complete the services required under this Contract in conjunction with the new members of the Architect-Engineer's team approved by the District.

ARTICLE 15. COMPLIANCE WITH FEDERAL AND DISTRICT OF COLUMBIA LAWS AND REGULATIONS

A. Generally. The Architect-Engineer shall at all times observe and comply with all laws, codes, regulations, orders and decree set forth by any department, agency or branch of the United States District, and the District of Columbia and shall indemnify and save harmless the District of Columbia and all of its officers, agents, employees and servants against any and all claims or liability arising from or based on the violation of any such law, code, regulation, order or decree whether by the Architect-Engineer an employee or agent of the Architect-Engineer any person firm or corporation employee or engaged by the Architect-engineer or contractually associated with him in the performance of or in connection with the work required contemplated or performed under the Contract.

B. Equal Opportunity: Non-Discrimination in Employment. During the performance of this contract the Architect-Engineer shall comply with the provisions of Mayor's Order 85-85 as implemented by Title 4, Chapter 11 – Equal Employment Opportunity Requirements in Contracts, 33 DCR 4952 (August 15, 1986).

C. Buy American Act.

1. *Agreement*—In accordance with the Buy American Act (41 USC l0a-l0d), 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, l059—63 Comp., p. 635), the Architect-Engineer agrees that only domestic construction material will be used by the Architect-Engineer, subcontractors, material men and suppliers in the performance of the Contract, except for non-domestic material listed in the Contract.

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. -

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 District to be not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

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 on-tenth of one percent of the total project cost, or $2,500,000, whichever is greater.

D. Davis-Bacon Act Provision. The Architect-Engineer agrees that the work performed under this Contract shall be subject to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-7). The wage rates applicable to this Project shall be attached as an exhibit to the Contract. The Architect-Engineer 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.

E. False Claims Act. The Architect-Engineer shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in District of Columbia Code §22-2405 and §§2-381.01 et seq.

ARTICLE 16. APPOINTMENT OF ATTORNEY

The Architect-Engineer does hereby irrevocably designate and appoint the Clerk of the Superior Court of the District and his successors in office as the true and lawful attorney of the Architect-Engineer for the purpose of receiving service of all notices and processes issued by any court in the District, as well as service of all pleadings and other papers, in relation to any action or legal proceeding arising out of or pertaining to the Contract or the work required or performed hereunder.

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

ARTICLE 17. INDEMNIFICATION

A. Violation of Laws, Regulations, Specifications, and Breach of Contract. If the Architect-Engineer violates any laws, regulations, codes or industry standards relating to the Project, the Architect-Engineer shall take prompt action to correct or abate such violation and shall indemnify and hold the Department and its consultants, representatives, agents, servants and employees harmless against any damages, fines, penalties, third party claims, suits, awards, actions, causes of action or judgments, including but not limited to reasonable attorney's fees and costs incurred thereunder, that result from such violation. If the Architect-Engineer breaches the terms of this Agreement, including the solicitation, letter contract, standard contract provisions, directives, specifications, manufacturer's specifications, and the RFP, the Architect-Engineer shall indemnify and hold the Department and its consultants, representatives, agents, servants and employees harmless against any damages, fines, penalties, third party claims, suits, awards, actions, causes of action or judgments, including but not limited to reasonable attorney's fees and costs incurred thereunder, that result from such breach.

B. Professional Services. To the fullest extent permitted by law, the Architect-Engineer shall defend, indemnify and hold harmless the Department and the Department's consultants and agents and employees from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Architect-Engineer, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

C. Non-Professional Services. In addition, other than claims arising out of the performance of professional services, the Architect-Engineer shall indemnify and hold harmless the Department, its representatives, consultants, officers, agents, servants and employees from and against third-party claims, liabilities, demands, losses, damages, judgments, costs, or expenses, including reasonable attorneys' fees and expenses recoverable under applicable law, to the extent such claims are caused by acts or omissions of the Architect-Engineer, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified under this Agreement or arising out of the Contract Work, provided that, such claims arise out of non-professional services required under the Contract.

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

ARTICLE 18. SUBCONTRACTORS AND/OR OUTSIDE ASSOCIATED AND CONSULTANTS

A. Prior Consent Required. The Architect-Engineer shall not delegate or enter into any Subcontracts for the performance of its obligations under the Contract, in whole or in part, without on each occasion obtaining the prior written consent of the Contracting Officer. Any

subcontractors and/or outside associates or consultants required by the Architect-Engineer in connection with the services covered by the Contract shall be limited to such individuals or firms as were specifically identified in the Architect-Engineer's written proposal and approved by the District during negotiations. Any proposed changes in such subcontractors, associates, or consultants shall be subject to the prior written approval of the Contracting Officer.

B. Requests. The Architect-Engineer shall submit to the Contracting Officer copies of all proposed Subcontract(s) to be entered into by the Architect-Engineer, along with the Architect-Engineer's written request for the District's consent. All such Subcontracts must specify that:

1. work performed by the Subcontractor shall be in accordance with the terms of the Contract;

2. nothing contained in such Subcontract shall be construed to impair the rights of the District under the Contract;

3. the District's consent to or approval of any Subcontract shall not create any obligation of the District to any Subcontractor;

4. nothing contained in such Subcontract, or under the Contract, shall create any obligation of the District to any Subcontractor;

5. the District shall be expressly designated a third party beneficiary of the Subcontract;

6. upon request by the District (at the District's sole option) and upon receipt of written notice from the District stating that the Contract between the District and the Architect-Engineer has been terminated, the Subcontractor agrees that it will continue to perform its obligations under the Subcontract for the benefit of the District in accordance with the terms and conditions of the Contract, provided the District pays Subcontractor for the Services rendered and Materials provided by Subcontractor from and after the date of the termination of the Contract between the District and the Architect-Engineer at the same rate or in the same amount as set forth in the Subcontract for Services and Materials after such date of termination;

7. the Subcontractor shall be bound by the same requirements as the Architect-Engineer including, without limitation, furnishing payment and performance bonds, confidentiality, maintenance and preservation of records, and audit by government representatives, under the Contract;

8. the Subcontractor agrees (i) to assign and transfer to the District all of its rights to sales and use tax which may be refunded as a result of a claim for refund for any materials purchased in connection with the Subcontract or the Contract, (ii) that, other than as directed by the District, it will not file a claim for refund for any sales or use tax which is the subject of this assignment; and (iii) that the District, in its own name or in the name of Subcontractor, may file a claim for a refund of any sales or use tax covered by the assignment;

C. No Relief of Obligations. No permitted Subcontract shall relieve the Architect-Engineer of any obligation under the Contract. The Architect-Engineer shall be as fully responsible for the acts and omissions of its Subcontractors or persons either directly or indirectly employed by them, as

it is for the acts and omissions of the Architect-Engineer or persons directly or indirectly employed by the Architect-Engineer.

D. No Effect. Any purported Subcontract in violation of this Section or of any other Section in the Contract shall be of no force and effect.

E. Right to Reject. The District may, in its sole discretion, reject any or all bids and proposals received by the Architect-Engineer from any Subcontractor for any portion of the Work, and may require the Architect-Engineer to obtain new or revised bids or proposals or Subcontractors.

F. Incorporation by Reference. Any agreement the Architect-Engineer makes with a subcontractor, outside associate or consultant shall incorporate specifically or by reference thereto, each and every provision of this Contract, these Standard Contract Provisions, the Attachment(s) and Appendices hereto, and if applicable, the District's Standard Contract Provisions for Construction Contracts.

ARTICLE 19. WAIVER

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

ARTICLE 20. PATENTED AND PROPRIETARY ITEMS

A. Prior Approval Required. The Architect-Engineer shall not, without the prior written approval of the Contracting Officer, specify for the Project, or necessarily imply the required use of any article, product, material, fixture or form of construction, the use of which is covered by a patent, or which is otherwise exclusively controlled by a particular firm or group of firms.

B. Indemnity. The Architect-Engineer shall be liable to and hereby agrees to defend, indemnify and hold harmless the District against any claim, action cost or judgment against the District for patent infringement, trademark violation, copyright violation or infringement of rights in technical data, in any systems, graphs, charts, designs, drawings or specifications furnished by the Architect-Engineer in the performance of this Contract.

ARTICLE 21. TRANSFER OR ASSIGNMENT OF CONTRACT

A. Prior Consent Required. Unless otherwise provided by law, neither the Contract nor any interest therein may be transferred or assigned by the Architect-Engineer to any other party without the written consent of the Contracting Officer, and in the case where a performance and payment bond is required to securing the Contract, nor without the written acceptance by the surety on the performance and payment bond securing the Contract of the assignee as the Architect-Engineer and the principal on such bond; and any attempted transfer or assignment not authorized by this Article shall constitute a breach of the Contract and the District may for such cause terminate the Contract for default and terminate the right of the Architect-Engineer to proceed in the same manner as provided in Article 8.B. herein, and the Architect-Engineer and his sureties shall be liable to the District for any excess cost occasioned the District thereby.

B. Monies. The Architect-Engineer shall not assign any right to any monies to be paid under the Contract, without on each occasion obtaining the prior written consent of the Contracting Officer. In no case shall approval by the District of the assignment of any monies to be paid under the Contract relieve the Architect-Engineer from its obligations hereunder or change the remaining terms of the Contract. Any purported assignment in violation of this Article shall be of no effect.

C. Applicability in Case of Bankruptcy or Insolvency. A receiver or trustee in any federal or state bankruptcy, insolvency or other proceedings shall comply with the requirements set forth in the Standard Contract Provisions.

D. Obligation of Architect-Engineer. The Architect-Engineer acknowledges that the Services are the obligation of the Architect-Engineer and the District shall have no obligation to accept performance by a third party without the Contracting Officer's prior and express written consent.

E. Failure to Obtain Consent. Failure to obtain the previous written consent of the Contracting Officer to such an assignment, transfer or conveyance, shall justify, at the option of the Contracting Officer, the revocation and annulment of this Contract. The District shall thereupon be relieved and discharged from any further liability and obligation to the Architect-Engineer, his assignees or transfers, and the Architect-Engineer and his assignees shall forfeit and lose all monies theretofore earned under the Contract, except so much as may be required to pay the Architect-Engineer's employees.

F. Assignment by the District. This Contract may be assigned by the District to any corporation, agency or instrumentality having authority to accept such assignment.

ARTICLE 22. QUALIFICATIONS

A. Signatory Authority and Qualifications. The Architect-Engineer hereby warrants that the signature or signatures herein before affixed are duly authorized further the Architect-Engineer warrants as a true statement any and all statements of qualification with respect to but not limited to professional status premises, employees experience and financial standing such as may be set forth in documents furnished by the Architect-Engineer or required by the District for the purpose of securing the District's consent to enter into this Contract. Misrepresentation shall be cause for termination for default of the Contract and such other action as may be appropriate including with limitation suspension and debarment and civil or criminal penalties.

B. Good Standing. If the Architect-Engineer is an entity, the Architect-Engineer is either: (1) a not-for-profit corporation or other entity determined to be tax exempt pursuant to section 501(c) of the Internal Revenue Code by the Internal Revenue Service; or (2) a business corporation, partnership or other business entity duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization. The Architect-Engineer shall also be duly licensed, qualified and in good standing in the District of Columbia and in all jurisdictions in which it conducts business activities. The Architect-Engineer's loss of good standing is grounds for Termination for Default without liability upon the Department.

C. Authority to Act. the Architect-Engineer has full legal power and authority to enter and perform the Contract and provide the Services and Materials without resulting in a default under or a breach or violation of (1) the Architect-Engineer's certificate or articles of incorporation or bylaws or other organizational documents, if applicable; (2) any Applicable Law, or any license, permit

or other instrument or obligation to which the Architect-Engineer is now a party or by which the Architect-Engineer may be bound or affected; and (3) the Architect-Engineer's tax exempt status, if applicable.

D. Legal Obligation. The Contract has been duly authorized, executed and delivered by the Architect-Engineer, by and through persons authorized to execute the Contract on behalf of the Architect-Engineer, and constitutes the legal, valid and binding obligation of the Architect-Engineer, enforceable against the Architect-Engineer in accordance with its terms.

E. No Litigation Preventing Performance. There is no litigation, claim, consent order, settlement agreement, investigation, challenge or other proceeding pending or threatened against the Architect-Engineer, its properties or business, or any individuals acting on the Architect-Engineer's behalf, including, without limitation, Subcontractors, which seek to enjoin or prohibit the Architect-Engineer from entering into or performing its obligations under the Contract.

F. Requisite Licensure and Qualifications. The Architect-Engineer and all of the entities and individuals acting on the Architect-Engineer's behalf, including, without limitation, Subcontractors, in connection with the Services and Materials under the Contract, possess and, at all times during the term of the Contract, shall possess all licenses, certifications, qualifications, or other credentials as required in accordance with all applicable laws, regulations and the terms of the Contract, to perform the Services and provide the Materials. The Architect-Engineer shall provide the District with copies of all licenses, credentials, and/or certifications specified in this Section within five (5) days of request by the District.

ARTICLE 23. ARCHITECT-ENGINEER'S WARRANTY AGAINST DEBARMENT

The Architect-Engineer certifies that it is not currently debarred, suspended, excluded, party to a voluntary exclusion agreement or otherwise enjoined from submitting bids or proposals on contracts for the type of goods and/or services covered by the Contract, nor is the Architect-Engineer an agent of any person or entity that is currently so debarred, suspended, excluded or otherwise enjoined.

ARTICLE 24. RECOVERY OF DEBTS OWED THE GOVERNMENT

The Architect-Engineer hereby agrees that the Department may use all or any portion of any payment, consideration or refund due the Architect-Engineer under the Contract to satisfy, in whole or part, any debt due the Department.

ARTICLE 25. ADMINISTRATIVE LIQUIDATED DAMAGES

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

ARTICLE 26. FORCE MAJEURE

If the Architect-Engineer, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Contract, the Architect-Engineer may be excused from whatever performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations under this Contract by reason of Force Majeure, within 72 hours of the occurrence or event, the Architect-Engineer must provide the Contracting Officer written notice of its inability to perform as well as a description of the Force Majeure and its effect on Contract performance. The Contracting Officer will have the right to cause the inspection of the work site to determine the validity of the Architect-Engineer's assertion of its inability to perform. If the Contracting Officer agrees that the Architect-Engineer is wholly or partly unable to perform its obligations under the Contract a decision will be issued indicating the extent to which the Architect-Engineer is excused from its performance obligations. In no event will the Contractor be entitled to money damages from the Department due to Force Majeure.

Exhibit O2

District of Columbia Department of General Services
Standard Contract Provisions

GENERAL PROVISIONS
(Construction Contract)

ARTICLE 1. DEFINITIONS

A. "Government" as used herein means the District of Columbia Department of General Services, (DGS) that is a party to a contract.

B. "Executive" as used herein means the elected head of the Government as set forth in [Public Law 93-198 dated December 24, 1973, Title 4, Part B, Section 422(1)] (Or relevant local law).

C. "Contracting Officer" as used herein means the Government official authorized to execute and administrate the Contract on behalf of the Government. Within DGS, the Director is the Chief Contracting Officer. The Director may make delegations of procurement authority to additional contracting officers within DGS.

D. "Contract Documents" or "Contract" as used herein means Addenda, Contract Form, Standard Contract Provisions, Instructions to Bidders, General Provisions, Labor Provisions, Performance and Payment Bonds, Specifications, Special Provisions, Contract Drawings, approved written Change Orders and Agreements required to acceptably complete the Contract, including authorized extensions thereof.

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

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

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

1. The Contracting Officer shall be promptly notified in writing of any error, discrepancy or omission, apparent or otherwise.

2. Applicable Federal, State, and Municipal Code requirements have priority over: the Contract form, General Provisions, Change Orders, Addenda, Contract drawings, Special Provisions and Specifications.

3. The Contract form, Standard Contract Provisions, General Provisions and Labor Provisions have priority over: Change Orders, Addenda, Contract drawings, Special Provisions and Specifications.

4. Change Orders have priority over: Addenda, Contract drawings and Specifications.

5. Addenda have priority over: Contract drawings, Special Provisions and Specifications. A later dated Addendum has priority over earlier dated Addenda.

6. Special Provisions have priority over: Contract drawings and other specifications.

7. Shown and indicated dimensions have priority over scaled dimensions.

8. Original scale drawings and details have priority over any other different scale drawings and details.

9. Large scale drawings and details have priority over small scale drawings and details.

10. Any adjustment by the Contractor without a prior determination by the Contracting Officer shall be at his own risk and expense. The Contracting Officer will furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.

ARTICLE 3. CHANGES

A. **DESIGNATED CHANGE ORDERS**—The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract, including but not limited to changes

1. In the Contract drawings and specifications;

2. In the method or manner of performance of the work;

3. In the Government furnished facilities, equipment, materials or services; or

4. Directing acceleration in the performance of the work.

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

B. **OTHER CHANGE ORDERS**—Any other written order or an oral order (which term as used in this Section (B) shall include direction, instruction, interpretation, or determination) from the Contracting Officer which causes any such change, shall be treated as a Change Order under this Article, provided that the Contractor gives the Contracting Officer written notice stating the date, circumstances and sources of the order and that the Contractor regards the order as a Change Order.

C. **GENERAL REQUIREMENTS**—Except as herein provided, no order, statement or conduct of the Contracting Officer shall be treated as a change under this Article or entitle the Contractor to an equitable adjustment hereunder. If any change under this Article causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this Contract whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any change under (B) above shall be allowed for any cost incurred more than 20 days before the Contractor gives written notice as therein required unless this 20 days is extended by the Contracting Officer and provided further, that in case of defective drawings and specifications, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective drawings and specifications.

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

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

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

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

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

1. **Labor**—Payment will be made for direct labor cost plus indirect labor cost such as insurance, taxes, fringe benefits and welfare provided such costs are considered reasonable. Indirect costs shall be itemized and verified by receipted invoices. If verification is not possible, up to 18 percent of direct labor costs may be allowed. In addition, up to 20 percent of direct plus indirect labor costs may be allowed for overhead and profit.

2. **Bond**—Payment for additional bond cost will be made per bond rate schedule submitted to the Office of Contracting and Procurement with the executed Contract.

3. **Materials**—Payment for cost of required materials will be F.O.B. destination (the job site) with an allowance for overhead and profit.

4. **Rented Equipment**—Payment for required equipment rented from an outside company that is neither an affiliate of, nor a subsidiary of, the Contractor will be based on receipted invoices which shall not exceed rates given in the current edition of the Rental Rate Blue Book for Construction Equipment published by Data Quest. If actual rental rates exceed manual rates, written justification shall be furnished to the Contracting Officer for consideration. No additional allowance will be made for overhead and profit. The Contractor shall submit written certification to the Contracting Officer that any required rented equipment is neither owned by nor rented from the Contractor or an affiliate of or subsidiary of the Contractor.

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

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

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

ARTICLE 4. EQUITABLE ADJUSTMENT OF CONTRACT TERMS

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

A. DIFFERING SITE CONDITIONS:

1. During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the Contractor, upon discovering such conditions, shall promptly notify the Contracting Officer in writing of the specific differing conditions before they are disturbed and before the affected work is performed.

2. Upon written notification, the Contracting Officer will investigate the conditions, and if he/she determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding loss of anticipated profits, will be made and the contract modified in writing accordingly. The Contracting Officer will notify the Contractor of his/her determination whether or not an adjustment of the contract is warranted.

3. No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice; a failure to notify the Contracting Officer of the changed conditions prior to work being disturbed by said conditions shall constitute a permanent waiver of all right to compensation related to the changed conditions by the Contractor.

4. No contract adjustment will be allowed under this clause for any effects caused on unchanged work.

B. SUSPENSION OF WORK ORDERED BY THE CONTRACTING OFFICER:

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

2. Upon receipt, the Contracting Officer will evaluate the Contractor's request. If the Contracting Officer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control or and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Contracting Officer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Contracting Officer will notify the Contract of his/her determination whether or not an adjustment of the contract is warranted.

3. No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed; a failure to submit a request for adjustment in the time

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

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

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

1. The Contracting Officer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the Contractor agrees to perform the work as altered.

2. If the alterations or changes in quantities significantly change the character of the work under the contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Contracting Officer may determine to be fair and reasonable.

3. If the alterations or changes in quantities significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

4. The term “significant change” shall be construed to apply only to the following circumstances:

a. When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or

b. When an item of work is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in the case of a decrease below 75 percent, to the actual amount of work performed.

ARTICLE 5. TERMINATION

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

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

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

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

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

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

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

1. The delay in the completion the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, climatic conditions beyond the normal which could be anticipated, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers (the term subcontractors or suppliers shall mean subcontractors or suppliers at any tier); and

2. The Contractor, within 72 hours from the beginning of any such delay, (unless the Contracting Officer grants a further period of time before the date of final payment under the Contract) notifies the Contracting Officer in writing of the causes of delay.

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

If, after notice of termination of the Contractor's right to proceed under the provisions of this Article, it is determined for any reason that the Contractor was not in default under the provisions of this Article, or that the delay was excusable under the provisions of this Article, the rights and obligations of the parties shall be in accordance with Article 6 herein. Failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of Article 7 herein.

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

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

ARTICLE 6. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

A. The performance of work under the Contract may be terminated by the Government in accordance with this Article in whole, or in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.

B. After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

1. Stop work under the Contract on the date and to the extent specified in the Notice of Termination.

2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract as is not terminated.

3. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.

4. Assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

5. Settle all outstanding liabilities and all claims arising out of such termination of orders or subcontracts, with the approval or ratification of the Contracting Officer to the extent he may require, which approval or ratification shall be final for all purposes of this Article.

6. Transfer title to the Government and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer

:

a. The fabricated or unfabricated parts, work in progress, completed work, supplies, and other material procured as a part of, or acquired in connection with, the performance of the work terminated by the Notice of Termination, and

b. The completed, or partially completed plans, drawings information and other property which, if the Contract bad been completed, would have been required to be furnished to the Government.

7. Use his best efforts to sell, in the manner, at the terms, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in 6 above provided, however, that the Contractor:

a. Shall not be required to extend credit to any purchaser, and

b. May acquire any property under the conditions prescribed and at a price or prices approved by the Contracting Officer, and

c. Provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under the Contract or shall otherwise be credited to the price or cost of the work covered by the Contract or paid in such other manner as the Contracting Officer may direct.

8. Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.

9. Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

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

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

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

C. After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than 90 days from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such 90 day period or authorized extension thereof. In the event the Contractor was terminated for default and it asserts that it is entitled to a termination for convenience, its certified request for the conversion of the default termination to one for convenience and its certified termination settlement proposal must be submitted to the Contracting Officer prior to the expiration of 90 days from the date of the default termination. With respect to a termination for convenience, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 90 day period or extension thereof. Nothing herein shall be construed to extend the time for the submission of a claim hereunder for a defaulted Contractor beyond 90 days from the date of the default termination. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the Government's procedures in effect as of the date of execution of the Contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

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

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

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

1. With respect to all Contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:

a. The cost of such work;

b. The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in B 5. above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under the Contract, which amounts shall be included in the cost on account of which payment is made under E1.a. above; and

c. A sum, as profit on E.1.a. above, determined by the Contracting Officer to be fair and reasonable; provided however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subparagraph and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and provided further that profit shall be allowed only on preparations made and work done by the Contractor for the terminated portion of the Contract but may not be allowed on the Contractor's settlement expenses. Anticipatory profits and consequential damages will not be allowed. Any reasonable method may be used to arrive at a fair profit, separately or as part of the whole settlement.

2. The reasonable cost of the preservation and protection of property incurred pursuant to B.9; and any other reasonable cost incidental to termination of work under the Contract including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under the Contract.

F. The total sum to be paid to me Contractor under E.1. above shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further

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

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

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

2. If an appeal had been taken, the amount finally determined on such appeal.

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

1. all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of the Contract;

2. any claim which the Government may have against the Contractor in connection with the Contract; and

3. the agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by the Contractor or sold, pursuant to the provisions of this Article and not otherwise recovered by or credited to the Government.

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

J. The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of the Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Article, such excess Shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum for the period from the date such excess is received by the Contractor to the date on which such excess is repaid to the Government; provided however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

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

ARTICLE 7. DISPUTES

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

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

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

(3) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor.
(4) Pending final decision of an appeal, action, or final settlement, a Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.
C. Claims by the Government against a Contractor

(a) Claim as used in Section C of this clause, means a written demand or written assertion by the Government, including the Contracting Officer, seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. Nothing herein shall be construed to require the Government to notify the Contractor prior to the issuance of the Contracting Officer's final decision.
(b) (1) All claims by the Government against a Contractor arising under or relating to a contract shall be decided by the Contracting Officer, who shall issue a decision in writing and furnish a copy of the decision to the Contractor.
(2) The decision shall be supported by reasons and shall inform the Contractor of his or her rights. Specific findings of fact shall not be required.
(3) This clause shall not authorize the Contracting Officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.
(4) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor.
(5) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

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

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

1. If such consideration is specifically authorized by the Contract;

2. If the Contractor furnishes satisfactory evidence that he has acquired title to such material, that it meets Contract requirements and that it will be utilized on the work covered by the Contract; and

3. If the Contractor furnishes to the Contracting Officer an itemized list.

The Contracting Officer at his/her discretion shall cause to be withheld retention in an amount sufficient to protect the interest of the Government. Unless otherwise agreed, the amount shall not exceed ten percent (10%) of the partial payment. However, if the Contracting Officer, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, he may authorize any of the remaining progress payments to be made in full or may retain from such remaining partial payments less than 10 percent thereof. Also, whenever work is substantially complete, the Contracting Officer, if he considers the amount retained to be in excess of the amount adequate for the protection of the Government, at his discretion, may release to the Contractor all or a portion of such excess amount. Furthermore, on completion and acceptance of each separate building, public work, or other division of the Contract, on which the price is stated separately in the Contract, payment may be made therefore without retention of a percentage, less authorized deductions.

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

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

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

ARTICLE 10. MATERIAL AND WORKMANSHIP

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

B. SURPLUS MATERIALS USE—Whenever specified in the Contract or authorized by the Contracting Officer that materials become the property of the Contractor, which by reference or otherwise shall include disposal of materials, it is understood that the Contractor accepts such materials "as is" with no further expense or liability to the Government. If such material specified in the Contract will have a potential or real interest of value, the Contractor shall make allowance in the Contract to show such value.

C. GOVERNMENT MATERIAL—No materials furnished by the Government shall be applied to any other use, public or private, than that for which they are issued to the Contractor. The full amount of the cost to the Government of all materials furnished by the Government to the Contractor and for which no charge is made, which are not accounted for by the Contractor to the satisfaction of the Contracting Officer, will be charged against the Contractor and his sureties and may be deducted from any monies due the Contractor, and this charge shall be in addition to and not in lieu of any other liabilities of the Contractor whether civil or criminal. Materials furnished by the Government for which a charge is made at a rate mentioned in the specifications will be delivered to the Contractor upon proper requisitions therefore and will be charged to his account.

D. Plant —The Contractor shall at all times employ sufficient tools and equipment for prosecuting the various classes of work to full completion in the manner and time required. The Contractor shall at all times perform work in sufficient light and shall provide proper illumination, including

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

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

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

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

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

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

ARTICLE 11. INSPECTION AND ACCEPTANCE—Except as otherwise provided in the Contract, inspection and test by the Government of material and workmanship required by the Contract shall be made at reasonable times and at the site of the work, unless the Contracting Officer determines that such inspection or test of material which is to be incorporated in the work shall be made at the place of production, manufacture or shipment of such material. To the extent specified by the Contracting Officer at the time of determining to make off-site inspection or test, such inspection or test shall be conclusive as to whether the material involved conforms to Contract requirements. Such off-site inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Government after acceptance of the completed work under the terms of the last paragraph of this Article, except as herein above provided.

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

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

1. May, by contract or otherwise, replace such material and correct such workmanship and charge the cost thereof to the Contractor, or

2. May terminate the Contractor's right to proceed in accordance with Article 5 herein.

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

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

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

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

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

ARTICLE 14. INDEMNIFICATION—

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

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

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

ARTICLE 16. CONDITIONS AFFECTING THE WORK

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

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

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

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

E. UTILITIES AND VAULTS—The Contractor shall take necessary measures to prevent interruption of service or damage to existing utilities within or adjacent to the project. It shall be the Contractor's responsibility to determine exact locations of all utilities in the field.

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

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

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

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

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

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

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

G. PRIVATE WORK—Except as specifically authorized by the Contracting Officer, the Contractor shall not perform any private work abutting Government projects with any labor, materials, tools, equipment, supplies or supervision scheduled for the Contract until all work under the Contract has been completed. Contract materials used for any unauthorized purpose shall be subtracted from Contract amount.

H. GOVERNMENT NOISE CONTROL ACT OF 1977—The contractor shall be in strict compliance with [D.C. Law 2-53, Government of Columbia Noise Control Act of 1977 and all provisions thereof. Effective March 16, 1978. 24 D.C.Register 5293.] (Or relevant local law)

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

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

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

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

ARTICLE 20. COVENANT AGAINST CONTINGENT FEES—The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to terminate the Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

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

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

ARTICLE 22. GRATUITIES AND GOVERNMENT EMPLOYEES NOT TO BENEFIT

A. If it is found by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any official, employee or agent of the District with a view toward securing the Contract or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract without liability and may pursue such other rights and remedies provided by law and under the Contract.

B. In the event the Contract is terminated as provided above, the Department shall be entitled:

   1. to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor; and

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

C. Unless a determination is made as provided herein, no officer or employee of the Government will be admitted to any share or part of this contract or to any benefit that may arise therefrom, and any contract made by the Contracting Officer or any Government employee authorized to execute contracts in which they or an employee of the Government will be personally interested shall be

void, and no payment shall be made thereon by the Government or any officer thereof, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. A Government employee shall not be a party to a contract with the Government and will not knowingly cause or allow a business concern or other organization owned or substantially owned or controlled by the employee to be a party to such a contract, unless a written determination has been made by the head of the procuring agency that there is a compelling reason for contracting with the employee, such as when the Government's needs cannot reasonably otherwise be met. [DC Procurement Practices Act of l985, D.C. Law 6-85, D.C. Official Code, section 2-310.01, and Chapter 18 of the DC Personnel Regulations] (Or relevant local law). The Contractor represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants not to employ any person having such known interests in the performance of the contract.

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

ARTICLE 24. BUY AMERICAN.

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

A. **AGREEMENT—**In accordance with the Buy American Act (41 USC l0a-l0d), 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, l059—63 Comp., p. 635), the Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, material men and suppliers in the performance of the Contract, except for non-domestic material listed in the Contract.

B. **DOMESTIC CONSTRUCTION MATERIAL**—"Construction material" means any article, material or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a "domestic construction material" if it has been mined or produced in the United States. A manufactured construction material is a "domestic construction material" if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. "Component" means any article, material, or supply directly incorporated in a construction material. -

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

D. **FOREIGN MATERIAL** – When steel materials are used in a project a minimal use of foreign steel is permitted. The cost of such materials cannot exceed on-tenth of one percent of the total project cost, or $2,500,000, whichever is greater.

ARTICLE 25. TAXES

A. FEDERAL EXCISE—Materials, supplies and equipment are not subject to the Federal Manufacturer's Excise Tax, if they are furnished or used in connection with the Contract provided that title to such materials, supplies and equipment passes to the Government under the Contract. The Contractor shall in such cases furnish his subcontractors and suppliers with a purchaser's certificate in the form prescribed by the U.S. Internal Revenue Service.

B. SALES AND USE TAXES—Materials which are physically incorporated as a permanent part of real property are not subject to Government Sales and Use Tax. The Contractor shall, when purchasing such materials, furnish his suppliers with a Contractor's Exempt Purchase Certificate in the form prescribed in the Sales and Use Tax Regulations of the Government. Where the Contractor, subcontractor or material man has already paid the Sales and Use Tax on material, as prescribed above, the Sales and Use Tax Regulations of the Government permit the Contractor, subcontractor or material man to deduct the sales or use tax on the purchase price of the same on his next monthly return as an adjustment. However, the Contractor, subcontractor or material man must satisfy the Chief Financial Officer for the Government that no sum in reimbursement of such tax was included in the Contract or else that the Government has received a credit under the Contract in an amount equal to such tax.

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

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

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

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

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

1. That performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the contractor, or

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

No claim under this Article shall be allowed:

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

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

ARTICLE 27. SAFETY PROGRAM

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

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

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

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

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

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

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

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

1. Submit in writing to the Contracting Officer for his approval his program for complying with this Article for accident prevention.

2. Meet with the Contracting Officer's Safety Representative after submission of the above program to develop a mutual understanding relative to the administration of the overall safety program.

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

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

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

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

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

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

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

C. The Contractor represents and warrants that it did not, directly or indirectly, engage in any collusive or other anti-competitive behavior in connection with the bid, negotiation or award of the Contract. Further, the Contractor represents and warrants that it will not either directly or indirectly, engage in any collusive or other anti-competitive behavior in connection with the performance and administration of the Contract. In the event the Department determines that there has been a violation of these provisions, it may terminate the contract without liability.

ARTICLE 32. NON-DISCRIMINATION IN EMPLOYMENT PROVISIONS.

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

1. Employment, upgrading, or transfer;

2. Recruitment or recruitment advertising;

3. Demotion, layoff, or termination;

4. Rates of pay, or other forms of compensation; and
5. Selection for training and apprenticeship.

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

C. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in this Section.

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

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

F. The Contractor shall include in every subcontract the equal opportunity clauses of this Section so that such provisions shall be binding upon each Subcontractor or vendor.

G. The Contractor shall take such action with respect to any Subcontractor as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for non-compliance.

ARTICLE 33. ETHICAL STANDARDS FOR DEPARTMENT'S EMPLOYEES AND FORMER EMPLOYEES---The Department expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed under the Contract. The Contractor may not assign to any former Department or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Subcontractor or vendor.

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

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

ARTICLE 36. REMEDIES CUMULATIVE. Unless specifically provided to the contrary in the Contract, all remedies set forth in the Contract are cumulative and not exclusive of any other remedy the Government may have, including, without limitation, at law or in equity. The Government's rights and

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

ARTICLE 37. ENTIRE AGREEMENT; MODIFICATION. The Contract supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to the Contract shall be effective against the Department unless made in writing signed by both the Department and the Contractor, unless otherwise expressly provided to the contrary in the Contract. Nothing herein shall be construed to limit the Department's right to issue unilateral modifications to the contract.

ARTICLE 38. SEVERABILITY. In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Contract, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Contract a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable; each part of this Contract is intended to be severable.

ARTICLE 39. FORCE MAJEURE---If the Contractor, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Contract, the Contractor may be excused from whatever performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations under this Contract by reason of Force Majeure, within 72 hours of the occurrence or event, the Contractor must provide the Contracting Officer written notice of its inability to perform as well as a description of the force majeure and its effect on Contract performance. The Contracting Officer will have the right to cause the inspection of the work site to determine the validity of the Contractor's assertion of its inability to perform. If the Contracting Officer agrees that the Contractor is wholly or partly unable to perform its obligations under the Contract a decision will be issued indicating the extent to which the Contractor is excused from its performance obligations. In no event will the Contractor be entitled to money damages from the Government due to force majeure.

Exhibit P

First Source Employment Agreement

Exhibit Q

SBE Subcontracting Plan

Exhibit R

Request for Proposal DCAM-22-CS-RFP-0011