

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



Addendum No. 2
To
Request for Proposal (“RFP”) No. DCAM-22-CS-RFP-0019

Construction Management At-Risk (“CMAR”) Services for
DC Infrastructure Academy at Spingarn High School

Issued: August 24, 2022

This Addendum No. 2 is hereby issued and posted on the Department’s web site on August 24, 2022. Except as modified herein, the RFP remains unchanged.

Item No. 1. Request for Proposal DCAM-22-CS-RFP-0019 pages 1 - 59

Delete: In its entirety (Not Attachments)

Replace with DCAM-22-CS-RFP-0019 (revised) provided as **Exhibit A** to Addendum 2

Item No. 2 Section 5.3 Date and Time for Receiving Proposals

The due date for proposals has been extended to **4:00pm September 2, 2022**

Item No. 3. Section 6.3 Explanation to Prospective Offerors

Offerors are hereby provided an opportunity to submit questions about the RFP no later than **2:00pm on August 29, 2022.**

Item No. 4. Section 11 Attachments

The following attachments of the original RFP are hereby revised or provided as indicated to Exhibits to Addendum 2. All other RFP Attachments remain the same.

1. Attachment L - Form of Contract or Agreement - provided as **Exhibit B** to Addendum 2
2. Attachment M - Notice to Proceed and Letter Contract – provided as **Exhibit C** to Addendum 2
3. Attachment I - Employment Plan (revised) – provided as **Exhibit D** to Addendum 2
4. Attachment E - Davis Bacon Wage Rate provided as **Exhibit E** to Addendum 2
5. Attachment R - BIM Requirements (revised) – provided as **Exhibit F** to Addendum 2
6. Attachment G2 Standard Contract Provisions (Architectural & Engineering Contracts) – provided as **Exhibit G** to Addendum 2

By: James H. Marshall
James H. Marshall
Contracting Officer

Date: August 24, 2022

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



EXHIBIT A

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



REQUEST FOR PROPOSALS

**CONSTRUCTION MANAGEMENT AT-RISK SERVICES
FOR**

**DC INFRASTRUCTURE ACADEMY
AT
SPINGARN HIGH SCHOOL**

August 24, 2022

Solicitation Number: DCAM-22-CS-RFP-0019

Last Day for Questions: August 29, 2022 by 2:00 P.M.

Proposals Due Date: September 2, 2022 by 4:00 P.M.

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PART 1 - PROJECT INTRODUCTION AND INSTRUCTIONS FOR OFFERORS

1.0 Procurement Overview

The District of Columbia (“District”) Department of General Services (the “Department” or “DGS”), on behalf of the Department of Employment Services (“DOES”), is issuing this Request for Proposals (“RFP”) to engage a contractor to serve as the Construction Manager at Risk (the “CMAR” or the “Contractor”) to build out the DC Infrastructure Academy (“DCIA”) at the Spingarn High School building and stabilize and make safe the unoccupied portion of the building (the “Project”), located at 2500 Benning Road NE, Washington, DC 20002.

1.1 Project Overview

The Department hired BELL Architects as the Architect/Engineer (the “A/E”) for the Project and has started the design process and has completed Concept Design. The design is currently advancing to schematic design, and it is envisioned that by the time a Contractor is selected, the Contractor can provide design feedback and other preconstruction services on the design development documents and prior to permitting. The Department expects that when the permit documents are completed by the A/E, the Contractor will obtain quotes from the trade subcontractors and provide a Guaranteed Maximum Price (“GMP”).

The Project scope generally includes all preconstruction, construction and logistics/move-in services required to construct and implement the approved design for the DC Infrastructure Academy at the Spingarn High School building.

Built between 1951 and 1952, Spingarn High School was constructed for the education of African American Students during the final period of school racial segregation in DC and was meant to relieve the overcrowding of the other segregated high schools. Spingarn was the last Black high school and the first built in 36 years. The school’s name honored Joel Elias Spingarn, a well-known literary critic, professor of comparative literature at Columbia University, and one of the early founders of the National Association for the Advancement of Colored People (NAACP). The building was placed on the National Register of Historic Places in 2014. The Spingarn High School building is a three story, 225,000 SF classical and colonial style inspired school that sits on 8.75 acres and is part of a larger complex of public school buildings occupying an extensive site consisting of 27.5 acres of land, the Hilltop Campus.

The Spingarn High School building has been vacant since the 2012/2013 school year and is in a current state of extensive disrepair. The Project scope generally includes the hazardous-material remediation of the entire facility, interior demolition and modernization of an estimated 50,000 SF, new exterior construction of an estimated 12,000 SF of infrastructure simulation areas, general exterior improvements around the facility, and a stabilization of the remainder of the Spingarn High School building. As part of the 50,000 SF interior demolition and build out, it is expected that the facility will receive modernizations to include, but not be limited to following existing spaces: Main Entrance/Lobby, Auditorium, Gym, Cafeteria/Kitchen, classrooms, restrooms, and

corridors. While the Project scope only requires a portion of the building to be modernized, as part of this project DGS ultimately would prefer that those portions of the building not part of the modernization be converted to a ‘cool dark shell’ to provide a minimal amount of stabilization space for further expansion of the DCIA and/or other potential future users. A cool dark shell refers to a space that lacks Heating, Cooling, Plumbing, Elevators, and Electricity, minimal ventilation will be provided.

1.2 Project Budget and Funding Limitations

Offerors are to base their proposals on the District’s construction budget funding limitation for the Project. The Department has an approved construction budget of \$43,500,000.00 for this Project. The construction budget includes all materials and labor to complete the Project, inclusive of but not limited to the construction management fee, general conditions cost, logistical and move-in, insurance and bonds, design contingency and construction contingencies.

1.3 Compensation

As is more fully described in the resulting contract (“Contract” or “Agreement”) between the Department and the selected Contractor, this RFP will result in the award of a cost plus a fixed fee with a GMP type contract. The Form of Contract (“Form of Contract”) is included as **Attachment L**. Offerors are not required to submit trade costs nor a proposed GMP with their proposals. Those costs will be developed later in the Project in accordance with the procedures set forth in **Part 2** of this RFP.

1.4 Substantial Completion Date

The entire Project shall be substantially completed by **February 1, 2024** (the “Substantial Completion Date”).

1.5 Project Delivery Method

The Department intends to implement the Project through a construction manager at risk approach. The scope of work for the Project (“Scope of Work”) will be divided into two phases: (i) Preconstruction Phase; and (ii) the Construction Phase.

During the Preconstruction Phase, the selected Contractor will be required to work with the A/E to develop a schedule, budget and design that accomplishes the Department’s goals and objectives. The Contractor will be required to actively participate in the development of the construction documents by providing cost estimating, scheduling, identifying long-lead purchasing items, and performing constructability reviews. The Department expects that an early release bid set will be completed, at which point the Contractor will be required to obtain quotes from trade subcontractors and enter into an Early Start Agreement (“ESA”). When the GMP Bid Set/Permit Set is complete the Contractor will provide a GMP based on the approved set of documents. The process by which the GMP will be formed is more fully described in the Form of Contract.

The Project needs to be completed and available for occupancy no later than the Substantial Completion Date noted in **Section 1.4** of this RFP. The Department seeks a CMAR that develops a Preconstruction approach to meet the dates established in Section 1.4.

The Department contemplates that construction will begin in the fall of 2022. Abatement, razing, selective demolition, tree protection, remediation work, site enablement, and other long lead items may be released earlier, if necessary.

1.6 Department Designated Point of Contact

The Department's sole point of contact ("POC") for matters related to this RFP is the only individual authorized to discuss this RFP with any interested parties, including Offerors. All communications with the Department's POC about the Project or this RFP shall be sent in writing to:

Name:	Shafi Anwary
Title:	Contract Specialist Department of General Services Contracts and Procurement Division 1250 U Street NW, 2 nd Floor Washington, DC 20009 shafi.anwary@dc.gov

The Department disclaims the accuracy of information derived from any source other than the Department's POC, and the use of any such information is at the sole risk of the Offeror. All communications and requests for information shall be submitted in writing by the Offeror's point of contact identified in the proposal. Written communications to the Department from Offerors shall specifically reference the correspondence as being associated with DCAM-22-CS-RFP-0019.

1.7 Contractor Designated Point of Contact

All Offerors responding to this RFP shall provide the name, address, phone number, and email address of its designated point of contact to the Department's POC as part of its proposal, as noted in **Part 1, Section 1.6**. Offerors shall notify the Department of any changes in the Offeror's designated point of contact's information. Notification of change(s) may be communicated by email and shall be as soon as practicable following the event(s) causing the change(s). Failure to identify a designated point of contact in writing may result in the Offeror failing to receive post-bid addenda or other important communications from the Department, for which the Department shall not be responsible.

1.8 Procurement Schedule and Project Milestones

1.8.1 Procurement Schedule

The Department anticipates conducting the procurement of the Project in accordance with the Procurement Schedule. The Procurement Schedule is subject to revision and the Department reserves the right to modify this schedule as it finds necessary, in its sole discretion.

- Issue RFP, Revised: August 24, 2022
- Questions deadline: August 29, 2022 by 2:00 P.M.
- Proposals due date: September 2, 2022 at 4:00 P.M.
- Notice of Award: To be determined
- Notice to Proceed & Letter Contract: To be determined

1.8.2 Project Schedule

Further, The Department has established the following milestones for the Project, and Offerors shall base their proposals on such proposed milestones.

1.8.2.1 Substantial Completion Date shall be no later than the date set forth in **Section 1.4**; and

1.8.2.2 If an Offeror proposes a Substantial Completion Date earlier than that shown in **Part 1, Section 1.4**, and the Department agrees to such proposed date, such proposed date will be deemed by the Department as the contractual Substantial Completion Date for the Agreement for all purposes, including liquidated damages.

Project Schedule	Duration
Submit Baseline Schedule	2 weeks after NTP
Complete ESA Bid Set (by A/E)	2 weeks after Baseline Schedule
Complete ESA Trade Bidding	3 weeks after ESA Bid Set
ESA Proposal Submitted	2 weeks after Trade Bidding
VE/ESA Negotiations Completed	4 weeks after ESA Bid Set
Finalize ESA	4 weeks after Negotiations
Final GMP	8 weeks after ESA Bid Set
Project Substantial Completion Date	February 1, 2024
Project Final Completion Date	May 1, 2024
Project Administrative Term Date	May 1, 2025

1.9 Selection Criteria

Proposals will be evaluated in accordance with **Part 3** of this RFP.

1.10 Economic Inclusion

The Department requires that Local, Small and Disadvantaged Business Enterprises (“LSDBE”) participate in this Project as fully described in **Part 4** of this RFP.

In addition to LSDBE participation as described in **Part 4** of the RFP, the Department requires that District residents participate in the Project to the greatest extent possible.

1.11 RFP Documents

The documents included in this RFP consist of this RFP in all of its parts, all addenda, attachments, and exhibits contained or identified in the RFP’s sections (collectively, the “RFP documents”). Each Offeror shall review the RFP documents and provide questions or requests for clarification, including but not limited to terms that it considers to be ambiguous or to which it takes exception. Such questions or requests for clarification will be submitted to the Department’s POC within the time specified in **Part 1, Section 1.8.1** of this RFP. The Department will review all questions and/or requests for clarification received and, if it deemed appropriate, in its sole discretion, may modify the RFP documents through addenda. Offerors shall base their proposals on the terms and conditions of the RFP documents included in all addenda issued.

The Attachments to this RFP are fully listed in **Part 11** of this RFP.

1.12 Obligation to Meet All of the Requirements of the RFP documents

If awarded the Agreement, the Contractor will be obligated to meet all of the requirements of the RFP documents for the Project Budget and within the Agreement schedule.

1.13 Offeror’s Pre-Proposals Responsibilities and Representations

Each Offeror shall be solely responsible for examining the RFP documents, including any addenda issued to the RFP, and any and all conditions which may in any way affect the Offeror’s proposal or the performance of the Work on the Project, including but not limited to:

- a) Examine and carefully study the RFP documents, including any addenda and other information or data identified in all of the RFP documents;
- b) Visit the Project site and become familiar with and satisfy itself as to the general, local, and site conditions that may affect the fees required to be submitted with the Offeror’s proposal;
- c) Address all potential impacts with third parties and ensure all such impacts have been included in the Offeror’s proposal;

- d) Become familiar with and aware of all federal, state, and local laws and regulations that may affect the cost, progress, or performance of its work on the Project;
- e) Determine that the RFP documents are sufficient to indicate and convey understanding of all terms and conditions for the performance of Offeror's work on the Project; and
- f) Notify the Department in writing of all conflicts, errors, ambiguities, or discrepancies that Offeror discovers in the RFP documents.

Any failure to fulfill these responsibilities is at the Offeror's sole risk and no relief will be provided by the Department.

PART 2 – PROJECT REQUIREMENTS

2.0 Scope of Work

Under this RFP, the Department will engage a Contractor to provide any and all construction services required to complete the Project. The Project shall be complete, operating, and ready for use on or before the Substantial Completion Date and within the Project's budget as specified in **Part 1, Section 1.2** and **Section 1.4** of this RFP.

The Contractor shall utilize the Concept Design Drawings Set and Storm Water Management Master Plan (**Attachment A**), Spingarn High School Existing Conditions Drawing (**Attachment V**), Hazardous Materials Survey (**Attachment W**), and Spingarn High School Phase 1 and Phase 2 Environmental Site Assessments (**Attachment X**) to complete the contract's requirements.

The Project will be located at the existing Spingarn High School on 26th Street NE; however, the official address is 2500 Benning Road NE, Washington, DC 20002.

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

- a) To confirm the construction of the Project in accordance with the Contract documents ("Contract documents").
- b) To provide all construction management services necessary to implement the goals of the Project inclusive of, but not limited to, the following: construction management services inclusive of budgeting, value engineering ("Value Engineering"), scheduling, project administration, management and coordination of subcontractors.
- c) To conduct subsurface investigation work if and as required for the Project.
- d) To furnish and provide all materials, management, personnel, equipment, hazardous material abatement, supervision, labor and other services necessary to complete the Project.
- e) To furnish and provide Furniture, Fixtures, and Equipment ("FF&E"). FF&E procurement schedule to be developed by the Contractor subject to DOES, the Department's specification, agreement and acceptance.
- f) To provide one (1) year of preventative and corrective maintenance services following substantial completion and using as a basis the recommended maintenance schedule developed to meet Project closeout requirements.

2.1 Contractor's Duties; General Intent

The selected Contractor will be required to work with the A/E, Department, DOES, and other applicable regulatory agencies to advance the design for the Project and to construct the approved design no later than the Substantial Completion Date. The Contractor will be required to engage in preconstruction efforts to ensure constructability reviews of the design in a manner consistent with the Department's goals for the Project (e.g., programmatic, budgetary, schedule and quality); to solicit competitive trade bids for the construction work and to develop an acceptable guaranteed

maximum price and corresponding scope and schedule for the work; and to implement the requisite construction and other work necessary no later than the dates set forth in this RFP. The Contractor will be required to provide a Project ready for occupancy and shall be responsible for all items of cost except for those items set forth in **Part 2, Section 2.12** of this RFP.

2.2 Preconstruction Phase

2.2.1 Initial Deliverables

The Preconstruction Phase will start from the issuance of the notice to proceed through the execution of the. The Department will issue a notice to proceed for preconstruction services (the “Preconstruction NTP” or “Letter Contract”), attached to the RFP as **Attachment M**. Offerors are advised that they are required to submit their proposals premised upon agreeing to the terms of the Preconstruction NTP. To the extent there are any ambiguities or inconsistencies between this RFP, the District of Columbia Standard Contract Provisions General Provisions (Construction Contracts) (**Attachment G1**) and (Architectural & Engineering Contracts) (**Attachment G2**) (SCP) and the Preconstruction NTP, the order of precedence shall be: the SCP; Preconstruction NTP; and the RFP.

The Contractor shall prepare and provide the following initial deliverables:

2.2.1.1 Baseline Schedule. Within seven (7) calendar days after the Preconstruction NTP is issued, the Contractor shall prepare and submit a Baseline Schedule for the Project (the “Baseline Schedule”). The Baseline Schedule shall be subject to review and approval by the Department and the Contractor shall incorporate such adjustments to the Baseline Schedule as may be reasonably requested by the Department. The Baseline Schedule shall be prepared in a critical path method (“CPM”) in a sufficient level of detail to permit the Department and the Contractor and any other affected parties to properly plan the Project. The Baseline Schedule shall show: (i) key design milestones and bid packages (to be provided by the A/E); (ii) release dates for long lead items; (iii) release dates for key subcontractors; and (iv) Substantial and Final Completion Dates. The Baseline Schedule must also be submitted in Primavera 6 native format and shall be updated by the Contractor, at a minimum, on a bi-weekly basis. Bi-weekly updates to the schedule should include the original baseline schedule as well to show time difference between planned start and finish dates versus actual start and finish dates.

2.2.1.2 Construction Management Plan. The Contractor shall submit a draft of its construction management plan (“Construction Management Plan”) within fourteen (14) days after the Preconstruction NTP is issued to include, but is not limited to, noise control, hours for construction and deliveries, truck routes, trash and debris removal plan, traffic and parking control, communications procedures, emergency procedures, quality control procedures, dust control, public street cleaning and repair, planned occupancy of public ways, erosion control, tree

protection plan, vibration monitoring, temporary fire protection measures, project signage, pest control, construction staging plan, and construction logistics plan.

2.2.1.3 Constructability/Sole Source/Long-Lead Time Memorandum.

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

2.2.1.4. Subcontractor Bidding Procedures.

Proposal shall include: (i) a list of proposed trade packages; (ii) a list of trade subcontractors that will be invited to bid on each such package; and (iii) a narrative description of the process. At least three (3) potential subcontractors shall be identified for each trade package. In addition to the information normally required in such bids, the Contractor shall also require subcontractors to provide an estimate of the percentage of labor hours performed in completing the subcontracted work that will be performed by District residents. A copy of this deliverable shall be provided to both the Project Manager and the Contracting Officer. The Construction Manager shall have at least one "over the shoulder" review session for each major trade package with the Architect. These "over the shoulder" review sessions shall be scheduled such review prior to trade bidding.

2.2.1.5. Value Engineering & Scope Assessment.

Based on the trade bids the Contractor shall prepare a written report of suggested Value Engineering strategies necessary to reconcile the costs of constructing the Project with the Department's Project Budget. The Contractor shall meet with the Department's representatives to discuss any Value Engineering and changes in scope required to bring the project costs within the Project Budget.

2.2.1.6. GMP Formation.

Based on any value engineering, scope modifications and approved changes in the Project Budget, the Contractor shall prepare and submit to the Department a GMP proposal. The Contractor's GMP proposal shall represent Contractor's offer to Fully Complete the Project. The GMP proposal shall include: (i) detailed construction budget by Division; (ii) a detailed CPM schedule; (iii) a listing of the drawings upon which the GMP is based; and (iv) an LSDBE utilization plan. In the event that the Department and the Contractor are unable to agree upon a GMP or schedule for the Project, the Department shall have the right to terminate the Contract and assume any trade subcontracts held by the Contractor. The GMP shall be subject to review and approval by the Council for the District of Columbia in the event it exceeds the previously approved

Contract value by more than \$1 million. In such event, the GMP shall not be effective until so approved.

2.2.1.7 Additional Preconstruction Services. In addition to those items enumerated above, the Contractor shall provide such preconstruction services as are necessary to properly advance the Project. These services shall include, but are not limited to, scheduling, estimating, shop-drawings, the ordering of long-lead materials, condition assessments, conservator studies, archeological studies, recommended testing, additional geotechnical testing and monitoring of historic assets. The Contractor shall prepare and submit to the Department a full cost estimate of the current design no later than fourteen (14) days from execution of the Preconstruction NTP.

2.2.1.8 Deliverables Liquidated Damages. The Contractor acknowledges that the Department is engaging the Contractor to provide an extensive level of preconstruction support services to minimize the potential for cost overruns, schedule delays or the need for extensive Value Engineering late in the Project and that the deliverables required under this **Section 2.2.1** are key to identify the value of such services. In the event the Contractor fails to deliver any of the deliverables required in **Section 2.2.1** (and unless such failure is the result of any event of Force Majeure), the Contractor shall be subject to liquidated damages in an amount of One Thousand Dollars (\$1,000) per day after receiving written notice from the Contracting Officer of failure to submit such deliverables.

2.2.1.9 Permits. The Contractor will be responsible for preparing and submitting all permits and applications for other approvals that are necessary for the construction of the Project. No later than ten (10) days after the notice to proceed for Preconstruction Services, the Contractor shall prepare and submit a matrix that identifies all permits and land use approvals that are required for the Project to proceed. The matrix should include zoning and other land use entitlements, building permits, as well as trade permits and lane closure permits. The matrix shall identify the specific permit, the date by which such is needed to maintain the Project's Schedule, and a status column. The matrix shall be updated monthly.

For permits previously submitted by the Department or the A/E, the Contractor shall provide assistance and input, if and as requested by the Department, for all such permits through the review process.

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

2.2.2 Early Release/Abatement, Razing, & Demolition

2.2.2.1 Abatement, Razing, & Selective Demolition / Exploratory. The Department may release the Contractor to commence hazardous material abatement, razing, and selective site demolition, or other early activities, as applicable. It is envisioned that this work may be released in advance of the Construction NTP.

2.2.2.2 Long Lead Materials. The Department will release funding for long-lead items once the Permit Set/Construction documents have been approved. If the Contractor believes an earlier release is required in order to meet the Project Schedule, it shall advise the Department and make a recommendation as to the requested release date. Any decision to authorize an early release shall be made by the Department in its sole and absolute discretion.

2.3 Construction Phase

Based on the permitted and approved plans and specifications, the Contractor shall construct the Project. During the Construction Phase, the Contractor shall be required to cause the Work to be completed in a manner consistent with the design documents approved by the Department and/or by the authorities having jurisdiction and shall provide all labor, materials, insurance, bonds and equipment necessary to fully complete the Project in accordance with the drawings, specifications, schedule and budget that are issued for the Project. The Contractor shall be responsible for paying for and obtaining trade permits, other than the building permit fee, and to pay all necessary fees for utility connections and the like. The work shall be accomplished in accordance with the following:

2.3.1 In order to properly manage the Project, the Contractor shall be required to undertake at minimum the following tasks:

- a. Participate and assist in Project/Planning meetings, during all phases and provide a Project Manager for the entire duration of the Project.
- b. Provide and maintain a fully equipped office on-site to perform all required Contractor duties.
- c. Participate and support the A/E in community meetings throughout the design phases of the Project.
- d. Maintain full-time, on-site construction supervision and provide daily inspections, quality control, monitoring, coordination of various trades, record drawings, and daily work log.
- e. Conduct weekly progress meetings following a Contractor generated agenda and meeting minutes with the Project Manager and all trades.
- f. Provide general safety and signage and posting for the Project and ensure that each subcontractor prepares and submits adequate safety program and

monitoring throughout the Project.

- g. Provide a written monthly report that includes (i) an updated schedule analysis, (ii) an updated cost report, (iii) a monthly review of cash flow, and (iv) a narrative of the work performed.
- h. Manage the change order process with the trade subcontractors to verify validity, purpose, and cost.
- i. Prepare payment requests, verify accuracy and forward to the department for approval and payment.
- j. Assemble close-out documents required, including O&M Manual.
- k. Provide assistance to DGS through any applicable warranty periods.
- l. Take control of the site and install the necessary construction fences and other devices to properly secure the site. It is anticipated that this will occur when the Construction Phase begins. The Contractor's storage/laydown area will be limited to the limits of disturbance shown on the approved construction plans. Additionally, the Contractor is responsible for safety of equipment on site and must follow guidelines spelled out in **Section 2.5.2**.
- m. Abate hazardous materials, if required, in accordance with Environmental Protection Agency ("EPA") and all jurisdictional agencies.
- n. Salvage and store all items as identified by the Department.
- o. Pay all permits and fees associated with the Project, other than the building permit fees.
- p. Provide all required insurance and performance and payment bonds before issuing the notice to proceed.
- q. Remove the balance of construction debris off site in accordance with all applicable rules and regulations of those jurisdictions having authority.

2.3.3 Drawings & Specifications. All of the Work shall be constructed in strict compliance and in accordance with the final Construction documents issued for and approved by the Department.

2.3.4 Compliance with Other Requirements. In performing the Work, the Contractor and its subcontractors shall comply with all of the applicable provisions of the SCP and the requirements set forth in **Section 2.5** (Site Safety), **Section 2.7** (Workhours; Coordination with the District.), and **Section 2.8** (Quality Control Plan) of this RFP.

2.3.5 Site Office. Throughout the Work, the Contractor shall provide and maintain a fully-equipped construction office on the Project site.

2.3.6 Supervision. Throughout the Work, the construction office shall be managed by personnel competent to oversee the Work at all times while construction is underway. Such personnel shall maintain full-time, on-site construction supervision and provide daily

inspections, quality control, monitoring, coordination of various trades, record drawings, and daily work log.

2.3.7 Weekly Progress Meetings. Throughout the Work, the Contractor shall conduct weekly progress meetings following the Contractor's generated agenda with the Department's Project Manager and key trade subcontractors. The Contractor shall draft and circulate the meeting minutes on a weekly basis.

2.3.8 Move-in Assistance. The Contractor shall assist the project team in relocating FF&E and other items, as applicable. The GMP shall include an allowance and Scope of Work for these activities.

2.3.9 Delay Liquidated Damages. In addition to the liquidated damages provided for in Sections 2.13.2 relating to Key Personnel, and 2.2.1.8 relating to deliverables, if the Scope of Work is not substantially complete by the Substantial Completion Date, the Contractor shall be subject to liquidated damages in an amount of Five Thousand Dollars (\$5,000) per day. These damages shall not apply if the delay is the result of Force Majeure, and the Contractor otherwise complies with the provisions set forth in the Agreement and SCP.

2.3.10 Hazardous Materials. The Contractor's Scope of Work includes the abatement and removal of hazardous materials found anywhere on or within the Project site. In performing such work, the Contractor shall comply with all laws, including, without limitation, the requirements of the Environmental Protection Agency and all jurisdictional agencies and all laws relating to safety, health welfare, and protection of the environment, in removing, treating, encapsulating, passivating, and/or disposing of hazardous materials, including, but not limited to, removal, treatment, encapsulation, passivation, and/or disposal of the hazardous materials. If any notices to governmental authorities are required, the Contractor shall also give those notices at the appropriate times. The Contractor shall ensure abatement subcontractors and disposal sites are appropriately licensed and qualified. In addition, the Contractor shall ensure that any subcontractors involved in the abatement of hazardous materials maintain a contractor's pollution legal liability insurance policy of at least Two Million Dollars (\$2,000,000) for the duration of the Project and a period of ten (10) years after Substantial Completion of the Project, and that any disposal site to which hazardous materials are taken carries environmental impairment liability insurance for the duration of the Project and a period of ten (10) years after Substantial Completion of the Project. The Contractor's obligations under this Section 2.3.10 shall include signing (as the agent for the Department) any manifests required for the disposal of hazardous materials.

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

2.4 Intentionally omitted.

2.5 Site Safety

2.5.1 General Responsibility. The Contractor shall provide a safe and efficient site, with controlled access. As part of this obligation, the Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Project, and shall comply with the requirements set forth in **Article 16, Section F** of the SCP.

2.5.2 Safety Plan. Prior to the start of construction activities, the Contractor shall prepare a safety plan for the Construction Phase conforming to OSHA 29 CFR 1926 (such plan, the “Safety Plan”). This Safety Plan developed by the Contractor shall describe the proposed separation and the specific nature of the safety measures to be taken including fences and barriers that will be used and the site security details. This Safety Plan will be submitted to the District for their review and approval prior to the commencement of construction. Once the Safety Plan has been approved, the Contractor shall comply with the plan at all times during construction. The Contractor shall be required to revise the Safety Plan as may be requested by the Department or DOES. The cost of revising and complying with the plan shall not entitle the Contractor to an increase in the GMP. The Contractor will not be permitted to commence the Construction Phase until the Safety Plan is submitted and in no event shall any resulting delay constitute an excusable delay. Additionally, the Contractor shall comply with the requirements of **Article 27, Section A** of the SCP.

2.5.3 Safety Barriers/Fences. As part of its responsibility for Project safety, the Contractor shall install such fences and barriers as may be necessary to separate the construction areas of the site from the public. The Contractor shall describe in the Safety Plan the proposed separation and the specific nature of the fences and barriers that will be used.

2.5.4 Site Security. The Contractor shall be responsible for site security and shall be required to provide necessary measures to protect the site from unwanted intrusion, including but not limited to soliciting the services of the District’s Protective Services Division (PSD) to provide additional security of the site if necessary.

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

2.5.6 The Contractor shall be responsible for the cost of temporary power used during the construction of the Project, including, but not limited to, the cost of installing such temporary wiring as may be required to bring power to the site. The Contractor shall also be responsible for the cost of all temporary construction necessary on the site.

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

2.6 Reporting Requirements

The Contractor shall be required to submit the following reports:

2.6.1 Monthly Report. The Contractor shall provide written reports to the Department, on the progress of the entire Work at least monthly from Preconstruction NTP until Final Completion of the Project. The monthly report shall include: (i) an updated schedule analysis, including any plans to correct defective or deficient work or recover delays; (ii) an updated cost report; (iii) a monthly review of cash flow; (iv) a quality control report; and (v) progress photos.

2.6.2 Bi-Weekly Schedule Updates. The Contractor shall provide a Baseline Schedule update to the Department, on the progress of the entire Work at least bi-weekly, in the same format set forth in **Section 2.2.1.1** of this RFP. The update shall reflect the actual progress of the Project, identify developing or potential delays, regardless of their cause, and reflect the Contractor's best projection of the actual date by which Substantial Completion and Final Completion of the Project will be achieved. The Contractor shall also state what must be done to avoid or reduce that delay, 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.

2.6.2.1 Two Week Look Ahead Schedule. Upon commencement of initial construction activities, the Contractor shall provide on a weekly basis a Two Week Look Ahead Schedule. The Two Week Look Ahead Schedule shall be a sufficient detail to allow the Department to fully understand the anticipated to be on going and complete.

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

2.6.4 Invoice Submittal. The Contractor shall create and submit payment requests in an electronic format through the DC Vendor Portal, <https://vendorportal.dc.gov>. The Contractor shall submit proper invoices on a monthly basis. To constitute the required

documentation for the invoice per Article 8 of the SCP, the Contractor shall enter all required information into the Portal after selecting the applicable purchase order number which is listed on the Contractor's profile.

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

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

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

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

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

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

2.6.11 Daily Log. The Contractor shall also maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, major equipment on the site, Work accomplished, problems encountered and other similar relevant data as the Department may reasonably require. The log shall be available to the Department, the A/E and the Program Manager, and on a monthly basis a copy of the log shall be submitted to the Department.

2.7 Workhours; Coordination with all parties and Community

2.7.1 Workhours. The Contractor shall comply with the Noise Ordinance and neither it nor its subcontractors shall undertake work on the Project site other than at the times and sound level permitted by the Noise Ordinance.

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

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

2.7.4 Outreach Plan. The Contractor shall keep the Department informed of the construction activities and their potential impact on the community. The Contractor shall submit the plan to the Department prior to its implementation and such plan shall be subject to the Department's review and approval.

2.8 Quality Control Plan

2.8.1 General Obligation. The Contractor shall be responsible for all activities necessary to manage, control, and document work to ensure compliance with the Contract documents as outlined in **Part 7**. The Contractor's responsibility includes ensuring adequate quality control services are provided by the Contractor's employees and its subcontractors at all levels. The Work activities shall include safety, submittal management, document reviews, reporting, and all other functions related to quality construction.

2.8.2 Quality Control Plan. The Contractor shall develop a quality control plan for the Project (the, "Quality Control Plan"). A draft of the Quality Control Plan shall be submitted to the Department and shall be subject to the Department's review and approval. The

Quality Control Plan shall be tailored to the specific products/type of construction activities contemplated in the design development documents, and in general, shall include a table of contents, quality control team organization, duties/responsibilities of quality control personnel, submittal procedures, inspection procedures, deficiency correction procedures, documentation process, and a list of any other specific actions or procedures that will be required for key elements of the Work.

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

2.8.4 Corrective Action Plan. The Department shall have the right to direct the Contractor to revise the Quality Control Plan in accordance with the Agreement.

2.9 Project Close-out

2.9.1 Punchlist. Prior to the Substantial Completion date, the Contractor shall develop a punch list. Once the punch list is prepared, the Contractor shall inspect the Work along with representatives from the Department. The punch list shall be revised to reflect additional work items that are discovered during such inspection. The Contractor shall correct all punch list items no later than ninety (90) days after Substantial Completion is achieved.

2.9.2 Training. The Contractor shall provide training to DOES and the Department staff on all of the building systems, as applicable. The Contractor shall be required to schedule such training sessions and shall use commercially reasonable efforts to ensure all such training occurs prior to the Final Completion Date.

2.9.3 Warranties & Manuals. Subsequent to Substantial Completion Date and no later than fifteen (15) days following the Substantial Completion Date, the Contractor shall prepare and submit the following documentation: (i) a complete set of product manuals (O&M), training videos, warranties, etc.; (ii) attic stock; (iii) an equipment schedule; (iv) a proposed schedule of maintenance for the new building; (v) environmental, health and safety documents for the new building; and (vi) all applicable inspection certificates/permits (boiler, elevator, emergency evacuation plans, health inspection, etc.) for the new building.

No later than thirty (30) days following the Substantial Completion Date, the Contractor shall prepare and submit: (i) a complete set of its Project files; (ii) a set of record drawings;

and (iii) any additional documentation required by the Turnover Protocol Document listed in **Attachment Q**.

2.9.4 Eleven Month Walk. The Contractor shall use commercially reasonable efforts to schedule a joint inspection of the Project during the eleventh month after Substantial Completion is achieved. During such inspection, the Contractor and a representative of the Department shall walk the Project to identify any necessary warranty work.

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

2.10 Costs and Fees

2.10.1 Reimbursable Costs

The following costs shall be reimbursable at cost and without mark-up:

- a) Payments made by the Contractor to subcontractors and suppliers, but only in accordance with the subcontracts and supply Agreements;
- b) The cost of General Conditions (as defined below in **Section 2.10.2**), subject however to the Maximum Cost of General Conditions;
- c) All amounts due to the Contractor under the terms of the Department's written authorization for the Contractor to perform any portion of the Work as Self-Performed Work. If an authorization for the Contractor to engage in Self-Performed Work is not on a fixed-price basis, then, as to that work, the following costs shall be within the Cost of the Work:
 1. **Labor.** Properly documented wages actually paid to Project foremen, construction workers, and other personnel in the direct employ of the Contractor, while engaged in approved Self-Performed Work, together with contributions, assessments, payroll taxes, or fringe benefits required by the laws or applicable collective bargaining agreements.
 2. **Incorporated Materials.** The cost, net of trade discounts, of all materials, products, supplies and equipment incorporated into the Self-Performed Work, including, without limitation, costs of transportation and handling.
 3. **Unincorporated Materials.** The cost of materials, products, supplies and equipment not actually installed or incorporated into the Self-Performed Work, but required to provide a reasonable allowance for waste or spoilage, subject to the Contractor's agreement to turn unused excess materials over to the Department at the completion of the Project or, at the Department's option, to sell the material and pay the proceeds to the Department or give the Department a credit in the amount of the proceeds against the Cost of the Work.

- d) Royalty and license fees paid for use of a design, process or product, if its use is required by the Agreement or has been approved in advance by the Department;
- e) Fees for obtaining all required approvals or permits associated with the abatement, demolition, utilities abandonment, and utility relocation, and all trade permit fees.
- f) All fees and other costs necessarily incurred to carry out testing and inspection required by the Agreement, or otherwise to maintain proper quality assurance. The costs the Contractor incurs to schedule and coordinate any additional testing and inspections the Department may decide to conduct itself shall be reimbursable unless the additional testing establishes that the work tested was defective or otherwise failed to satisfy the Agreement's requirements, in which case the Contractor shall pay the costs, without reimbursement;
- g) All bonds to jurisdictional agencies (utilities, storm water management, land disturbance, and grading); and
- h) All performance and payment bonds and general liability insurance. The Department may, in its sole discretion, allow the Contractor to recover the costs of subcontractor default insurance at a mutually agreed upon rate in lieu of trade level bonds, provided that such insurance be approved by the Department in advance and after being presented with a cost-benefit analysis of such use.

2.10.2 Cost of General Conditions

The Contractor's general condition costs shall be reimbursable at cost and without mark-up. Only the following items, however, are reimbursable (any other items or expenses are non-reimbursable and the Contractor shall use its fee to cover any additional cost items):

- a) Cost of construction staff (only field staff are reimbursable)
- b) Fringe Benefits associated with field staff costs
- c) Payroll taxes and payroll insurance associated with construction staff costs
- d) Staff costs associated with obtaining permits and approvals
- e) Out-of-house consultants
- f) Field office for CMAR including but not limited to:
 - Trailer purchase and/or rental
 - Field office installation, relocation and removal
 - Utility connections and charges during the Construction phase
 - Furniture
 - Office supplies
- g) Office equipment including but not limited to:
 - Computer hardware and software
 - Fax machines
 - Copy machines
 - Telephone installation, system and uses charges
 - Job radios
- h) Local delivery and overnight delivery costs

- i) First aid facility
- j) BIM Cost (software, seats, hardware)

2.10.3 Non-Reimbursable Costs

The following costs shall not be reimbursable:

- a) Any personnel or labor costs other than those provided for in **Section 2.10.1 (c) (1)** or **Section 2.10.2 (a)**.
- b) Fees for any permits or licenses the Contractor requires to conduct its general business operations.
- c) The CMAR's capital expenses, including interest on the CMAR's capital employed for the Work.
- d) The cost of home or regional offices, it being understood that compensation for such costs included in the Construction Management Fee and Award Fee.
- e) Sales or use taxes, unless the Contractor establishes that applicable law required payment of such taxes.
- f) Costs due to the errors or omissions of the Contractor or its subcontractors or suppliers at all tiers, negligent or otherwise.
- g) Costs due to breach of Contract by the Contractor or its subcontractors or material suppliers at all tiers, including, without limitation, costs arising from defective or damaged work or its correction, disposal of materials or equipment erroneously supplied, and repairs to property damaged by the Contractor or its subcontractors or material suppliers at all tiers.
- h) Any costs incurred in performing work of any kind before Preconstruction NTP, unless specifically authorized by the Department in advance and in writing.
- i) Direct or indirect costs of any kind, except those expressly included in **Section 2.10.1**.

2.11 Construction Management Fee & Award Fee Calculations

The Contractor's compensation shall consist of (i) the Preconstruction Fee; and (ii) Construction Management Fee bid by selected Offeror. In addition, the Contractor shall be entitled to recover at cost and without mark-up its Costs of General Conditions as is defined in **Section 2.10.2**; subject, however, to the Maximum Cost of General Conditions proposed by the selected Offeror which limits shall serve as a cap on the Cost of General Conditions.

2.11.1 Preconstruction Fee. The Preconstruction fee shall be Contractor's sole compensation for services performed during Preconstruction Phase.

2.11.2 Base Construction Management Fee. The Construction Management Fee shall be divided into two categories. Seventy-five percent (75%) of the Construction Management Fee shall be referred to as the "Base Construction Management Fee" and the remaining twenty-five percent (25%) shall be at risk (the "At Risk Portion"). The Base Construction Management Fee shall be paid in monthly progress payments. Each of those amounts shall

be paid in equal monthly installments spread over the duration of each such phase. To the extent that the Agreement duration is extended, the then remaining amounts of the Base Construction Management Fee will be re-allocated such that the then existing portion of the Base Construction Management Fee allocated to each phase shall be evenly spread over the then-remaining duration of the phase.

2.11.3 Maximum Cost of General Conditions. The Maximum Cost of General Conditions shall be the maximum amount that will be reimbursed by the Department for those costs described in **Section 2.10.2**. The Maximum Cost of General Conditions shall not be increased or decreased as a result of Change Orders or Change Directive unless such changes (i) extend the duration of the Project beyond the time identified in **Section 1.4**; and (ii) the Contractor can demonstrate to the satisfaction of the Department that such additional Cost of General Conditions are necessary and not due to any fault of the Contractor, its subcontractors, materialmen, consultants or anyone making claims thereunder. To the extent the Contractor incurs General Conditions costs in excess of the Maximum Cost of General Conditions, the Contractor shall not be entitled to reimbursement for such amounts. In such an event, the Contractor shall be required to adequately staff the Project.

2.11.4 Award Fee Determination. The Contractor shall be entitled to the At-Risk Portion as follows:

- a) If the GMP is agreed upon by the Contractor and the Department on or before (Date to be determined as part of ESA), the Contractor shall earn twenty five percent (25%) of the At-Risk Portion of the Construction Management Fee.
- b) The Contractor shall earn twenty five percent (25%) of the At-Risk Portion of the Construction Management Fee if the Project is Substantially Complete on or before **February 1, 2024**.
- c) The Contractor shall be eligible to earn up to Twenty Five percent (25%) of the Award Fee Pool (“Award Fee Pool”) based on the overall level of quality of the Project as delivered (such amount, the “Quality Incentive Amount”). Entitlement to this portion of the Award Fee Pool shall be determined by an award fee committee (the “Award Fee Evaluation Committee”), which will be appointed by the Contractor and the Department within sixty (60) days after award. The Award Fee Evaluation Committee will consist of: (i) the Department’s Deputy Director for Capital Construction; (ii) a senior representative from DOES; and (iii) a senior member of the Program Management team that is not involved in the day-to-day management of this Project that is acceptable to both the Department and the Contractor. Upon Substantial Completion, the Award Fee Evaluation Committee shall inspect the Project and assess the overall appearance, functionality and level of quality found in the Work. In making this determination, the Award Fee Evaluation Committee shall endeavor to reach a consensus among its members and ascribe one of the following four scores to the

overall success of the design intent: poor, fair, good, or excellent.

If the panel determines that the overall level of success was poor, then the panel shall award Zero Dollars (\$0); if the panel determines that the overall level of success was fair, then the panel shall award one third (1/3) of the Construction Quality Incentive Amount; if the panel determines that the overall level of success was good, then the panel shall award two thirds (2/3) of the Construction Quality Incentive Amount; and if the panel determines that the overall level of success was excellent, then the panel shall award all of the Construction Quality Incentive Amount. In the event the panel cannot reach consensus, then each member of the panel shall make a determination and the three such determinations shall be averaged with poor equating to 0% of the Construction Quality Incentive Amount, fair equating to 33% of the Construction Quality Incentive Amount, good equating to 67% of the Construction Quality Incentive Amount, and excellent equating to 100% of the Construction Quality Incentive Amount.

- d) The Contractor shall earn twenty-five percent (25%) of the At-Risk Portion of the Construction Management Fee if the Project is completed for an amount that does not exceed more than one hundred three percent (103%) of the GMP as initially established. Entitlement to this portion of the Award Fee Pool shall be based on the final outcome of the Project. For the avoidance of doubt, the Contractor shall not be entitled to earn such portion of the Award Fee Pool even if the failure to deliver within the 103% cost goal was caused by DOES, the Department, delays resulting from the permitting or zoning process, or an event of Force Majeure.

2.12 Excluded Cost Elements

It is the Department's intent that the Contractor provide a turn-key solution for the implementation of the Project, and the budget set forth in **Section 1.2** has been developed based on such framework. The Contractor shall advance the Project in a manner consistent with such budget and the understanding that only the following cost elements are excluded from the budget set forth in **Section 1.2** of the RFP:

- a) Design by Architect/Engineer and its sub-consultants;
- b) 3rd Party Material Testing;
- c) Commissioning;
- d) 3rd Party Inspections;
- e) Costs of active DOES equipment; and
- f) 3rd Party Plan Review.

2.13 NONPROFIT FAIR COMPENSATION ACT OF 2020, D.C. Code § 2-222.01 et seq.

Nonprofit organizations, as defined in the Act, shall include in their rates the indirect costs incurred in provision of goods or performance of services under this contract pursuant to the nonprofit organization's unexpired Negotiated Indirect Cost Rate Agreement (NICRA). If a nonprofit organization does not have an unexpired NICRA, the nonprofit organization may elect to instead include in its rates its indirect costs:

- (1) As calculated using a *de minimis* rate of 10% of all direct costs under this contract;
- (2) By negotiating a new percentage indirect cost rate with the awarding agency;
- (3) As calculated with the same percentage indirect cost rate as the nonprofit organization negotiated with any District agency within the past 2 years; however, a nonprofit organization may request to renegotiate indirect costs rates in accordance with 2.13.2; or
- (4) As calculated with the same percentage indirect cost rate as the nonprofit organization negotiated with any District agency within the past 2 years; however, a nonprofit organization may request to renegotiate indirect costs rates in accordance with 2.13.2; or

2.13.1 If this contract is funded by a federal agency, indirect costs shall be consistent with the requirements for pass-through entities in 2 C.F.R. § 200.331, or any successor regulations.

2.13.2 The Contractor shall pay its subcontractors which are nonprofit organizations the same indirect cost rates as the nonprofit organization subcontractors would have received as a prime contractor.

2.14 Key Personnel; Diversion

2.14.1 Identification of Key Personnel. The following individuals shall be considered key personnel ("Key Personnel"): (i) the Project Executive; (ii) the Field Superintendent; (iii) the Project Manager who will supervise the Project; (iv) the Project Manager who will supervise the Mechanical, Electrical, and Plumbing ("MEP") work; and (v) the individual that will manage quality control and interact with the Department's quality control representative (Safety/Quality Assurance/Quality Control Manager). The Contractor will not be permitted to reassign any of the Key Personnel unless the Department approves the proposed reassignment and the proposed replacement.

2.14.2 Key Personnel Removal or Replacement Disincentive Fee. If the Contractor removes or reassigns one of the Key Personnel (excluding, however, instances where such personnel become unavailable due to death, disability, or separation from the employment of the Contractor or any affiliate of the Contractor) without the prior written consent of the Department's Contracting Officer, the Contractor shall pay to the Department the sum of

\$25,000 for each replacement as a replacement fee and not as a penalty, to reimburse the Department for its administrative costs arising from the Contractor's failure to provide the Key Personnel. The foregoing replacement fee amount shall not bar recovery of any other damages, costs or expenses other than the Department's internal administrative costs. In addition, the Department shall have the right, to be exercised in its sole discretion, to remove, replace or to reduce the scope of services of the Contractor in the event that a member of the key personnel has been removed or replaced by the Contractor without the consent of the Department. In the event the Department exercises the right to remove, replace or to reduce the scope of services of the Contractor, the Department shall have the right to enforce the terms of the Agreement and to keep-in-place those members of the Contractor's team not removed or replaced and the remaining members shall complete the services required under the Agreement in conjunction with the new members of the Contractor's team approved by the Department's Contracting Officer.

2.15 Deliverable List

The Contractor shall be required to prepare and submit the following, in addition to any other deliverables required under this RFP and the RFP documents:

2.15.1 Preconstruction Phase Deliverables

- a) Project Schedule and cost estimate for all A/E deliverables, including but not limited to design development document, as requested.
- b) List of long lead items that could adversely impact the Project's schedule and recommendations for purchase.
- c) List of subcontractors from which the Contractor has solicited bids and bidding procedure.
- d) Trade bid tabulations, including all subcontractor proposals to include cost estimates for all operating items in the GMP
- e) Statement of constructability within ten (10) days of the conclusion of the Preconstruction Phase, executed by the Contractor.
- f) Insurance certificates.
- g) Contractor's Performance and Payment Bonds.
- h) GMP proposal.

2.15.2 Construction Deliverables

- a) Hazardous Material Abatement Subcontractor Insurance Certificates.
- b) Hazardous Material Abatement Records.
- c) Construction Document Packages.
- d) Progress Meeting Minutes.
- e) Project Schedule Updates.
- f) Project Progress Reports.
- g) Cost Variance Report.
- h) OSHA Safety Plan.

- i) Close out documents (Product Manuals, Warranties, etc.).
- j) Quality Control Plan.
- k) Quality Control Inspection Reports.
- l) Corrective Action Plan.
- m) ProjectTeam submissions.
- n) Invoices and Acceptable Application for Payment with Release of Liens and Claims.
- o) Insurance Certificates.
- p) Performance and Payment Bonds and Agreement of Indemnity
- q) Certificate of Substantial Completion executed by the A/E and submitted to the Department for review, concurrence and approval.
- r) Documents that may be required by Contracting Officer from time to time.

2.15.3 Close-Out Deliverables

- a) A complete set of the Contractor's Project files.
- b) A complete set of product manuals (O&M), training videos, warranties, etc.
- c) As built record drawings.
- d) Attic stock and schedule.
- e) Equipment schedule.
- f) Proposed schedule of maintenance.
- g) Environmental, health & safety documents.
- h) LEED – Preliminary Construction Review.
- i) All applicable inspection certificates/permits (boiler, elevator, emergency evacuation plans, health inspection, etc.).
- j) All other files and requirements outlined in Turnover Protocol Document (**Attachment Q**).

2.16 Licensing, Accreditation and Registration

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

2.17 Conformance with Laws

It shall be the responsibility of the Contractor to perform under the Agreement in conformance with the Department's Procurement Regulations and all statutes, laws, codes, ordinances, regulations, rules, requirements, orders, and policies of governmental bodies.

2.18 Davis-Bacon Act

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

2.19 Time is of the Essence

Time is of the essence with respect to the Agreement. The Project must be Substantially Complete by the Substantial Completion Date. As such, the Contractor must dedicate such personnel and other resources as are necessary to ensure that the Project is completed on-time and in a diligent, skilled, and professional manner.

2.20 Building Information Modeling (“BIM”)

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

2.21 Protection of Existing Elements

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

PART 3 - EVALUATION AND AWARD CRITERIA

3.0 Evaluation Criteria

Proposals will be evaluated in accordance with the following evaluation criteria:

- a) Past Performance, Relevant Experience & Capabilities (30 points)
- b) Key Personnel (20 points)
- c) Project Management Plan and Schedule (30 points)
- d) Price (20 points)
- e) Certified Business Enterprise (“CBE”) Preference Points (up to 12 points)

3.1 Evaluation Process

The Department shall evaluate Offerors’ proposal(s) and any requested best and final offers (“BAFO(s)”) in accordance with the provisions of this **Part 3** and the Department’s procurement regulations. Proposal(s) include all items outlined in **Section 5.1**.

3.2 The Technical Rating Scale is as follows:

Numeric Rating	Adjective	Description
0	Unacceptable	Fails to meet minimum requirements, e.g., no demonstrated capacity, major deficiencies which are not correctable; offeror did not address the factor.
1	Poor	Marginally meets minimum requirements; major deficiencies which may be correctable.
2	Minimally Acceptable	Marginally meets minimum requirements; minor deficiencies which may be correctable.
3	Acceptable	Meets requirements; no deficiencies.
4	Good	Meets requirements and exceeds some requirements; no deficiencies.
5	Excellent	Exceeds most, if not all requirements; no deficiencies.

3.3 Evaluation Committee

Each Offeror's proposal shall be evaluated in accordance with this **Part 3** by an Evaluation Committee ("Evaluation Committee"). The Evaluation Committee shall prepare a written report summarizing its findings and submit the same to the source selection official. Based on the information submitted by the Offerors in response to this RFP and the report prepared by the Evaluation Committee, the source selection official shall select the responsive and responsible Offeror(s) whose proposal(s) are determined by the source selection official to be the most advantageous to the Department in accordance with D.C. Official Code § 2-354.03 and not necessarily the Offeror (s) with the highest score as evaluated per the factors in **Section 3.4** of this RFP.

3.4 Oral Presentation

The Department does not intend to interview Offerors and contract award may be made without discussion; however, the Department reserves the right to interview Offerors in the competitive range, if necessary. If the Department conducts such interviews, each Offeror within the competitive range shall make an oral presentation to the Department's Evaluation Committee, and participate in a question and answer session. The purpose of the oral presentation and the question and answer session is to permit the Evaluation Committee to fully understand and assess the qualifications of each Offeror and the Offeror's key personnel. The proposal will be re-scored at the conclusion of the oral presentation. As part of the evaluation, the Department will also consider its own historical experience with the Offeror, and the direct experience of the members of the evaluation panel and others involved in the evaluation process with the Offeror.

3.4.1 Length of Oral Presentation

Each Offeror will be given up to sixty (60) minutes to make the presentation. At the end of the initial presentation, there will be a break for approximately forty-five (45) minutes for the Evaluation Committee to assess the presentation and prepare questions. The Offeror will then respond to questions from the Department's Evaluation Committee for no more than ninety (90) minutes.

3.4.2 Oral Presentation Schedule

The order of oral presentations will be selected randomly, and the Offerors will be informed of their presentation date before the beginning of oral presentations. The Department reserves the right to reschedule any Offeror's presentation at the discretion of the Contracting Officer.

3.4.3 Offeror Attendees

The oral presentation will be made by the Offeror's personnel who will be assigned the key jobs for this Project. Each Offeror will be limited to seven (7) persons. The job functions of

the persons attending the presentation will be considered to be an indication of the Offeror's assessment of the key areas of responsibility that are deemed essential to the successful completion of the Project.

3.4.4 Topics

The Offeror may present information about its capabilities and special qualifications to serve as the Contractor for this Project, including the qualifications of the Key Personnel.

3.5 Proposal Evaluation

Each proposal will be scored on a scale of zero (0) to one hundred twelve (112) points. Offerors will be eligible to receive up to twelve (12) of the one hundred twelve (112) points based on the Offeror's status as a CBE as outlined in **Part 4** of this RFP. The Department's evaluation shall not necessarily be limited to the information provided in the Offeror's proposal. As part of the evaluation, the Department will also consider its own historical experience with the Offeror, and the direct experience of the members of the evaluation panel and others involved in the evaluation process with the Offeror. The Agreement will be awarded to the responsive and responsible Offeror found to be the most advantageous to the Department in accordance with D.C. Official Code § 2-354.03 and not necessarily the Offeror(s) with the highest evaluated score.

3.5.1 Past Performance, Relevant Experience & Capabilities (30 points)

The Department desires to engage a Contractor with the experience necessary to accomplish the objectives set forth in the RFP. The Offeror will be evaluated based on the following:

- i. Demonstrated experience with construction and/or renovation of, and extensive knowledge of such facilities in a setting similar in size and cost to the proposed Project.
- ii. Demonstrated knowledge and experience with the local subcontracting market
- iii. Past performance (considering schedule and budget) with public and/or private projects of similar scale (scale = construction budget total \$)
- iv. Demonstrated experience in managing cost of a project that have experienced varied price swings due to market conditions and inflations as well as supply change issues.

In evaluating these subfactors, the Department will evaluate, among other things, the Offeror's track record in delivering projects on-time and on-budget.

The Offeror shall ensure that a minimum of three (3) Past Performance Evaluation forms, **Attachment K**, are completed and included in the proposal

In the case of an Offeror without a record of relevant past performance or for whom information on past performance is not available, the Offeror will not be evaluated favorably or unfavorably on past performance.

If the Offeror is a team or joint venture, the names and addresses of the team or individual members of the joint venture, and copies of any joint venture or teaming agreements shall be provided. If the Offeror is a team the teaming agreement should include intention, expectations, roles and responsibility of the Contractor, roles and responsibility of the teaming partner, why the parties are teaming, division of the work and percentages. If the Offeror is a team or a Joint Venture of multiple companies, the Evaluation Committee will consider the experience of each member of the team or Joint Venture in light of their role in the proposed team or Joint Venture.

This element of the evaluation will be worth up to thirty (30) points.

3.5.2 Key Personnel (20 points)

The Department desires that the Contractor assign the appropriate number of personnel having the necessary seniority to implement a project of this type. The personnel should have experience working together and each such individual should have the necessary level of experience and education for his or her proposed role. Proposals should identify, at a minimum, (i) the Project Executive ; (ii) the Field Superintendent ; (iii) the Project Manager who will supervise the Project; (iv) the Project Manager who will supervise the Mechanical, Electrical, and Plumbing (“MEP”) work; and (v) the individual that will manage quality control and interact with the Department’s quality control representative. The availability and experience of the key individuals assigned to this Project will be evaluated as part of this element. Offerors should provide a table that identifies the specific staff that will be assigned to this Project. The table should include: (i) the individual’s name (if known); (ii) his or her title; (iii) his or her level of effort (i.e. the percentage of time devoted to this Project); and (iv) the time periods during which the individual will be assigned to the Project. This table should include all personnel that will be assigned to the Project. This element of the evaluation will be worth up to twenty (20) points.

3.5.3 Project Management Plan and Schedule (30 points)

Offerors are required to submit with their proposal a management plan (“Management Plan”). The Management Plan should clearly explain how the Contractor intends to manage and implement the Project. At a minimum, it should explain (i) how the Contractor will manage the preconstruction phase; (ii) how the Contractor proposes to staff and handle construction administration phase including coordinating with the A/E for timely resolution of issues; and (iii) how the Contractor will manage constructability reviews and manage value engineering process so that the Project is within budget.

Offerors should submit with their Management Plan a CPM schedule that shows the anticipated manner in which the Project will be constructed, including a preliminary phasing/sequencing plan for the Project, demonstrating how the Offeror will phase the work in order to meet the milestone dates required for this Project. The schedule should be

prepared using a critical path method and should show key logic ties and activity durations and should show a sufficient level of detail so as to demonstrate the Offeror's understanding of the Project and the key issues related to the Project. In addition, the Management Plan should also: (i) identify the key personnel and their specific roles in managing the Project; (ii) identify the key milestone dates and provide a description of how these dates will be achieved; (iii) provide a preliminary schedule of the work and the phasing of construction; (iv) describe how the Contractor intends to address and overcome issues related to the schedule; (v) describe the cost control management structures that will be used to ensure the Project is delivered on-budget; and (vi) describe the key challenges inherent with Spingarn site, how they will balance DCIA modernization and overall building stabilization and explain how they will be overcome or mitigated.

Each Offeror should prepare a preliminary project schedule (the “Baseline Schedule”) that shows how the Offeror intends to complete the Project in a timely manner. The Baseline Schedule shall be subject to review and approval by the Department. The Contractor shall incorporate any adjustment to the Baseline Schedule as may be reasonably requested by the Department. The Baseline Schedule shall be prepared in CPM and be developed in a sufficient level of detail so as to permit the affected parties (i.e. the Department, the A/E and the Contractor) to properly plan the Project, and shall show: (i) key design milestones and bid packages; (ii) release dates for long lead items; (iii) release dates for key subcontractors; and (iv) Substantial and Final Completion Dates. The preliminary schedule must also be submitted in Primavera 6 native format, and upon award, shall be updated by the Contractor, at a minimum, on a bi-weekly basis. The schedule should demonstrate that the Offeror understands the Project and has a workable method to deliver the Project in a timely manner.

This element of the evaluation is worth up to thirty (30) points.

3.5.4 Price (20 points)

Offerors will be required to submit with their proposals the following fee components: (i) a Preconstruction Fee; (ii) a Construction Management Fee; and (iii) a Maximum Cost of General Conditions. The Preconstruction Fee and the Construction Management Fee will be fixed fees and should cover the cost of the Contractor’s overhead and profit. The cost of general conditions, as defined in the Agreement, shall be reimbursable subject to a cap equal to the Maximum Cost of General Conditions proposed by the Offeror. Each Offeror will be required to complete and submit with their proposal a copy of the pricing sheet set forth as **Attachment B**, which includes all these price components. The pricing sheet shall be submitted as part of Volume 2 (i.e. the price proposal) as more fully described in **Part 5** of this RFP. **The price components will be worth up to twenty (20) points.**

3.5.5 CBE Preference (12 points)

The remaining twelve (12) points will be awarded based on the Offeror status as a Small Business Enterprise (“SBE”)/Certified Business Enterprise (“CBE”) as outlined in **Part 4** of this RFP.

PART 4 - ECONOMIC INCLUSION

4.0 Preference for Small, Local, and Disadvantaged Business Enterprises

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

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

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

4.1 Preferences for Certified Joint Ventures

A certified Joint Venture will receive preferences as determined by the Department of Small and Local Business Development (“DSLBD”) in accordance with D.C. Official Code § 2-218.39a (h).

- a) A copy of the certification acknowledgment letter must be submitted with the Offeror's proposal.
- b) Any vendor seeking certification in order to receive preferences under this RFP should contact the:

Department of Small and Local Business Development
ATTN: CBE Certification Program
441 Fourth Street NW, Suite 850N
Washington, DC 20001
(202) 727-3900

- c) All Offerors are encouraged to contact Department of Small and Local Business Development at (202) 727-3900 if additional information is required on certification procedures and requirements.

4.2 Subcontracting Requirements

4.2.1 Mandatory Subcontracting Requirements

- a) Unless the Director of DSLBD has approved a waiver in writing in accordance with D.C. Official Code § 2-218.51, for all contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted to SBEs.
- b) If there are insufficient SBEs to completely fulfill the requirement of paragraph **(a)** of this **Section 4.2.1** above, then the subcontracting may be satisfied by subcontracting (35%) of the dollar volume to any qualified CBEs; provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.
- c) A prime contractor that is certified by DSLBD as a small, local, or disadvantaged business enterprise shall not be required to comply with the provisions of Sections 4.2.1 a) and 4.2.1 b).
- d) Except as provided in paragraphs (e) and (g) below of this **Section 4.2.1**, a Prime Contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least (35%) of the contracting effort with its own organization and resources and, if it subcontracts, (35%) of the subcontracting effort shall be with CBEs. A CBE Prime Contractor that performs less than (35%) of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- e) A Prime Contractor that is a certified Joint Venture and has been granted an offer preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least (50%) of the contracting effort with its own organization and resources and, if it subcontracts, (35%) of the subcontracting effort shall be with CBEs. A certified Joint Venture Prime Contractor that performs less than (50%) of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- f) Each CBE utilized to meet these subcontracting requirements shall perform at least (35%) of its contracting effort with its own organization and resources.

- g) A Prime Contractor that is a CBE and has been granted an offer preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least (50%) of the on-site work with its own organization and resources if the Agreement is one (\$1) million dollars or less.

4.2.2 Subcontracting Plan Requirements and Non-Responsive Proposals:

The Subcontracting Plan Form, **Attachment H**, must be provided as part of all proposals, as follows:

1. If the prime contractor required by law to subcontract under this Contract, it shall submit a subcontracting plan as part of its proposal in accordance with D.C. Official Code § 2–218.46, and Section 4.2.1 of this RFP. The SBE Subcontracting Plan must list all subcontractors at every tier and shall include the following:
 - (a) The name and address of each subcontractor;
 - (b) A current certification number of the small or certified business enterprise;
 - (c) The scope of work to be performed by each subcontractor;
 - (d) The price to be paid by the prime contractor to each subcontractor; and
 - (e) Meet the subcontracting requirements as further described in Section 4.2.1 of this RFP.
2. If the prime Contractor is a CBE and self performs the entire project with its own organization and resources and will not subcontract any portion of the services, then the CBE shall only submit the SBE Subcontracting Form (**Attachment H**) by selecting the self-performance option located on the first page of the SBE Subcontracting Form.
3. Bidders responding to this RFP shall be deemed nonresponsive and shall be rejected if the Bidder fails to submit a Subcontracting Plan with its proposal as detailed in Section 4.2.1 and Section 4.2.2 of this RFP.
4. Once the Subcontracting Plan is approved by the Department’s CO, changes to the plan will only occur with the prior written approval of the CO and the Director of Department of Small and Local Business Development (“DSLBD”).
5. The Subcontracting Plan shall be provided before the District accepts the submission of the proposal.

4.2.3 Copies of Subcontracts

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

4.2.4 Subcontracting Plan Compliance Reporting

- a) The Prime Contractor has a subcontracting plan required by law for this Agreement; the Prime Contractor shall submit a quarterly report to the CO, District of Columbia Auditor and the Director of Department of Small and Local Business Development. The quarterly report shall include the following information for each subcontract identified in the subcontracting plan:
1. The price that the Prime Contractor will pay each subcontractor under the subcontract;
 2. A description of the goods procured or the services subcontracted for;
 3. The amount paid by the Prime Contractor under the subcontract; and
 4. A copy of the fully executed subcontract, if it was not provided with an earlier quarterly report.
- b) If the fully executed subcontract is not provided with the quarterly report, the Prime Contractor will not receive credit toward its subcontracting requirements for that subcontract.

4.2.5 Annual Meetings

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

4.2.6 DSLBD Notices

The Prime Contractor shall provide written notice to the Department of Small and Local Business Development and the District of Columbia Auditor upon commencement of the Agreement and when the Agreement is completed.

4.2.7 Enforcement and Penalties for Breach of Subcontracting Plan

A Prime Contractor shall be deemed to have breached a subcontracting plan required by law, if the Prime Contractor (i) fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information in a reasonably timely manner; (ii) submits a monitoring or compliance report or other required subcontracting information containing a materially false statement; or (iii) fails to meet its subcontracting requirements. A Prime Contractor that is found to have breached its subcontracting plan for utilization of CBEs in the performance of a contract shall be subject to the imposition of penalties, including monetary fines in accordance with D.C. Official Code § 2-218.63. If the CO determines the Prime Contractor’s failure to be a material breach of the Contract, the CO shall have cause to terminate the Contract under the default provisions in the SCP, **Attachment G1**. Neither the Prime Contractor nor its subcontractor may remove a subcontractor or tier-subcontractor if such subcontractor or tier-subcontractor is certified as an LSDBE company unless the Department approves of such removal, in writing. The

Department may condition its approval upon the Prime Contractor developing a plan that is, in the Department's sole and absolute judgment, adequate to maintain the level of LSDBE participation on the Project.

4.3 51% District Residents New Hires Requirements and First Source Employment Agreement

4.3.1 For contracts for services in the amount of \$300,000 or more, the Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code § 2-219.01 et seq. ("First Source Act").

4.3.2 The Contractor shall enter into and maintain during the term of the Contract, a First Source Employment Agreement (Employment Agreement) (**Attachment I**) with the District of Columbia Department of Employment Service's (DOES), in which the Contractor shall agree that: (a) The first source for finding employees to fill all jobs created in order to perform the Contract shall be the First Source Register; and (b) The first source for finding employees to fill any vacancy occurring in all jobs covered by the Employment Agreement shall be the First Source Register.

4.3.3 If applicable, the Contractor shall comply with subchapter X of Chapter II of Title 2, and all successor acts thereto, including by not limited to the Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011, and the rules and regulations promulgated thereunder, including, but not limited to the following requirements:

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

4.3.4 The Contractor shall not begin performance of the Contract until its Employment Agreement has been accepted by DOES. Once approved, the Employment Agreement shall not be amended except with the approval of DOES.

4.3.5 The Contractor agrees that at least 51% of the new employees hired to perform the Contract shall be District residents. The Contractor shall ensure that at least fifty-one percent (51%) of the Contractor and every sub-consultant's and subcontractor's employees hired after the effective date of the Agreement, or after such subconsultant or subcontractor enters into a contract with the Contractor, to work on the Project shall be residents of the District of Columbia. This percentage shall be applied in the aggregate, and not trade by trade.

4.3.6 The Contractor's hiring and reporting requirements under the First Source Act and any rules promulgated thereunder shall continue for the term of the Contract.

4.3.7 The CO may impose penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the Contract, for a willful breach of the Employment Agreement, failure to submit the required hiring compliance reports, or deliberate

submission of falsified data.

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

4.3.9 Any contractor who violates, more than once within a 10-year timeframe, the hiring or reporting requirements of the First Source Act shall be referred for debarment for not more than five (5) years.

4.3.10 The Contractor may appeal any decision of the CO pursuant to this clause to the DC Contract Appeals Board, located at 441 4th Street, NW, Suite 350N, Washington, DC 20001.

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

4.3.12 Construction projects or contracts covered by this Section 4.3 of the Contract shall be subject to the hiring and reporting requirements set forth in this Section until construction is completed and a final certificate of occupancy has been issued.

4.4 Apprenticeship Act

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

4.5 Way To Work Amendment Act Of 2006

4.5.1. Except as described in Section 4.5.9 below, the Contractor shall comply with Title I of the Way to Work Amendment Act of 2006, effective June 8, 2006 (D.C. Law 16-118, D.C. Official Code §2-220.01 *et seq.*) (“Living Wage Act of 2006”), for contracts for services in the amount of \$100,000 or more in a 12-month period.

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

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

4.5.4 The DOES may adjust the living wage annually and Contractor will find the current living wage rate on its website at www.does.dc.gov.

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

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

4.5.7 The payment of wages required under the Living Wage Act of 2006 shall be consistent with and subject to the provisions of D.C. Official Code §32-1301 et seq.

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

(1) Contracts or other agreements that are subject to higher wage level determinations required by federal law;

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

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

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

(5) Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services; provided that the trainees do not replace employees subject to the Living Wage Act of 2006;

(6) An employee under 22 years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than 25 hours per week; provided that he or she does not replace employees subject to the Living Wage Act of 2006;

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

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

(9) Medicaid provider agreements for direct care services to Medicaid recipients, provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; 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.

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

4.6 SPECIAL PROVISIONS RELATED TO THE COVID-19 EMERGENCY

4.6.1 The Contractor is required to comply with Mayor’s Order 2021-099, COVID-19 Vaccination Certification Requirement for District Government Employees, Contractors, Interns, and Grantees, dated August 10, 2021, and all substantially similar vaccine requirements, including any modifications to this Order, unless and until they are rescinded or superseded. At the request of

the District government, Contractors may be asked to provide certification of compliance with this requirement and/or documents and records in support of this certification.

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

PART 5 - PROPOSALS AND PROPOSAL ORGANIZATION

5.0 General

This part outlines specific information necessary for the proper organization and manner in which Offerors' proposals should be proffered. References are made to other sections in this RFP for further explanation.

5.1 Proposal Identification

All proposals shall be submitted electronically, as follows:

An electronic copy of the complete proposals (**Technical** and **Price Proposals**) shall be submitted to Contracts & Procurement Division's Submission Portal as described in **Section 5.2 by the Due Date in Section 5.3 of this RFP**. The submission should be titled: "**Proposal for CMAR for DC Infrastructure Academy at the Spingarn High School – DCAM-22-CS-RFP-0019.**"

5.2 Delivery or Mailing of Proposals

Proposals must be uploaded to Contracts & Procurement Division's Submission Portal using the link bellow:

<https://octo.quickbase.com/db/bq7rujdk2?a=dbpage&pageID=2>

The Submission Portal's preview is attached to this RFP as **Attachment U**.

5.3 Date and Time for Receiving Proposals

Proposals shall be received in the place identified in **Section 5.2** of this RFP no later than **September 2, 2022 at 4:00 p.m.** The Offeror assumes the sole responsibility for timely delivery of its proposal, regardless of the method of delivery.

5.4 Proposal Size, Organization and Offeror Qualifications

The Department is interested in a qualitative approach to presentation material. Brief, clear, and concise material is more desirable than quantity. The proposal shall be organized in two volumes, a technical proposal, and a price proposal. The Technical Proposal shall be organized as follows:

5.4.1 Executive Summary of Proposal

Each Offeror should provide a proposal executive summary of no more than three pages.

5.4.2 General Team Information and Firm(s) Data

Each Offeror should provide the following information for the Contractor and each of its subcontractors.

- a) Name(s), address(es), and role(s) of each firm (including all sub-contractors)
- b) Firm profile(s), including:
 - 1. Age.
 - 2. Firm history(ies).
 - 3. Firm size(s).
 - 4. Areas of specialty/concentration.
 - 5. Current firm workload(s) projected over the next year.
 - 6. A list of any contract held by the Offeror where the contract was terminated (either for default or convenience). This list should also identify any contracts that resulted in litigation or arbitration between the Department and the Offeror. If the Offeror has multiple offices, only contracts held by the office submitting a proposal to this RFP need be listed
 - 7. Identification of the single point of contact for the Offeror.

5.4.3 Past Performance, Relevant Experience & Capabilities

- a) Detailed descriptions of no more than five (5) projects that best illustrate the team's experience and capabilities relevant to this Project. For each such project, the Offeror should provide the information requested below:
 - 1. The name and location of the project.
 - 2. The square footage of the project
 - 3. A short narrative of the scope of the contractor's work on the project.
 - 4. The delivery method implemented on the project.
 - 5. The start and end dates for construction.
 - 6. The date of Contractor's engagement and point during the design process at which builder was engaged (e.g., schematic design 50% complete; schematic design 100% complete, etc.).
 - 7. The initial substantial completion date and initial contract value, also noting the contract type (i.e., GMP, not to exceed or lump sum price).
 - 8. The level of completion of design documents that the initial contract value was based on.
 - 9. The actual substantial completion date and the final contract value.

5.4.4 Key Personnel

Key Personnel should contain information requested in **Section 3.4.2** and **Section 3.4.4** of the RFP. In addition, the Offeror shall provide the following:

- a) Organizational chart illustrating reporting lines and names and titles for key participants proposed by the Offeror.
- b) A list or chart of all personnel proposed for the Project. Such list or chart should include the following information for each individual:

- i. The individual's name.
 - ii. The individual's role.
 - iii. The percentage of time that will be devoted by the individual to the Project. This should be identified for each phase of the Project.
 - iv. The individual's resume. Resumes should indicate the individual's experience on the five (5) relevant projects and identify the role of the individual in each past project noted on the resume. The resume should also clearly identify how long the individual has worked in the construction industry and should indicate the number of years of experience in his or her current role and the prior roles.
 - v. The individual's current workload over the next two years.
- c) A chart showing the experience that the key team members have working together.

5.4.5 Project Management Plan and Schedule

The Project Management Plan should contain the information requested in **Section 3.4.3** of the RFP.

5.5 Price Proposal

The Price proposal shall be organized as follows:

- b. **Form of Offer Letter/Bid Form.** Each Offeror shall submit a form of offer letter/bid form substantially in the form of **Attachment B**. Material deviations, in the opinion of the Department, from the bid form shall be sufficient to render the proposal non-responsive.
- c. **Bidder-Offeror Certification Form.** Each Offeror shall complete and submit with its Price Proposal the Bidder-Offeror Certification Form attached hereto as **Attachment C**. An Offeror who submits an incomplete or improperly or inaccurately completed Bidder-Offeror Certification Form may be deemed non-responsive.
- d. **Tax Affidavit.** Each Offeror must submit a tax affidavit substantially in the form of **Attachment D**. In order to be eligible for this procurement, Offerors must be in full compliance with their tax obligations to the District of Columbia Government.
- e. **Bid Bond.** Each Offeror shall submit with their Price Proposal a bid bond in the amount specified and further explained in **Part 9, Section 9.0**, in the form of **Attachment F**.
- f. **SBE Subcontracting Plan.** Each Offeror shall complete and submit with their Price Proposal a Subcontracting Plan in the form of **Attachment H**.
- g. **First Source Employment Agreement and Employment Plan.** Each Offeror shall complete and submit as part of its Price Proposal a First Source Agreement and Employment Plan in the form of **Attachment I**.
- h. **Certificate to Furnish Performance & Payment Bond.** Each Offeror shall submit with their Price Proposal a Certificate to Furnish Performance & Payment Bond in the form of **Attachment S**.

- i. **Equal Employment Opportunity (“EEO”) Policy Statement.** Each Offeror shall complete and submit an EEO Policy Statement in the form of **Attachment T**.
- j. **Certificate of Clean Hands (“CCH”)** – CCH can be downloaded from this link: <https://mytax.dc.gov/#1>
- k. A copy of business license

PART 6 - PROCEDURES & PROTESTS

6.0 Contact Person

Offerors should contact the department's POC as stated in **Section 1.6** for information about this RFP or for any written questions or inquiries regarding the RFP.

6.3 Explanations to Prospective Offerors

Each Offeror should carefully examine this RFP and any and all amendments, addenda, or other revisions, and thoroughly be familiar with all requirements prior to proffering a proposal. Should an Offeror find discrepancies or ambiguities in, or omissions from, the RFP and amendments, addenda or revisions, or otherwise desire an explanation or interpretation of the RFP, any amendments, addenda, or revisions, it must submit a request for interpretation or correction in writing. Any information given to an Offeror concerning the RFP shall be furnished promptly to all other Offerors as an amendment or addendum to this RFP if in the sole discretion of the Department that information is necessary in proffering proposals or if the lack of information would be prejudicial to any other prospective Offerors. Oral explanations or instructions given before the award of the Agreement shall not be binding.

Requests should be directed to the Department's POC at the address listed in **Section 1.6** no later than the **2:00 p.m., on August 29, 2022**. The person making the request shall be responsible for prompt delivery.

6.4 Protests

Protests shall be governed by D.C. Official Code § 2-360.08 and Section 4734 of the Department's Procurement Regulations (27 DCMR § 4734).

6.5 Contract Award

This procurement is being conducted in accordance with D.C. Code § 2-354.03 and the provisions of Title 27 DCMR §§ 4700, et seq., of the Department's Procurement Regulations. Responses to the RFP shall be in the form of competitive sealed proposals and the Agreement shall be awarded based on the proposal that is the most advantageous to the Department, or in the event of more than one award, the proposals that are the most advantageous to the Department. The RFP sets forth the evaluation factors and indicates the relative importance of each factor. The RFP contains a statement of work or other description of the Department's specific needs, which shall be used as a basis for the evaluation of the proposals. Price will be evaluated; however, while price or total cost to the Department may be an important or even deciding factor in most source selections, the Department may select the source whose proposal is most advantageous in terms of technical merit and other factors. As such, the Agreement contemplated hereunder will be awarded to the Offeror whose competitive sealed proposal is determined by the source selection official to be the most advantageous to the Department considering technical merit and other factors.

6.7 Retention of Proposals

All proposals shall be retained by the Department and therefore shall not be returned to the Offerors. With the exception of proprietary financial information, the proposals shall become the property of the Department and the Department shall reserve the right to distribute or use such information as it determines.

6.8 Examination of Proposals

Offerors are expected to examine the requirements of all instructions outlined in the RFP documents including all amendments, addenda, attachments, and exhibits. Failure to do so shall be at the sole risk of the Offeror and may result in disqualification.

6.9 Late Proposals: Modifications

- a) Any proposal or BAFO received after the time specified in **Section 5.3** shall not be considered.
- b) Any modification of a proposal, including a modification resulting from the CCO's requests for BAFO, is subject to the same conditions as in **Section 6.7 (a)** stated above.
- c) The only acceptable evidence to establish the time of receipt at the Department's designated office is the time-date stamp of such installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.
- d) Notwithstanding any other provisions of this RFP to the contrary, a late modification of an otherwise successful proposal which makes its terms more favorable to the Department may be considered at any time as received and may be accepted.
- e) Proposals shall be irrevocable and remain in full force and effect for a period not less than one hundred twenty (120) days after receipt of proposals.

6.10 No Compensation for Preparation of Proposals

The Department shall not bear or assume any financial obligations or liabilities regarding the preparation of any proposals submitted in response to this RFP, or prepared in connection therewith, including, but without limitation, any proposals, statements, reports, data, information, materials or other documents or items.

6.11 Rejection of Proposals

The Department reserves the right, in its sole discretion:

- a) To cancel this RFP, in whole or in part, at any time before the opening of proposals and/or reject all proposals.
- b) To reject proposals that fail to prove the Offeror's responsibility.

- c) To reject proposals that contain conditions and/or contingencies that in the Department's sole judgment, make the proposals indefinite, incomplete, otherwise non-responsive, or otherwise unacceptable for award.
- d) To waive minor irregularities in any proposal provided such waiver does not result in an unfair advantage to any Offeror.
- e) To take any other action within the applicable Procurement Regulations or law.
- f) To reject the proposal of any Offeror that has submitted a false or misleading statement, affidavit or certification in connection with such proposal or this RFP.
- g) To reject proposal that indicates a lack of understanding of any aspect of the Project.
- h) To reject proposals that are too costly, financially, or otherwise, to the Department relative to other proposals and the Project budget.
- i) To reject proposals where the Offeror has altered any pricing element or line item by Thirty Percent (30%) from the initial proposal or median price for that pricing element or line item in response to a Request for a best and final offer.
- j) To reject proposals that are deemed non-responsive.

6.12 Limitation of Authority

Only a Contracting Officer with prior written authority from the CCO shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clauses or conditions of the Agreement. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this RFP is not effective or binding unless made in writing and signed by the CCO or its authorized Contracting Officers.

6.13 Non-Responsive Proposals

6.13.1 Certification. The Department may consider a proposal non-responsive if the Offeror fails to properly complete or provides accurate information on the Bidder/Offeror Certification Form **Attachment C**.

6.13.2 Core Competency. The Department may consider a proposal non-responsive if the Offeror, whether by inclusion or omission, fails, in the Department's sole judgment, to demonstrate an understanding and competence in every aspect of the Project.

PART 7 – CONSTRUCTION MANAGEMENT AT RISK AGREEMENT

7.0 Contract Documents

The Form of Contract is attached to the RFP as **Attachment L**. The SCP are attached hereto as **Attachments G1 and G2**. Offerors should carefully review the Agreement and SCP when submitting their proposals. To the extent there are any ambiguities or inconsistencies among this RFP, the SCP and the Agreement, the SCP and the Agreement shall have precedence. Offerors are advised that they are required to submit their proposals premised upon agreeing to the terms of the SCP and entering into a Letter Contract, and subsequently, the Agreement.

PART 8 - INSURANCE REQUIREMENTS

A. **GENERAL REQUIREMENTS.** The Contractor at its sole expense shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall 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 insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A- / VII or higher. Should the Contractor decide to engage a subcontractor for segments of the work under this contract and wish to propose different insurance requirements than outlined below, then, prior to commencement of work by the subcontractor, the Contractor shall submit in writing the name and brief description of work to be performed by the subcontractor on the Subcontractors Insurance Requirement Template provided by the CA, to the Office of Risk Management (ORM). ORM will determine the insurance requirements applicable to the subcontractor and promptly deliver such requirements in writing to the Contractor and the CA. The Contractor must provide proof of the subcontractor's required insurance prior to commencement of work by the subcontractor. If the Contractor decides to engage a subcontractor without requesting from ORM specific insurance requirements for the subcontractor, such subcontractor shall have the same insurance requirements as the Contractor.

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

for whom the Contractor or its subcontractors may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

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

B. INSURANCE REQUIREMENTS

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

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

DGS should collect, review for accuracy and maintain all warranties for goods and services.

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.

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 paragraphs 1,2 and 3 shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.

4. 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. Limits may not be shared with other lines of coverage. A copy of the cyber liability policy must be submitted to the Office of Risk Management (ORM) for compliance review.

5. 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 the CO - Owner certificates of insurance evidencing environmental liability insurance maintained by third party transportation and disposal site operators(s) used by the Contractor for losses arising from facility(ies)

accepting, storing or disposing hazardous materials or other waste as a result of the Contractor's operations. Such coverages must be maintained with limits of at least the amounts set forth above.

6. 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, Workplace Torts, "Bullying" in "any location" and "by any means," including the Internet, whether between employees of contractor or against third parties. Employment Practices Liability coverage must specifically state Third Party Liability coverage is included. Contractor will indemnify and defend the District of Columbia should it be named co-defendant or be subject to or party of any claim. Coverage shall also extend to Temporary Help Firms and Independent Contractors hired by Contractor. The policy shall provide limits of not less than \$1,000,000 for each wrongful act and \$2,000,000 annual aggregate for each wrongful act.
7. Installation-Floater Insurance - For projects not involving structural alterations, the contractor shall provide an installation floater policy with a limit equal to the Property values being installed as part of the project. The policy shall cover property while located at the project site, at temporary locations, or in transit; deductibles will be the sole responsibility of the contractor.
8. Professional Liability Insurance (Errors & Omissions) - The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of \$1,000,000 per claim or per occurrence for each wrongful act and \$2,000,000 annual aggregate. The Contractor warrants that any applicable retroactive date precedes the date the Contractor first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services. Limits may not be shared with other lines of coverage.
9. Sexual/Physical Abuse & Molestation – Applicable if school becomes operational with students on site prior to Substantial or Final Completion. The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate of affirmative abuse and molestation liability coverage. Coverage should include physical abuse, such as sexual or other bodily harm and non-physical abuse, such as verbal, emotional or mental abuse; any actual, threatened or alleged act; errors, omission or misconduct. This insurance requirement will be considered met if the general liability insurance includes an affirmative sexual abuse and molestation endorsement for the required amounts. So called "silent" coverage or "shared" limits under a commercial general liability or professional liability policy will not be acceptable. Limits may not

be shared with other lines of coverage. The applicable policy may need to be submitted to the Office of Risk Management (ORM) for compliance review.

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.

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 ordinance and terrorism coverage will be included.

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

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

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

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

C. 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.

- D. **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.
- E. **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.
- F. **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.
- G. **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.
- H. **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.
- I. **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 to:

The Government of the District of Columbia

And mailed to the attention of:

Ahmad Stanekzai
Contracting Officer
Department of General Services
Contracts and Procurement Division
1250 U Street NW 2nd Floor
Washington, DC 20009
ahmad.stanekzai@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).

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

PART 9 - BONDS REQUIREMENTS

9.0 Bid Bond

Offerors are required to submit with their proposals a bid bond in the amount of five percent (5%) of the total price proposal, in the form included as **Attachment F**. All bonding companies must be included on the Department of Treasury's Listing of Approved Sureties. Alternatively, Offerors may submit a cashier's check in lieu of a bid bond. However, in the event an Offeror who is awarded the Agreement fails to post a payment and performance bond for the full value of the Agreement, the Offeror shall thereby forfeit the full amount of the cashier's check, and the Department shall collect such funds. If the Offeror chooses to submit a cashier's check in lieu of a bid bond, the Offeror must complete the form included as **Attachment N** and return, notarized, with the Offeror's proposal.

9.1 Trade Subcontractor Bonds

The Agreement will require that the Contractor ensure that all trade subcontractors provide a payment and performance bond having a penal value equal to One Hundred Percent (100%) of the cost of the trade subcontract. All such bonds shall be written on a dual-obligee basis.

9.2 Contractor's Payment and Performance Bond

In addition to the trade subcontractor bonds required by Section 9.1, the Contractor will be required to post a payment and performance bond having a penal value equal to the contract price or early release not-to-exceed amount at the time the Agreement is executed. The Contractor will be required to post updated payment and performance bonds to reflect the GMP amount.

PART 10 - MISCELLANEOUS PROVISIONS

10.0 Conflict of Interest

The Department reserves the right, in its sole discretion, to make determinations relative to potential conflicts of interest on a project specific basis. Offeror shall submit the Conflict of Interest Disclosure Statement with their proposals (**Attachment O**).

10.1 Definitions

Capitalized terms not otherwise defined in the Agreement definitions section shall have the meanings given to them in the RFP.

10.2 Abbreviations

The following are abbreviations used throughout this RFP:

CPM	Critical Path Method
GMP	Guaranteed Maximum Price
LEED	Leadership in Energy & Environmental Design
NTP	Notice to Proceed
RFP	Request for Proposals
OP	Office of Planning
CO	Contracting Officer
CCO	Chief Contracting Officer
CA	Contract Administrator
CFA	Commission of Fine Arts
COTR	A Contracting Officer's Technical Representative
DOES	Department of Employment Services
CBE	A Certified Business Enterprise
SBE	Small Business Enterprises

PART 11 - ATTACHMENTS

Attachments to this RFP include the following:

Attachment A	Concept Design Drawings Set and Storm Water Management Master Plan
Attachment B	Form of Offer Letter/Bid Form
Attachment C	Bidder/Offeror's Certification Form
Attachment D	Tax Affidavit
Attachment E	Davis-Bacon Wage Rates
Attachment F	Bid Bond Form
Attachment G1	Standard Contract Provisions (Construction Contracts)
Attachment G2	Standard Contract Provisions (Architect & Engineering Contracts))
Attachment H	SBE Subcontracting Plan
Attachment I	First Source Employment Agreement
Attachment J	2022 Living Wage Act
Attachment K	Past Performance Evaluation Form
Attachment L	Form of Contract or Agreement
Attachment M	Notice to Proceed and Letter Contract
Attachment N	Bid Guarantee Certification
Attachment O	Conflict of Interest Disclosure Statement
Attachment P	Release of Lien Waivers
Attachment Q	DGS Turnover Protocol
Attachment R	BIM Requirements for Contractor
Attachment S	Certification to Furnish Performance Payment Bond
Attachment T	EEO Policy Statement
Attachment U	Submission Portal's Preview
Attachment V	Spingarn High School Existing Conditions Drawings
Attachment W	Hazardous Materials Survey
Attachment X	Spingarn High School Phase 1 and Phase 2 Environmental Site Assessments

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



EXHIBIT B

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

CONSTRUCTION MANAGEMENT AT-RISK AGREEMENT

FOR

**DC INFRASTRUCTURE ACADEMY
AT
SPINGARN HIGH SCHOOL**

BY AND BETWEEN

THE DEPARTMENT OF GENERAL SERVICES AND

[INSERT CMAR]

CONTRACT NUMBER: DCAM-22-CS-RFP-0019

PROJECT INFORMATION

A. PROJECT SUMMARY

1.	Project Name:	Construction Management At-Risk Services for DC Infrastructure Academy at Spingarn High School
2.	Project Address:	2500 Benning Road NE, Washington, DC 20002
3.	Agreement Type:	Construction Management At-Risk with Guaranteed Maximum Price
4.	Client Agency:	District of Columbia Department of Employment Services (“DOES” or “Client Agency”)
5.	Contractor:	
6.	Agreement Amounts:	
i.	Initial NTE:	To be determined.
ii.	Project Budget:	\$43,500,000.00
7.	Contractor Compensation:	
i.	Preconstruction Fee:	
ii.	Construction Management Fee:	
iii.	Base Construction Management Fee (75% of the Construction Management Fee):	
iv.	At Risk Portion of the Construction Management Fee (25% of the Construction Management Fee):	
v.	Maximum Cost of General Conditions:	

vi.	Contingency:	To be determined at GMP
vii.	Allowances:	To be determined at GMP
8.	Liquidated Damages:	
i.	Failure to Submit Deliverables:	\$1,000 per deliverable per day
ii.	Delay in Substantial Completion:	\$5,000/per calendar day
9.	GMP Proposal Submission By:	TBD
10.	GMP Amendment Executed By:	TBD
11.	Substantial Completion Date:	February 1, 2024
12.	Final Completion Date:	May 1, 2024
13.	Administrative Term Expiration Date:	May 1, 2025
14.	Key Personnel Removal or Replacement Disincentive	\$25,000 per person
15.	Letter Contract:	
i.	Period of Performance	From [INSERT] (date of execution of Letter Contract) through Administrative Term Date with a Substantial Completion Date of February 1, 2024 and Final Completion Date May 1, 2024.
ii.	NTE Amount:	\$950,000.00
16.	GMP Basis Documents Design Progression	Permit Set

**CONSTRUCTION MANAGEMENT AT-RISK AGREEMENT
DC INFRASTRUCTURE ACADEMY AT SPINGARN HIGH SCHOOL
DCAM-22-CS-RFP-0019**

THIS AGREEMENT (“Agreement” or “Contract”) is made by and between the **DISTRICT OF COLUMBIA GOVERNMENT**, acting by and through its **DEPARTMENT OF GENERAL SERVICES** (the “Department”) and [Insert CMAR], with a place of business at [Insert] (the “CMAR” or “Contractor”, and collectively with the Department, the “Parties”).

RECITALS

WHEREAS, the Department issued a request for proposals dated July 14, 2022 (the “RFP”) to engage a Contractor to provide construction management at-risk services for the DC Infrastructure Academy (“DCIA”) at the Spingarn High School building and stabilize and make safe the unoccupied portion of the building. located at 2500 Benning Road NE, Washington, DC 20002 (the “Project”);

WHEREAS, the Department desires that the Project be substantially complete no later than February 1, 2024 (“Substantial Completion Date”);

WHEREAS, the Contractor submitted a proposal entitled Proposal for CMAR for DC Infrastructure Academy at the Spingarn High School – DCAM-22-CS-RFP-0019, dated [] to provide construction management at-risk services for the Project;

WHEREAS, the Department wishes to retain the Contractor to provide construction management at-risk services for the Project. The Project is to include preconstruction services and construction services;

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

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

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

WHEREAS, the Department has engaged BELL Architects (the “Architect/Engineer” or “A/E”) pursuant to a separate contract (the “Design Contract”) to provide design, planning, architectural and engineering services in order to construct the Project and the A/E has advanced the design of the Project to the development of [Insert Current Level of Design]; and

WHEREAS, the Department will remain in contract with the A/E and will manage the

Design Contract for the duration of the Project. The Contractor will, however, be required to coordinate with the A/E.

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

Article 1 - DEFINITIONS

Section 1.1 Administrative Term.

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

Section 1.2 Agreement.

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

Section 1.3 Client Agency.

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

Section 1.4 Construction Documents.

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

Section 1.5 Construction Phase Services.

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

Section 1.6 Cost of General Conditions.

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

Section 1.7 Contract Documents.

“Contract Documents” or “Contract” as used herein means Addenda, Contract Form, Standard Contract Provisions, Instructions to Bidders, General Provisions, Labor Provisions, Performance and Payment Bonds, Specifications, Special Provisions, Contract Drawings,

approved written Change Orders and Agreements required to acceptably complete the Contract, including authorized extensions thereof.

Section 1.8 Preconstruction Phase Services.

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

Section 1.9 Drawings.

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

Section 1.10 Final Completion.

The point at which Substantial Completion has been achieved, all punchlist items noted at Substantial Completion have been completed and all documents the Contractor is required to deliver to the Department as a condition to receiving final payment have been delivered.

Section 1.11 Final Completion Date.

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

Section 1.12 Fully Complete.

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

Section 1.13 Guaranteed Maximum Price or GMP.

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

Section 1.14 Environmental and Hazardous Material Requirements.

The Contractor shall be required to comply with all applicable Federal and District environmental laws and regulations for the project, including but not limited to, the District of Columbia Environmental Policy Act (e.g., D.C. Code § 8-109.01 - 8-109.12; and the District of Columbia Municipal Regulations Chapter 20-72). Additionally, the Contractor shall lawfully handle, remediate, and abate as necessary and appropriate, any toxic substance or hazardous chemicals defined or regulated pursuant to federal, state or local laws, including in regards to pollution, treatment, storage or disposal of waste, or protection of human health or the

environment. Such laws include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act and laws relating to emission, spills, leaks, discharges, releases or threatened releases of toxic material. The term Hazardous Materials shall also include petroleum and petroleum byproducts.

Section 1.15 Notice to Proceed.

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

Section 1.16 Project Schedule.

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

Section 1.17 Self-Performed Work.

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

Section 1.18 Services.

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

Section 1.19 Specifications.

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

Section 1.20 Standard Contract Provisions.

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

Section 1.21 Subcontractor.

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

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

Section 1.22 Substantial Completion.

Substantial Completion shall mean that all of the following have occurred: (1) the construction and installation work have been completed with only minor punchlist items remaining to be completed; (2) a temporary certificate of occupancy and all other required permits or approvals have been obtained; (3) draft copies of all operating and maintenance manuals, training videotapes and warranties required by the Agreement have been delivered to the Department and the Client Agency; (4) any supplemental training session required by the Agreement for operating or maintenance personnel have been scheduled; (5) all clean-up required by the Agreement has been completed; (6) the Project is ready for the Department and Client Agency to use it for its intended purpose; and (7) all equipment, supplies, materials and items to be installed have been installed in accordance with the manufacturer's specifications and industry standards and have undergone and passed the requisite testing and inspections. "Minor punchlist items" are defined for this purpose as items that, in the aggregate, can be completed within ninety (90) days from Substantial Completion without interfering with the Department or Client Agency's normal use of the Project.

Section 1.23 Substantial Completion Date.

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

Section 1.24 The Work

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

Article 2 - GENERAL PROVISIONS

Section 2.1 Letter Contract.

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

Section 2.2 Term and Termination

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

Section 2.3 Relationship of Parties.

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

Section 2.4 Confidentiality of Information

The Contractor shall assure and keep all information and data obtained throughout the performance of the Project whether related to the Agreement, the Work in all of its aspects, the Department and the Department's employees confidential, during and following the term of the Agreement, and shall not use the information in connection with any other matters; nor shall it disclose any such information to any other person, firm or corporation, unless disclosure is required pursuant to court order, subpoena, or other regulatory authority. The Contractor shall not be divulged of confidential information without the individual's and the Department's written consent and only in accordance with District and/or Federal laws, codes and regulations. The Contractor and any Subcontractors who utilize, access, or store personally identifiable information as part of the performance of this Agreement are required to safeguard this information and immediately notify the Department of any breach or suspected breach in the security of such information. The Contractor and all Subcontractors shall allow the Department

to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. The Contractor, Subcontractors and their respective employees working on this Project may be required to sign a confidentiality statement.

Section 2.5 Project Description.

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

The Project scope generally includes all preconstruction, construction and logistics/move-in services required to construct and implement the approved design for the DC Infrastructure Academy at the Spingarn High School building.

Building Information Modeling (BIM) is required to be used throughout the facility lifecycle, including all project phases from project planning and concept design through construction, as-built(s) and into facilities management.

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

- a) To confirm the construction of the Project in accordance with the Contract documents ("Contract documents").
- b) To provide all construction management services necessary to implement the goals of the Project inclusive of, but not limited to, the following: construction management services inclusive of budgeting, value engineering ("Value Engineering"), scheduling, project administration, management and coordination of subcontractors.
- c) To conduct subsurface investigation work if and as required for the Project.
- d) To furnish and provide all materials, management, personnel, equipment, hazardous material abatement, supervision, labor and other services necessary to complete the Project.
- e) To furnish and provide Furniture, Fixtures, and Equipment ("FF&E"). FF&E procurement schedule to be developed by the Contractor subject to DOES, the Department's specification, agreement and acceptance.
- f) To provide one (1) year of preventative and corrective maintenance services following substantial completion and using as a basis the recommended maintenance schedule developed to meet Project closeout requirements.

The Project shall be constructed in such a way so as to allow for substantial completion to be achieved no later than the Substantial Completion Date.

Section 2.6 Program Manager and Project Manager.

The Department has engaged a Program Manager and Project Manager to provide certain program management functions. Such Program Manager and Project Manager shall, at all times, be acting solely for the benefit of the Department, not the Contractor. **The Contractor hereby acknowledges and agrees that only a duly authorized and designated Contracting**

Officer shall have the authority to issue Change Orders or Change Directives on the Department's behalf. As of the date that this Agreement is signed, the Department's duly authorizing Contracting Officers are set forth in Exhibit H.

The Contracting Officer's Technical Representative ("COTR")/ Program Manager is as follows:

Mohamed Jalloh
Executive Program Manager – Government Centers/TI Program
Department of General Services
Capital Construction Division
1250 U Street NW, 4th Floor
Washington, DC 20009
mohamed.jalloh1@dc.gov

The Project Manager is as follows:

Robert C. Cooper
Department of General Services
Capital Construction Division
1250 U Street NW, 4th Floor
Washington, DC 20009
robert.cooper@dc.gov

Section 2.7 General Description of Contractor's Duties.

Generally, the Contractor shall perform the Services in a professional workmanlike manner. The Contractor shall supply and furnish at the location where the Work is to be performed all labor, materials, equipment, tools, services, and supervision, and shall bear all items of expense, necessary to complete and satisfactorily perform this Agreement, except such items that the Department, in this Agreement, specifically agrees to supply or furnish to or for the use of Contractor. Any labor, materials, equipment, tools, services or supervision not specifically described in this Agreement, but which may be fairly implied as required thereby or necessary to properly complete the Work, shall be deemed within the Scope of the Work and shall be provided by Contractor at Contractor's sole expense.

Section 2.8 Warranties and Representations

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

2.8.1. If any disclosure, representation, warranty or certification the Contractor has made or makes pursuant to the RFP or the Agreement, including, without limitation, representations concerning the Contractor's construction or design experience and qualifications, claims or litigation history or financial condition, is

materially inaccurate, that shall constitute a material breach of the Agreement, entitling the Department to any and all available remedies.

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

Section 2.9 Responsibility for Agents and Contractors.

At all times and during both the Preconstruction and Construction Phases, the Contractor shall be responsible to the Department for any and all acts and omissions of the Contractor's agents, employees, Subcontractors, Sub-Subcontractors, material suppliers, and laborers, and the agents and employees of the Subcontractors, Sub-Subcontractors, material suppliers, and laborers performing or supplying Work in connection with the Project.

Section 2.10 Building Information Modeling (BIM).

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

Article 3 - CONTRACTOR'S PRECONSTRUCTION SERVICES

Section 3.1 Preconstruction Services.

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

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

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

Section 3.2.1 Baseline Schedule. Within seven (7) calendar days after the Preconstruction NTP is issued, the Contractor shall prepare and submit a Baseline Schedule for the Project (the "Baseline Schedule"). The Baseline Schedule shall be subject to review and approval by the Department and the Contractor shall incorporate such adjustments to the Baseline Schedule as may be reasonably requested by the Department. The Baseline Schedule shall be prepared in a critical path method ("CPM") in a sufficient level of detail to permit the Department and the Contractor and any other affected parties to properly plan the Project. The Baseline Schedule shall show: (i) key design milestones and bid packages (to be provided by the A/E); (ii) release dates for long lead items; (iii) release dates for key subcontractors; and (iv) Substantial and Final Completion Dates. The Baseline Schedule must also be submitted in Primavera 6 native format and shall be updated by the Contractor, at a minimum, on a bi-weekly basis. Bi-weekly updates to the schedule should include the original baseline schedule as well to show time difference between planned start and finish dates versus actual start and finish dates. The preliminary schedule is attached hereto as **Exhibit B**.

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

delays, and the Contractor's best projection of the effect of such delays on the Project Schedule. The Department's receipt of, and lack of objection to, any schedule update showing a later Substantial Completion or Final Completion shall not be regarded as the Department's agreement that the Contractor may have an extension of time, or as a waiver of any of the Department's rights, but merely as the Contractor's representation that, as a matter of fact, the Project may not be completed by the applicable Substantial or Final Completion Date. The Project Schedule shall be maintained and continuously updated during the Preconstruction and Construction Phases.

Section 3.2.2 Construction Management Plan. The Contractor shall submit a draft of its construction management plan ("Construction Management Plan") within fourteen (14) days after the Notice to Proceed is issued to include, but is not limited to, noise control, hours for construction and deliveries, truck routes, trash and debris removal plan, traffic and parking control, communications procedures, emergency procedures, quality control procedures, dust control, public street cleaning and repair, planned occupancy of public ways, erosion control, tree protection plan, vibration monitoring, temporary fire protection measures, project signage, pest control, construction staging plan, and construction logistics plan.

Section 3.3 Constructability Reviews

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

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

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

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

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

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

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

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

Article 4 - FORMATION OF GMP PROPOSAL

Section 4.1 General.

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

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

Section 4.2 Review of GMP Basis Documents.

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

Section 4.3 Contingency.

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

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

Section 4.4 Trade Bids.

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

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

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

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

Section 4.5 Basis of Guaranteed Maximum Price.

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

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

4.5.2. A list of Unit Prices and Allowance, as applicable, Items and a statement of their basis; provided, however, that only such allowances as are agreed to by the Department shall be included.

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

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

comprise the GMP.

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

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

4.5.7. The Contractor's Designated Representative.

Section 4.6 Department Review of GMP Proposal.

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

Section 4.7 Department Acceptance of GMP Proposal.

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

Section 4.8 GMP Amendment.

In the event an acceptable GMP Proposal is not developed and a GMP Amendment is not executed, the Agreement will be terminated. In the event the Agreement is terminated pursuant to this Section, the Department shall be free to use any of the documents and information developed through the date of termination to retain a new contractor to complete the Project. In such event, the Contractor shall forfeit fifty percent (50%) of the Preconstruction Fee

Section 4.9 Assignment Upon Failure to Reach GMP.

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

Section 4.10 Certification.

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

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

Section 4.11 Preconstruction Phase Deliverables.

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

Section 4.12 Unsafe Materials and Hazardous Materials

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

4.12.2. The Contractor shall abate Hazardous Materials on the site as necessary to complete the Work contemplated by this Agreement. The Contractor shall comply with all laws, including, without limitation, the requirements of the Environmental Protection Agency ("EPA") and all jurisdictional agencies as well as all laws relating to safety, health welfare, and protection of the environment, in removing, treating, encapsulating, passivating, and/or disposing of Hazardous Materials, including, but not limited to, removal, treatment, encapsulation, passivation, and/or disposal of the Hazardous Materials. If any notices to governmental authorities are required, the Contractor shall also give those notices at the appropriate times. The Contractor shall ensure abatement subcontractors and disposal sites are appropriately licensed and qualified.

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

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

Article 5 - CONSTRUCTION PHASE

Section 5.1 General.

The Construction Phase shall not commence until the Department issues a Notice to Proceed for Construction Phase Services. The Contractor shall, through Subcontractors or, with the written consent of the Department, with its own forces, perform all of the Work necessary to construct the Project so that it is complete, safe, and properly built in strict accordance with the approved Construction Documents and the other requirements of this Agreement. Without limitation, the Contractor shall provide all of the labor, materials, tools, equipment, temporary services, and facilities necessary to complete the Project in accordance with the drawings, specifications, schedule and budget that are issued for the Project. The Contractor shall be responsible for paying for and obtaining all necessary permits, and to pay all necessary fees for utility connections. The Work shall be carried out in a good and workmanlike, first-class manner, and in a timely fashion. All materials and equipment to be incorporated into the Project shall be new and previously unused, unless otherwise specified, and shall be free of manufacturing or other defects.

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

Section 5.2 Design Completion.

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

Section 5.3 Subcontracting and Administration.

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

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

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

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

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

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

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

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

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

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

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

5.3.9.1 that, to the extent of the work or supply within the agreement's scope, the Subcontractor or supplier is bound to the Contractor for the performance of all obligations which the Contractor owes the Department under the Agreement;

5.3.9.2 that the Subcontractor or supplier is not in privity with the Department and shall not seek compensation directly from the Department on any third-party beneficiary, quantum meruit, or unjust enrichment claim, or otherwise, except as may be permitted by any applicable mechanic's lien law;

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

5.3.9.4 that the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Contractor is terminated for default;

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

5.3.9.6 that the Subcontractor or supplier shall maintain records of all Work it is requested or authorized to do on a time and material or cost-plus basis, or with respect to claims that it has asserted on a time and materials or cost-plus basis, during the Project and for a period of time specified in the General Conditions Cost and requiring the Subcontractor or supplier to make those records available for review or audit by the Department during that time;

5.3.9.7 that the Subcontractor shall obtain and maintain, throughout the Project, workers' compensation insurance in accordance with the laws of the District of Columbia (this provision is not applicable to supply agreements);

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

5.3.9.9 that the Department shall have the right to enter into a contract with the Subcontractor or supplier for the same price as its subcontract or supply agreement price less amounts already paid, if the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;

5.3.9.10 that the Subcontractor or supplier shall not be entitled to payment for defective or non-conforming work, materials or equipment, and shall be obligated promptly to repair or replace non-conforming work, materials or equipment at its own cost;

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

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

5.3.9.13 a provision which allows the Contractor to withhold payment from the Subcontractor if the Subcontractor does not meet the requirements of the Subcontract;

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

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

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

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

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

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

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

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

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

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

Section 5.4 Weekly Progress Meetings & Schedule Updates.

The Contractor shall schedule and conduct, at a minimum, weekly progress meetings following a Contractor generated agenda at which the Department, the A/E, the Program Manager, the Contractor and appropriate Subcontractors can discuss the status of the Work. The Contractor shall prepare and promptly distribute meeting minutes. In addition, the Contractor shall submit bi-weekly Schedule updates which shall reflect actual conditions of Project progress as of the date of the update. The update shall reflect the actual progress of construction, identify any developing delays, regardless of their cause, and reflect the Contractor's best projection of the actual date by which Substantial Completion and Final Completion of the Project will be achieved. Via a narrative statement (not merely a critical path method schedule), the Contractor shall identify the causes of any potential delay and state what, in the Contractor's judgment, must be done to avoid or reduce that delay. The Contractor shall point out, in its narrative, changes that have occurred since the last update, including those related to major changes in the scope of work, activities modified since the last update, revised projections of durations, progress and completion, revisions to the schedule logic or assumptions, and other relevant changes. Any significant variance from the previous schedule or update shall also be identified in a narrative, together with the reasons for the variance and its impact on Project completion. All schedule updates shall be in a native format reasonably acceptable to the Department (e.g., Primavera).

The Department may make reasonable requests during the Project for changes to the format or for further explanation of information provided. Submission of updates showing that Substantial Completion or Final Completion of the Project will be achieved later than the applicable scheduled completion date shall not constitute requests for extension of time and shall not operate to change the scheduled completion date(s). The Department's receipt of, and lack of objection to, any schedule update showing Substantial Completion or Final Completion later than the dates

agreed upon in the Project Schedule shall not be regarded as the Department's agreement that the Contractor may have an extension of time, or as a waiver of any of the Department's rights, but merely as the Contractor's representation that, as a matter of fact, Substantial Completion or Final Completion of the Project may not be completed by the agreed upon date in the Project Schedule. Changes to the scheduled completion dates may be made only in the circumstances and only by the methods set forth in this Agreement.

Section 5.5 Written Reports.

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

5.5.1. Monthly Report. The Contractor shall provide written reports to the Department, on the progress of the entire Work at least monthly from Preconstruction NTP until Final Completion of the Project. The monthly report shall include: (i) an updated schedule analysis, including any plans to correct defective or deficient work or recover delays; (ii) an updated cost report; (iii) a monthly review of cash flow; (iv) a quality control report; and (v) progress photos.

5.5.2. Bi-Weekly Schedule Updates. The Contractor shall provide a Baseline Schedule update to the Department, on the progress of the entire Work at least bi-weekly, in the same format set forth in Section 2.2.1.1 of this RFP. The update shall reflect the actual progress of the Project, identify developing or potential delays, regardless of their cause, and reflect the Contractor's best projection of the actual date by which Substantial Completion and Final Completion of the Project will be achieved. The Contractor shall also state what must be done to avoid or reduce that delay, 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.

5.5.3. Two Week Look Ahead Schedule. Upon commencement of initial construction activities, the Contractor shall provide on a weekly basis a Two Week Look Ahead Schedule. The Two Week Look Ahead Schedule shall be a sufficient detail to allow the Department to fully understand the anticipated to be on going and complete.

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

5.5.5. Invoice Submittal. The Contractor shall create and submit payment requests in an electronic format through the DC Vendor Portal, <https://vendorportal.dc.gov>. The Contractor shall submit proper invoices on a monthly basis. To constitute the required documentation for the invoice per Article 8 of the SCP, the Contractor shall enter all required information into the Portal after selecting the applicable purchase order number which is listed on the Contractor's profile.

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

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

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

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

5.5.10. Quality Assurance Report. The monthly report shall include a detailed summary of the steps that are being employed to ensure quality construction and

workmanship. Each report shall specifically address issues that were raised by the Department and/or its Program Manager during the prior month and outline the steps that are being taken to address such issues.

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

5.5.12. Daily Log. The Contractor shall also maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, major equipment on the site, Work accomplished, problems encountered and other similar relevant data as the Department may reasonably require. The log shall be available to the Department, the A/E and the Program Manager, and on a monthly basis a copy of the log shall be submitted to the Department.

Section 5.6 Cost Control System.

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

Section 5.7 Key Personnel.

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

5.7.2. Certain members of the Contractor’s Key Personnel shall be subject to replacement fee for their removal or reassignment by the Contractor. Those members of

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

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

Section 5.8 Qualified Personnel/Cooperation.

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

Section 5.9 Warranty.

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

reasonable efforts to schedule a joint inspection of the Project during the eleventh month after Substantial Completion is achieved. During such inspection, the Contractor and a representative of the Department shall walk the Project to identify any necessary warranty work.

Section 5.10 Open Book Reporting.

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

Section 5.11 Claims for Additional Time

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

5.11.2. The Contractor will perform the Work so that it shall achieve Substantial Completion by the Substantial Completion Date. Unless the failure to achieve Substantial Completion by the Substantial Completion Date is a result of an Excusable Delay, as defined in Section 5.11.3 below, the delay shall be deemed Non-Excusable and the Contractor shall not be entitled to an extension of time. Without limiting the generality of the foregoing, delays for the following reasons shall be regarded as Non- Excusable and shall not entitle the Contractor to an extension of time:

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

5.11.2.2 Delays due to adverse weather, unless the Contractor establishes that the adverse weather was of a nature and duration in excess of averages established by data from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for the Project locale for the ten (10) years preceding the effective date of the Agreement. For purposes of this clause, weather shall only be deemed "adverse" if the weather in question was more severe than that encountered at the Project site over the last ten (10) years for the month in question. Such determinations shall be made based on the number of rain/snow days or the cumulative precipitation total for the month in question. Notwithstanding the foregoing, named storms shall conclusively be deemed "adverse";

5.11.2.3 Delays due to the failure of the Contractor or Subcontractors or material suppliers at any tier to perform in timely or proper fashion, without regard to concepts of negligence or fault; or

5.11.2.4 Delays due to site conditions whether known or unknown as of the effective date of the Agreement, foreseeable or unforeseeable at that time, naturally occurring or man-made; provided, however, that delays due to differing Site Conditions as permitted by Article 4, Section A of the Standard Contract Provisions (Construction Contracts), or Hazardous Materials Remediation shall be deemed an Excusable Delay.

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

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

5.11.3.2 Delays due to acts of God, war, unavoidable casualties, civil unrest, and other similar causes of delay that are beyond the control of the Contractor; provided, however, that in no event shall a Non-Excusable Delay or the action or inaction of the Contractor, or any of its employees, agents, Subcontractors or material suppliers be deemed an Excusable Delay; or

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

5.11.3.4 Delays due to suspensions of work by the Department;

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

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

5.11.4. If the Contractor wishes to make a claim for an adjustment in time allotted per the Project Schedule, written notice as provided herein shall be given to the Contracting Officer and Program Manager. The Contractor’s claim shall include an estimate of the cost and of the probable effect of delay on the progress of the Work. In the case of continuing delay, only one claim is necessary.

5.11.5. In no event shall the Contractor be entitled to an increase in the GMP, the Preconstruction Fee, or the Construction Management Fee as a result of either an

Excusable or Non-Excusable Delay; provided, however, that to the extent that a delay is: (i) an Excusable Delay; (ii) of unreasonable duration; (iii) caused solely by the Department; and (iv) not concurrent with any other delay, then the Contractor shall be entitled to receive its actual costs, including all direct and indirect costs, bonds and insurances resulting from such extended duration. It is understood that the Contractor shall not be entitled to any profit or home office overhead, including, but not limited to, an increase in the Construction Management Fee, on any amounts to which the Contractor may be entitled pursuant to the preceding sentence.

Section 5.12 Site Safety and Clean-Up.

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

5.12.2. Safety Plan. Prior to the start of construction activities, the Contractor shall prepare a safety plan for the construction phase conforming to OSHA 29 CFR 1926 (such plan, the “Safety Plan”). This Safety Plan developed by the Contractor shall describe the proposed separation and the specific nature of the safety measures to be taken including fences and barriers that will be used as well as the site security details. The Safety Plan will be submitted to the Department and Client Agency for their review and approval prior to the commencement of construction. Once the Safety Plan has been approved, the Contractor shall comply with it at all times during construction. The Contractor shall be required to revise the Safety Plan as may be requested by the Department or Client Agency. The cost of revising and complying with the plan shall not entitle the Contractor to an increase in the GMP. In the event the Contractor fails to provide the Safety Plan, the Contractor will not be permitted to commence the Construction Phase until the Safety Plan is submitted and in no event shall any resulting delay constitute an Excusable Delay. Additionally, the Contractor shall comply with the requirements of Article 27, Section A of the Standard Contract Provisions (Construction Contract).

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

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

5.12.5. Exculpation. The right of the Department and Client Agency to comment on the Safety Plan and the nature and location of the required fences and barriers shall in

no way absolve the Contractor from the obligation to maintain a safe site.

5.12.6. Temporary Power. The Contractor shall be responsible for the cost of temporary power used during the construction of the Project, including, but not limited to, the cost of installing such temporary wiring as may be required to bring power to the site. The Contractor shall also be responsible for the cost of all temporary construction necessary on the site.

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

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

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

5.13.2. Site Office. Throughout the Project, the Contractor shall provide and maintain a fully-equipped construction office for the Project site.

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

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

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

5.13.6. Supervision. Throughout the Work, the construction office shall be managed by personnel competent to oversee the Work at all times while construction is underway. Such personnel shall maintain full-time, on-site construction supervision and provide daily inspections, quality control, monitoring, coordination of various trades, record drawings, and daily work log.

Section 5.14 Close-out & FF&E.

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

5.14.2. Punchlist. Promptly after Substantial Completion, the Contractor shall coordinate with the A/E to develop a punchlist. Once the punchlist is prepared, the Contractor shall inspect the work along with representatives from the Department. The punchlist shall be revised to reflect additional work items that are discovered during such inspection. The Contractor shall correct all punchlist items no later than ninety (90) days after Substantial Completion is achieved.

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

5.14.4. RESERVED.

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

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

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

Section 5.15 Salvaged and Stored Items.

The Contractor shall be responsible for salvaging and storing all items as identified by the Department and to the benefit of the Department in accordance with all applicable District laws and regulations, after notifying the Department and receiving the

Department's permission to proceed.

Section 5.16 Sediment and Erosion Control.

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

Section 5.17 Quality Control.

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

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

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

Section 5.18 Acceleration.

Subject to the terms of this Section, the Department shall have the right to direct the Contractor to accelerate the Work if, in the reasonable judgment of Department: (i) the Contractor fails to supply a sufficiency of workers or to deliver the materials or equipment with such promptness as to prevent the delay in the progress of the Work; or (ii) the progress of the Work otherwise materially falls behind the projections contained in the then currently approved Project Schedule. In the event that the Department or its Program Manager determine that either of the events specified in the preceding sentence have occurred, the Department shall provide the Contractor with written notice of such event

and the Contractor shall be required to provide the Department with a schedule recovery plan (“Recovery Plan”) that is reasonably designed to address the concerns raised in such notice within three (3) days after receipt of such notice. If the Department and the Contractor are unable to agree on the terms of the Recovery Plan within five (5) days after the issuance of the notice (i.e. within forty eight (48) hours after the receipt of the proposed Recovery Plan), the Department shall have the right to direct such acceleration as the Department, in its reasonable judgment, deems necessary. Provided Department complies with the notice provisions of this Section, the cost of any acceleration directed under this Section shall not justify an adjustment to the GMP or the Substantial Completion Date.

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

Section 5.19 Corrective Action Plan.

Subject to the terms of this Section, the Department shall have the right to direct the Contractor to revise the provisions of the Quality Control Plan if, in the reasonable judgment of the Department, the craftsmanship of the Work being installed fails to comply with generally applicable industry standards, requirements set forth in the Specifications that are reasonably related to the quality of craftsmanship quality, or any provisions set forth in this Agreement (each a “Quality Control Event”). In the event that the Department or its Program Manager determine that a Quality Control Event has occurred, the Department shall provide the Contractor with written notice of the occurrence of such Quality Control Event and the Contractor shall be required to provide the Department with a corrective action plan that is reasonably designed to address the concerns raised in such notice within three (3) days after receipt of such notice (each instance, a “Corrective Action Plan”). If the Department and the Contractor are unable to agree on the terms of the Corrective Action Plan within five (5) business days after the issuance of the notice (i.e. within forty eight (48) hours after the receipt of the proposed corrective action plan), the Department shall have the right to direct such corrective action measures as the Department, in its reasonable judgment, deems necessary. Such directive may include adjustments to the procedural provisions set forth in the Quality Control Plan and/or may impose additional requirements on the manner in which Work is being performed. Provided the Department complies with the notice provisions of this Section, the cost of any such corrective action directed under this Section shall not justify an adjustment to the GMP or the Substantial Completion Date.

Section 5.20 Use of ProjectTeam.

The Contractor shall utilize the Department’s ProjectTeam system to submit any and all documentation required to be provided by the Contractor, including, but not limited to: (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) invoices/applications for payment (full package including all forms required by the Department); (v) certified payrolls (in

addition to upload via LCP Tracker); (vi) drawings and specifications; (vii) building information model(s); (viii) punchlist; and (ix) other documents as may be designated by the Department.

Section 5.20.1 Invoice Submittal. The Contractor shall create and submit payment requests in an electronic format through the DC Vendor Portal, <https://vendorportal.dc.gov>. The Contractor shall submit proper invoices on a monthly basis. To constitute a proper invoice, per Article 8 of the Standard Contract Provision, the Contractor shall enter all required information into the Portal after selecting the applicable purchase order number which is listed on the Contractor's profile.

Section 5.21 Conformance with Laws.

It shall be the responsibility of the Contractor to perform under the Agreement in conformance with the Department's Procurement Regulations and all applicable laws, codes, ordinances, regulations, rules, requirements, orders, and policies of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Contractor to determine the Procurement Regulations, statutes, laws, codes, ordinances, regulations, rules, requirements and orders that apply and their effect on the Contractor's obligations thereunder. Given the requirements for the Project, the Department may, at its sole discretion, (i) apply for variance to the requirement of adhering to the Green Building Act on the Project and (ii) consider deferring the scope of work associated with storm water management to a later phase of the Project.

Section 5.22 Construction Phase Deliverables.

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

Section 5.23 Close-Out Deliverables.

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

- a) A complete set of the Contractor's Project files
- b) A complete set of product manuals (O&M), training videos, warranties, etc.
- c) As built record drawings
- d) Attic stock and schedule
- e) Equipment schedule
- f) Proposed schedule of maintenance
- g) Environmental, health & safety documents
- h) LEED – Preliminary Construction Review.
- i) All applicable inspection certificates/permits (boiler, elevator, emergency evacuation plans, health inspection, etc.)
- j) All other files and requirements outlined in Turnover Protocol Document.

Section 5.24 Licensing, Accreditation and Registration.

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

Section 5.25 Protection of Existing Elements.

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

Article 6 - DESIGNATED REPRESENTATIVES

Section 6.1 Department's Designated Representative.

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

Section 6.2 Contractor's Designated Representative.

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

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

Section 7.1 Compensation

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

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

Section 7.2 Payments

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

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

Article 8 - COMPENSATION FOR CONSTRUCTION PHASE SERVICES

Section 8.1 Compensation.

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

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

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

Section 8.2 Maximum Cost of General Conditions.

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

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

Section 8.3 Initial Not-to-Exceed Amount.

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

Section 8.4 Project Budget.

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

Section 8.5 No Adjustments to Fee.

It is the Department’s intent to engage the Contractor to develop a GMP that meets the preliminary design set forth in **Exhibit A** by the Client Agency and the Project Budget as set forth herein (*i.e.* built to budget), to allow for Substantial Completion of the Work to be achieved no later than the Substantial Completion Date. The Contractor shall be entitled to an adjustment to the Construction Management Fee at the time the GMP is established to the extent, and only to the extent, that: (i) the Department makes additions to the scope that, when measured relative to the program, cause the GMP to exceed the Project Budget by more than ten percent (10%); or (ii) the Department makes additions to the scope provided for herein which (other than for punchlist or warranty work) requires the Contractor’s services at the Project beyond **February 1, 2024**. With regard to Change Orders issued after the GMP is established, the Contractor shall be entitled to an increase in the Construction Management Fee to the extent, and only to the extent, that: (i) the Department has added a new programmatic element to the Project; or (ii) the Department made additions to the GMP scope which (other than punchlist or warranty work) require the Contractor’s services at the Project to extend 30 days or more beyond the Substantial Completion Date.

Section 8.6 Markup on Trade Work.

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

Article 9 - COST OF THE WORK FOR CONSTRUCTION PHASE

Section 9.1 Cost of the Work.

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

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

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

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

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

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

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

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

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

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

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

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

9.1.8. The Cost of General Conditions, subject however to the Maximum Cost of General Conditions; and

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

Section 9.2 Cost of General Conditions.

The Contractor's general conditions costs shall be reimbursable at cost and without mark-up. Only the following items, however, are reimbursable (any other items or expenses are non-reimbursable and the Contractor shall use its fee to cover any additional cost items):

9.2.1 Cost of Construction Staff, as defined below. Only staff stationed in the field is reimbursable; however, exceptions may be made for Project executive personnel, purchasing scheduling, cost estimating, local participation oversight and reporting and accounting services if such functions are normally provided by the Contractor's regional and/or home office personnel and/or if Contractor deems that such functions are more efficiently performed at the regional and/or home office(s). The term "Construction Staff" shall mean the Project executive, project managers and superintendents assigned to the project, administrative and professional staff performing scheduling, cost estimating and accounting services assigned on a full-time basis to the Project site;

9.2.2 Fringe Benefits associated with construction staff;

- 9.2.3 Payroll taxes and payroll insurance associated with construction staff;
- 9.2.4 Staff costs associated with obtaining permits and approvals;
- 9.2.5 Out-of-house consultants;
- 9.2.6 Field office for the Contractor including but not limited to: (i) trailer purchase and/or rent; (ii) field office installation, relocation and removal; (iii) utility connections and charges during the Construction Phase; (iv) furniture; and (v) office supplies;
- 9.2.7 Office equipment including but not limited to: (i) computer hardware and software; (ii) fax machines; (iii) copying machines; (iv) telephone installation, system and use charges; and (v) job radios;
- 9.2.8 Local delivery and overnight delivery costs;
- 9.2.9 First aid facility; and
- 9.2.10 BIM Cost (software, seats, hardware).

Section 9.3 Costs Not to Be Reimbursed.

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

- 9.3.1 Any personnel or labor costs other than those provided for in Section 9.2.1;
- 9.3.2 Fees for any permits or licenses the Contractor requires to conduct its general business operations;
- 9.3.3 Capital expenses and interest on capital employed for the Work;
- 9.3.4 Direct or indirect costs of any kind, except those expressly included in Section 9.1;
- 9.3.5 Sales or use taxes, unless the Contractor establishes that applicable law required payment of such taxes;
- 9.3.6 Costs due to the errors or omissions of the Contractor or its Subcontractors or suppliers at all tiers, negligent or otherwise;
- 9.3.7 Costs due to breach of the Agreement by the Contractor or its Subcontractors or material suppliers at all tiers, including, without

limitation, costs arising from defective or damaged Work or its correction, disposal of materials or equipment erroneously supplied, and repairs to property damaged by the Contractor or its Subcontractors or material suppliers at all tiers;

9.3.8 Any costs incurred in performing work of any kind before Notice to Proceed, unless specifically authorized by a duly authorized Contracting Officer of the Department in advance and in writing;

9.3.9 The cost of home or regional offices, it being understood that compensation for such costs included in the Construction Management Fee and Award Fee.

Section 9.4 Discounts, Rebates And Refunds.

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

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

Section 9.5 Facilitating Tax Exempt Purchases.

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

Section 9.6 Accounting Records.

The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Agreement. The Contractor's accounting and control systems shall be satisfactory to the Department. The Department, its representatives, and the Department's accountants shall be afforded access to the Contractor's records, books, correspondence, instruction, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Contractor

shall preserve such documentation relating to the Project for a period of three years after final payment, or for such longer period as may be required by law.

- 9.6.1** before Notice to Proceed, unless specifically authorized by a duly authorized Contracting Officer of the Department in advance and in writing;
- 9.6.2** The cost of home or regional offices, it being understood that compensation for such costs included in the Construction Management Fee and
- 9.6.3** Except as provided in Section 9.1.10 of this Agreement, costs due to the errors or omissions of the Contractor or its Subcontractors or suppliers at all tiers, negligent or otherwise.

Section 9.7 Discounts, Rebates And Refunds.

- 9.7.1** Cash discounts obtained on payments made by the Contractor shall accrue to the Department if: (i) before making such payment(s), the Contractor included them in an Application for Payment and received payment therefor from the Department; or (ii) the Department has deposited funds with the Contractor with which to make such payment(s). All other cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Department, and the Contractor shall make provisions so that such amounts can be secured.
- 9.7.2** Amounts that accrue to the Department in accordance with the provisions of Section 9.7.1 shall be credited to the Department as a deduction from the Cost of the Work.

Section 9.8 Facilitating Tax Exempt Purchases.

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

Section 9.9 Accounting Records.

The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Agreement. The Contractor's accounting and control systems shall be satisfactory to the Department. The Department, its representatives, and the Department's accountants shall be afforded access to the Contractor's records, books, correspondence, instruction, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the

Contractor shall preserve such documentation relating to the Project for a period of three years after final payment, or for such longer period as may be required by law.

Section 9.10 Excluded Cost Elements.

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

- 9.10.1** Design by A/E and its sub-consultants
- 9.10.2** 3rd Party Material Testing;
- 9.10.3** Commissioning;
- 9.10.4** 3rd Party Inspections;
- 9.10.5** Costs of active Client Agency equipment; and
- 9.10.6** 3rd Party Plan Review

Article 10 - CONSTRUCTION PHASE PAYMENTS

Section 10.1 Progress Payments.

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

The Cost of Work completed to date

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

Current approved estimated
Cost of Work through Final Completion

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

Minus Applicable retainage

Minus Amounts previously paid by the Department

Section 10.2 Retention.

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

Section 10.3 Documents Required with Application for Payment.

Each Application for Payment shall be accompanied by the Contractor's job cost ledgers in a form satisfactory to the Department, the Subcontractors' and Suppliers' Applications for Payment on AIA Documents G702 and G703 or other form acceptable to the Department, and such other supporting documentation as the Department may reasonably request. Each Application for Payment shall include detailed documentation of costs as a condition to approving progress payments, but the Contractor shall nevertheless maintain complete documentation of the costs. An executed Release of Liens and Claims in the format required by the Contracting Officer must accompany each Application for Payment.

Section 10.4 Stored Materials.

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

Section 10.5 Contractor's Certification.

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

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

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

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

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

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

Section 10.6 Lien Waivers.

Each Application for Payment shall be accompanied by written waivers of the right to file a mechanic's lien and all other claims, in a form substantially similar to **Exhibit J** for the Contractor and all Subcontractors and material suppliers at all tiers who have supplied labor or material or both for which payment is requested, subject only to receipt of payment. If the Department so requests, the Contractor shall also submit unconditional waivers of liens for itself and all Subcontractors and material suppliers at all tiers with respect to Work or materials or equipment for which payment has been previously made, and additional forms of waiver acknowledging receipt of final payment under the Agreement, and providing final release of such liens.

Section 10.7 Warranty of Title.

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

Section 10.8 Submission.

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

Section 10.8.1 Invoice Submittal. The Contractor shall create and submit payment requests in an electronic format through the DC Vendor Portal, <https://vendorportal.dc.gov>. The Contractor shall submit proper invoices on a monthly basis. To constitute a proper invoice, the Contractor shall enter all required information into the Portal after selecting the applicable purchase order number which is listed on the Contractor's profile.

Section 10.9 Right to Withhold Payments.

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

- 10.9.1** the Work is defective and such defects have not been remedied; or
- 10.9.2** the Department has determined that the Contractor's progress has fallen behind the Project Schedule, and the Contractor fails, within ten (10) calendar days of the Department's written demand, to provide the Department with a realistic and acceptable Recovery Plan in accordance with Section 5.18; or
- 10.9.3** the Contractor's monthly schedule update reflects that the Contractor has fallen behind the Project Schedule, and the Contractor fails to include, in the same monthly report, a realistic and acceptable Recovery Plan in accordance with Section 5.18; or
- 10.9.4** the Contractor has failed to provide reports in full compliance with Section 5.5 of this Agreement; or
- 10.9.5** the Contractor has failed to pay Subcontractors or suppliers promptly or has made false or inaccurate certifications that payments to Subcontractors or suppliers are due or have been made; or
- 10.9.6** any mechanic's lien has been filed against the Department, the site or any portion thereof or interest therein, or any improvements on the site, even though the Department has paid all undisputed amounts due to the Contractor, and the Contractor, upon notice, has failed to remove the lien, by bonding it off or otherwise, within ten (10) calendar days; or
- 10.9.7** the Department has reasonable evidence that the Work will not be completed by the Substantial Completion Date, as required, that the unpaid balance of the GMP would not be adequate to cover actual or liquidated damages arising from the anticipated delay; or
- 10.9.8** the Department has reasonable evidence that the Work cannot be completed for the unpaid balance of the GMP; or
- 10.9.9** the Contractor is otherwise in substantial breach of this Agreement (including, without limitation, failures to comply with LSDBE Utilization requirements; or
- 10.9.10** the Application for Payment is incomplete, unsubstantiated and/or does not contain sufficient documentation for evaluation by the Contracting Officer.

Section 10.10 Payment Not Acceptance.

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

Section 10.11 Department Not Obligated to Others.

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

payments to Subcontractor performing portions of the Work.

Section 10.12 Final Payment.

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

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

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

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

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

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

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

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

Article 11 - INSURANCE

Section 11.1 Insurance Required by the Project

A. GENERAL REQUIREMENTS. The Contractor at its sole expense shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall 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 insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A- / VII or higher. Should the Contractor decide to engage a subcontractor for segments of the work under this contract and wish to propose different insurance requirements than outlined below, then, prior to commencement of work by the subcontractor, the Contractor shall submit in writing the name and brief description of work to be performed by the subcontractor on the Subcontractors Insurance Requirement Template provided by the CA, to the Office of Risk Management (ORM). ORM will determine the insurance requirements applicable to the subcontractor and promptly deliver such requirements in writing to the Contractor and the CA. The Contractor must provide proof of the subcontractor's required insurance prior to commencement of work by the subcontractor. If the Contractor decides to engage a subcontractor without requesting from ORM specific insurance requirements for the subcontractor, such subcontractor shall have the same insurance requirements as the Contractor.

General liability, commercial auto, workers' compensation and property insurance policies (if applicable to this agreement) 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 Contractor and subcontractors.

B. INSURANCE REQUIREMENTS

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

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

DGS should collect, review for accuracy and maintain all warranties for goods and services.

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.

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 paragraphs 1,2 and 3 shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.

4. 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. Limits may not be shared with other lines of coverage. A copy of the cyber liability policy must be submitted to the Office of Risk Management (ORM) for compliance review.
5. 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 the CO - Owner certificates of insurance evidencing environmental liability insurance maintained by third party transportation and disposal site operators(s) used by the Contractor for losses arising from facility(ies) accepting, storing or disposing hazardous materials or other waste as a result of the Contractor's operations. Such coverages must be maintained with limits of at least the amounts set forth above.

6. 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, Workplace Torts, "Bullying" in "any location" and "by any means," including the Internet, whether between employees of contractor or against third parties. Employment Practices Liability coverage must specifically state Third Party Liability coverage is included. Contractor will indemnify and defend the District of Columbia should it be named co-defendant or be subject to or party of any claim. Coverage shall also extend to Temporary Help Firms and Independent Contractors hired by Contractor. The policy shall provide limits of not less than \$1,000,000 for each wrongful act and \$2,000,000 annual aggregate for each wrongful act.
7. Installation-Floater Insurance - For projects not involving structural alterations, the contractor shall provide an installation floater policy with a limit equal to the Property values being installed as part of the project. The policy shall cover property while located at the project site, at temporary locations, or in transit; deductibles will be the sole responsibility of the contractor.
8. Professional Liability Insurance (Errors & Omissions) - The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of \$1,000,000 per claim or per occurrence for each wrongful act and \$2,000,000 annual aggregate. The Contractor warrants that any applicable retroactive date precedes the date the Contractor first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services. Limits may not be shared with other lines of coverage.
9. Sexual/Physical Abuse & Molestation – **Applicable if school becomes operational with students on site prior to substantial or final completion.** The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate of affirmative abuse and molestation liability coverage. Coverage should include physical abuse, such as sexual or other bodily harm and non-physical abuse, such as verbal, emotional or mental abuse; any actual, threatened or alleged act; errors, omission or misconduct. This insurance requirement will be considered met if the general liability insurance includes an affirmative sexual abuse and molestation

endorsement for the required amounts. So called “silent” coverage or “shared” limits under a commercial general liability or professional liability policy will not be acceptable. Limits may not be shared with other lines of coverage. The applicable policy may need to be submitted to the Office of Risk Management (ORM) for compliance review.

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.

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 ordinance and terrorism coverage will be included.

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

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

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

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

C. 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.

- D. **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.
- E. **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.
- F. **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.
- G. **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.
- H. **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.
- I. **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 to:

The Government of the District of Columbia

And mailed to the attention of:

**Ahmad Stanekzai
Contracting Officer
Department of General Services
Contracts and Procurement Division
2000 14th Street NW, 4th Floor
Washington, DC 20009
ahmad.stanekzai@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).

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

Article 12 - ECONOMIC INCLUSION REQUIREMENTS

Section 12.1 LSDBE Utilization.

Section 12.1.1

If the Contractor subcontracts any work, at least (35%) of the dollar volume of the Agreement shall be subcontracted with small business enterprises (“SBE”). If there are insufficient qualified SBEs then the subcontracting may be satisfied by subcontracting (35%) of the dollar volume to any qualified certified business enterprises (“CBE”) in accordance with the DC Official Code § 2–218.46. For subcontracted work, pass through entities will not count toward this goal. In order to count toward the subcontracting requirement, the SBE must perform at least (35%) of the work that is being counted toward the goal with its own forces. The Local, Small, and Disadvantaged Business Enterprises (“LSDBE”) certification shall be, in each case, as of the effective date of the applicable subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal. The Contractor has developed a Subcontracting Plan that is attached hereto as Exhibit D. The Contractor shall comply with the terms of the SBE Subcontracting Plan in making purchases and administering its subcontracts and supply agreements.

Section 12.1.2

A Prime Contractor that is a CBE and has been granted an offer preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least (50%) of the on-site work with its own organization and resources if the Agreement is one (\$1) million dollars or less.

Section 12.2 Mandatory Subcontracting Requirements

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

Section 12.2.2 If there are insufficient SBEs to completely fulfill the requirement of Section 12.2.1, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.

Section 12.2.3 A prime contractor that is certified by DSLBD as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of Sections 12.2.1 and 12.2.2.

Section 12.2.4 Except as provided in Sections 12.2.5 and 12.2.7, a prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-

218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

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

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

Section 12.2.7 A Prime Contractor that is a CBE and has been granted an offer preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least (50%) of the on-site work with its own organization and resources if the Agreement is one (\$1) million dollars or less.

Section 12.3 Subcontracting Plan

If the Contractor is required by law to subcontract under this Agreement, then the subcontracting plan submitted with its Proposal, may only be amended with the prior written approval of the Contracting Officer and Director of DSLBD, as previously stated herein; and, any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the Subcontracting Plan shall inure to the benefit of the District. The Subcontracting Plan shall include the following:

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

Section 12.4 Copies of Subcontracts

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

Section 12.5 Subcontracting Plan Compliance Reporting

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

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

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

Section 12.6 Annual Meetings

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

Section 12.7 DSLBD Notices

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

Section 12.8 Enforcement and Penalties for Breach of Subcontracting Plan

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

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

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

Section 12.8.4 Neither the Contractor nor a Subcontractor may remove a Subcontractor or tier-Subcontractor if such Subcontractor or tier-Subcontractor is certified as an LSDBE company unless the Department approves of such removal, in writing. The Department

may condition its approval upon the Contractor developing a plan that is, in the Department's sole and absolute judgment, adequate to maintain the level of LSDBE participation on the Project.

Section 12.9 Equal Employment Opportunity and Hiring of District Residents

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

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

- (i) At least 20% of journey worker hours by trade shall be performed by District residents;
- (ii) At least 60% of apprentice hours by trade shall be performed by District residents;
- (iii) At least 51% of the skilled laborer hours by trade shall be performed by District residents; and
- (iv) At least 70% of common laborer hours shall be performed by District residents.

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

Section 12.9.4 For contracts for services in the amount of \$300,000 or more, the Construction Manager shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code § 2-219.01 *et seq.* ("First Source Act").

Section 12.9.5 The Construction Manager shall enter into and maintain during the term of the Contract, a First Source Employment Agreement (Employment Agreement) (Exhibit) with the District of Columbia Department of Employment Service's (DOES), in which the Construction Manager shall agree that: (a) The first source for

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

Section 12.9.6 The Contractor’s hiring and reporting requirements under the First Source Act and any rules promulgated thereunder shall continue for the term of the Contract.

Section 12.9.7 The CO may impose penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the Contract, for a willful breach of the Employment Agreement, failure to submit the required hiring compliance reports, or deliberate submission of falsified data.

Section 12.9.8 If the Construction Manager does not receive a good faith waiver, the CO may also impose an additional penalty equal to 1/8 of 1% of the total amount of the direct and indirect labor costs of the Contract for each percentage by which the Construction Manager fails to meet its hiring requirements.

Section 12.9.9 Any contractor which violates, more than once within a 10-year timeframe, the hiring or reporting requirements of the First Source Act shall be referred for debarment for not more than five (5) years.

Section 12.9.10 The Construction Manager may appeal any decision of the CO pursuant to this clause to the D.C. Contract Appeals Board located at 441 4th Street, NW, Suite 350N, Washington, DC 20001.

Section 12.9.11 The provisions of the First Source Act do not apply to nonprofit organizations which employ 50 employees or less.

Section 12.9.12 Construction projects or contracts covered by this Section 12.9.12 of the Contract shall be subject to the hiring and reporting requirements set forth in this Section until construction is completed and a final certificate of occupancy has been issued.

Section 12.9.13 The Construction Manager shall not begin performance of the Contract until its Employment Agreement has been accepted by DOES. Once approved, the Employment Agreement shall not be amended except with the approval of DOES.”

Section 12.10 Economic Inclusion Reporting Requirements

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

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

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

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

Section 12.11 Compliance with the Apprenticeship Act. The District of Columbia Apprenticeship Act of 1946, D.C. Official Code §§ 32-1401 *et seq.* ("Apprenticeship Act"), as amended, may apply to this Project. All subcontractors selected to perform work on the Project on a craft-by-craft basis shall be required to comply with this Apprenticeship Act. All terms and conditions of the Apprenticeship Act, D.C. Apprenticeship Council Rules and Regulations, as well as any federal requirements, shall be implemented. The Contractor shall be liable for any subcontractor non-compliance.

Article 13 - LIQUIDATED DAMAGES

Section 13.1 Delay in Submission of Deliverables

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

Section 13.2 Delay in Substantial Completion.

If the Contractor fails to achieve Substantial Completion of the Project by the Substantial Completion Date, the Parties acknowledge and agree that the actual damage to the Department for the delay will be impossible to determine, and in lieu thereof, the Contractor shall pay to the Department, as fixed, agreed and liquidated delay damages in the amount set forth in the Project Information Section of this Agreement per day for each calendar day of delay for failure to meet the applicable Substantial Completion Date. The Contractor and the Department agree that the liquidated damages set forth in this Article do not constitute, and shall not be deemed, a penalty but represent a reasonable approximation of the damages to the Department associated with a delay in the Project. These damages shall not apply if the delay is the result of force majeure and the Contractor otherwise complies with the provisions set forth in the Standard Contract Provisions.

Section 13.3 Early Completion.

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

Article 14 - MISCELLANEOUS PROVISIONS

Section 14.1 Ownership and Use of Documents.

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

Section 14.2 Assignment.

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

Section 14.3 Buy American Act Provision.

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

14.3.1 In accordance with the Buy American Act (41 U.S.C. § 10a-10d), and Executive Order 10582, December 17, 1954 (3 CFR, 1954-58 Comp., p. 230), as amended by Executive Order 11051, September 27, 1962 (3 CFR, 1059—63 Comp., p. 635), the Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, material men and suppliers in the performance of the Agreement, except for non-domestic material listed in the Agreement.

“Components” as used in this Section, means those articles, materials and supplies incorporated directly into the end products.

“Domestic end product”, as used in this section, means, (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States, exceeds 50 percent of the cost of all its components.

Components of foreign origin of the same class or kind as the products shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

“End Products”, as used in this Section, means those articles, materials, and supplies to be acquired for public use under this Contract.

The Contractor shall deliver only domestic end products, except those:

1. For use outside the United States;
2. That the District determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
3. For which the District determines that domestic preference would be inconsistent with the public interest; or
4. For which the District determines the cost to be unreasonable.

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

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

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

Section 14.4 The Quick Payment Clause

14.4.1 Interest Penalties to Contractors

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

- a. The date on which payment is due under the terms of the Contract;
- b. Not later than 7 calendar days, excluding legal holidays, after the date of delivery of meat or meat food products;

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

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

14.4.1.3

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

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

14.4.2 Payments to Subcontractors

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

- a) Pay the subcontractor for the proportionate share of the total payment received from the District that is attributable to the subcontractor for work performed under the contract; or
- b) Notify the Contracting Officer and the subcontractor, in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

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

14.4.2.3

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

14.4.2.4 Any amount of an interest penalty which remains unpaid by the Contractor at the end of any 30-day period shall be added to the principal amount of the debt to

the subcontractor and thereafter interest penalties shall accrue on the added amount.

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

14.4.3 Subcontractor Quick Payment Clause Flow-Down Requirements

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

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

14.4.4 Requirements for Change Order payments

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

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

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

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

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

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

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

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

Section 14.6 False Claims Act.

The Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to DC government, including the prescriptions set forth in the DC Official Code §22-2514 and §§2-381.01 et seq. In the event that it is discovered that the Contractor has made a false, fraudulent or unsupported statement or claim to the Department, the Department may terminate this Agreement without liability.

Section 14.7 Interpretation of Contract and Order of Precedence. All of the documents comprising the Agreement should be read as complementary, so that what is called for by one is called for by all. Ambiguities shall be construed in favor of a broader scope of work for the Contractor, as the intent of the Agreement is, with specific identified exceptions, to require the Contractor to assume entire responsibility for construction of the Project. If there is any inconsistency among the documents comprising the Agreement, the order of precedence among them is as follows, with the first listed document having the highest priority:

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

Section 14.8 Independent Contractor. The Contractor and the Contractor's employees: (1) shall perform the services specified herein as independent contractors, not as employees or agent of the District, or joint venture or partner with the District; (2) shall be responsible for

their own management and administration of the work required and bear sole responsibility for complying with any and all technical, schedule, financial requirements or constraints attendant to the performance of this Agreement; (3) shall be free from supervision or control by any government employee with respect to the manner or method of performance of the service specified; but (4) shall, pursuant to the government's right and obligation to inspect, accept or reject work, comply with such general direction of the CO, or the duly authorized representative of the CO as is necessary to ensure accomplishment of the Agreement objectives. The Contractor shall have exclusive authority to manage, direct, and control the work, and shall be responsible for all means, methods, techniques, sequences, and procedures, as well as for Project safety. In carrying out all its obligations under the Agreement, the Contractor shall act as an independent contractor and not as an employee or agent of the Department, nor as a joint venture or partner of the Department.

Section 14.9 No Third-Party Beneficiary Rights. Nothing in this Agreement shall be construed as creating third-party beneficiary rights in any person or entity, except as otherwise expressly provided in this Agreement.

Section 14.10 Media Releases. Neither the Contractor, its employees, agents or Subcontractors or material suppliers shall make any press release or similar media release related to the Project unless such press release have been discussed with the Department prior to its issuance.

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

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

If to the Department:

George Lewis
Chief, Contracts and Procurement
DGS Chief Procurement Officer
2000 14th Street, NW, 4th Floor
Washington, DC 20009

If to the Contractor:

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

[Address 2]

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

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

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

Section 14.15 No Waiver. If the Department waives any power, right, or remedy arising from the Agreement or any applicable law, the waiver shall not be deemed to be a waiver of the power, right, or remedy on the later recurrence of any similar events. No act, delay, or course of conduct by the Department shall be deemed to constitute the Department's waiver, which may be effected only by an express written waiver signed by the Department.

Section 14.16 Remedies Cumulative. Unless specifically provided to the contrary in the Agreement, all remedies set forth in the Agreement are cumulative and not exclusive of any other remedy the Department may have, including, without limitation, at law or in equity. The Department's rights and remedies will be exercised at its sole discretion, and shall not be regarded as conferring any obligation on the Department's to exercise those rights or remedies for the benefit of the Contractor or any other person or entity.

Section 14.17 Headings/Captions. The headings or captions used in this Agreement or its table of contents are for convenience only and shall not be used in interpreting the Agreement.

Section 14.18 Entire Agreement; Modification. The Agreement supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to the Agreement shall be effective against the Department unless made in writing signed by both the Department and the Contractor, unless otherwise expressly provided to the contrary in the Agreement. Notwithstanding the foregoing, nothing herein shall be construed to limit the Department's ability to unilaterally modify the Agreement.

Section 14.19 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable; each part of this Agreement is intended to be severable.

Section 14.20 Anti-Deficiency Acts. The obligations and responsibilities of the Department under the terms of the Agreement, or any subsequent agreement entered into pursuant to this Agreement or referenced herein (to which the Department is a party), are and shall remain subject to the provisions of: (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351, 1511-1519 (2004) (the “**Federal ADA**”), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2001); (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (2004 Supp.) (the “**D.C. ADA**” and (i) and (ii) collectively, as amended from time to time, the “**Anti- Deficiency Acts**”); and (iii) Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2001). Pursuant to the Anti-Deficiency Acts, nothing in this Agreement shall create an obligation of the Department in anticipation of an appropriation by Congress for such purpose, and the Department’s legal liability for payments and other charges under this Agreement shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress. **IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE AGREEMENT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS**

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

Section 14.22 Davis-Bacon Act Provision.

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

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

Section 14.24 SPECIAL PROVISIONS RELATED TO THE COVID-19 EMERGENCY

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

14.24.2 The Contractor is required to comply with City Administrator’s Order 2021-4, Resumption of Requirement for All Persons to Wear a Mask Inside District Government

Buildings and While on Duty as a District Government Employee or Contractor, dated July 30, 2021, and all substantially similar mask requirements including any modifications to this Order, unless and until they are rescinded or superseded.

14. 25 Authorized Changes By The Contracting Officer

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

Article 15 - TERMINATION OR SUSPENSION

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

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

Section 15.3 Termination for Default. The Department may terminate the Agreement for default if the Contractor fails to perform any of its duties or obligations under the Agreement. In particular, but without limitation, the Department may terminate the Agreement if:

- 1. The Contractor fails to perform the Work diligently, in accordance with the Project Schedule or to make such progress in the Work as the Department reasonably believes is necessary to complete the Project within the time required by the Agreement; or
- 2. The Contractor fails to perform the Work in a good and workmanlike manner or to correct defects in the Work promptly upon notice by the Department;

or

4. The Department reasonably determines that the Contractor has abandoned the Work, or has failed to pay laborers, mechanics, materialmen, Subcontractors or suppliers when payment is due; or
5. The Contractor becomes insolvent, makes an assignment for the benefit of creditors, files a voluntary petition under any chapter of the Bankruptcy Code or has an involuntary petition filed against it under any chapter of the Bankruptcy Code, or the Contractor has a receiver appointed, or files for dissolution or otherwise is dissolved; or
6. The Contractor fails to pay its debts in a timely manner or becomes insolvent, the Department reasonably determines that the Contractor does not have the financial ability to carry out its obligations under the Agreement and the Contractor fails to give the Department prompt and reasonable assurances of its ability to perform.
7. In the event the Contractor fails to meet the Substantial Completion Date for more than thirty (30) days, the Contractor consents to a Termination for Default.

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

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

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

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

Article 16 - OTHER CONDITIONS AND SERVICES

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

Article 17 – CHANGES IN THE WORK

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

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

Section 17.3 Department-Initiated Changes

- .1** If the Department wishes to make a change in the Work or to accelerate the Work, it will execute and issue to the Contractor a written Change Directive, either directing the Contractor to proceed at once with the changed Work or directing it to not to proceed, but to inform the Department, in writing, of the amount, if any, by which the Contractor believes that Substantial or Final Completion Dates and/or the Guaranteed Maximum Price should be adjusted to take the Change Order or Change Directive into account.
- .2** Within ten (10) days of receiving a Change Directive, the Contractor shall provide the Department with a written statement of all changes in the Agreement, including, without limitation, any changes to the Substantial or Final Completion Dates or the Guaranteed Maximum Price to which it believes it is entitled as a result of the Change Directive. If additional

time is sought, a schedule analysis supporting the requested extension should be included. The schedule analysis should include a written narrative explanation. If a change in the Guaranteed Maximum Price is sought (or if the Department has requested a deduct change), the statement should include a breakdown, by line item, of the estimated cost changes attributable to the proposed change. The Department may request, and the Contractor shall provide, further cost breakdowns, clarifications, documentation or back-up if the Department reasonably believes such additional information is needed to understand and evaluate the request. The additional information required may include cost and pricing data in accordance with the Department's regulations. Any requested adjustment to the Guaranteed Maximum Price shall be limited to increased Cost of the Work due to the Change Directive. The Contractor is not entitled to any markup on any kind of Change Orders except as authorized in Section 17.8, and if so authorized, any mark-up shall be in accordance with Section 17.11.

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

Section 17.4 Notice of Change Event. The Contractor must give the Department written notice of any Change Event within ten (10) calendar days of the date on which the Contractor knew, or reasonably should have known, of the Change Event. To the extent available, the notice must state the nature of the Change Event and describe, generally, all changes in the Agreement to which the Contractor believes it is entitled. Such notice is an express condition precedent to any claim or request for adjustment to the Substantial or Final Completion Dates, or the Guaranteed Maximum Price arising from the Change Event and, if the notice is not given within the required time, the Contractor will have waived

the right to any adjustment to the Substantial or Final Completion Dates, or the Guaranteed Maximum Price arising from the Change Event.

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

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

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

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

Section 17.8 No Adjustments to Fee. The Contractor understands and agrees that the Preconstruction Fee and Construction Management Fee shall not be increased or decreased as a result of any Change Orders or Change Directive. In furtherance of this understanding, the Contractor agrees that it shall not be entitled to an increase in the Preconstruction Fee or the Construction Management Fee by virtue of changes authorized by the Department unless such changes fall outside the general scope of work contemplated by this Agreement.

Section 17.9 Executed Change Orders Final. The Contractor agrees that any Change Order executed by the Department and Contractor constitutes its full and final adjustment for all costs, delays, disruptions, inefficiencies, accelerations, schedule impacts, or other consequences arising from the change in question, whether a Change Directive, or a Change Event, or from any claimed cumulative effect of changes made to the date of the Change Order, and that no further adjustments in compensation or time shall be sought

or made with respect to the Change Directive or the Change Event giving rise to the Change Order. Although the Parties anticipate that most Change Orders will not require an adjustment to the Cost of General Conditions, if the Work described in a Change Order requires an increase or decrease in the Maximum Cost of General Conditions (i.e. because such a Change requires additional field staff or other equipment that would be classified as General Conditions Costs), the Change Order shall contain an increase to the Construction Management Fee adjusting such amount. The cost of processing a Change Order shall not be considered an event that will require an increase in the Maximum Cost of General Conditions.

Section 17.10 Failure to Agree. If the Contractor claims entitlement to a change in the Agreement, and the Department does not agree that any action or event has occurred to justify any change in time or compensation, or if the Parties fail to agree upon the appropriate amount of the adjustment in time or compensation, the Department will unilaterally make such changes, if any, to the Agreement, as it determines are appropriate pursuant to the Agreement. The Contractor shall proceed with the Work and the Department's directives, without interruption or delay, and shall make a claim as provided in Article 19 herein. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Contract and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

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

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

Work as approved by the Department and shall include, but not be limited to: (Direct Cost of the Work does not, however, include home office overhead, field supervision, general conditions or profit of either the Subcontractor or the Contractor. No personnel above the level of a working foreman shall be considered a Direct Cost of the Work).

- **Labor.** Payment will be made for direct labor cost plus indirect labor cost such as insurance, taxes, fringe benefits and welfare provided such costs are considered reasonable. Indirect costs shall be itemized and verified by receipted invoices. If verification is not possible, up to five percent (5%) of direct labor costs may be allowed.

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

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

- **Materials.** Incorporated and unincorporated materials as permitted under Sections 9.1.2 (b) and 9.1.2 (c).

Article 18 – BONDS

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

Article 19 – CLAIMS AND DISPUTE RESOLUTION

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

Article 20 – EXHIBITS

- Exhibit A** Preliminary Design
- Exhibit B** Preliminary Schedule
- Exhibit C** Preconstruction and Construction Phase Deliverables
- Exhibit D** Close-Out Deliverables
- Exhibit E** Key Personnel
- Exhibit F** Davis-Bacon Wage Rates
- Exhibit G** Contractor’s Designated Representative
- Exhibit H** Department’s Designated Representatives and Contracting Officer
- Exhibit I** Standard Contract Provisions (Construction Contracts and Architectural & Engineering Contracts)
- Exhibit J** Release of Lien Waivers
- Exhibit K** GMP Amendment (To be submitted later)
- Exhibit L** FF&E Requirements (To Be Determined At GMP Amendment)
- Exhibit M** At-Risk Construction Management Fee Award Pool Determination
- Exhibit N** Subcontractor Performance Evaluation Form
- Exhibit O** EEO Policy Form
- Exhibit P** Building Information Modeling (BIM)
- Exhibit Q** Subcontracting Plan (*The SBE plan will be submitted before entering into a GMP with the Contractor.*)
- Exhibit R** 2022 Living Wage Act

IN WITNESS WHEREOF, the duly authorized signatories of the Parties have executed this Agreement (DCAM-22-CS-RFP-0019) as of the last date executed below.

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

[INSERT CONTRACTOR’S NAME]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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



EXHIBIT C

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



Contract & Procurement Division

Sent via email to:

[Insert Date]

[Insert Name]

[Insert Contractor's Name]

[Address 1]

[Address 2]

Email:

Subject: *Notice to Proceed and Letter Contract*

Reference: **Request for Proposals (“RFP”) No. DCAM-22-CS-RFP-0019 Construction Management At-Risk Services DC Infrastructure Academy at Spingarn High School**

Dear __:

We refer to the proposal submitted by *[Insert Contractor's Name]* (the “CMAR” or “Contractor”) in response to the above referenced RFP. We are pleased to inform you that this work has been awarded to [], and if this Letter Contract is signed by the Contractor without modification of any kind, it will serve as a notice to proceed for the work described below. This notice to proceed is subject to the following terms:

1. Letter Contract. This is a Letter Contract between the Contractor and the District of Columbia Government, acting by and through its Department of General Services (“DGS” or the “Department”), and shall govern our relationship until such time as a final contract is entered into for the work described in the above referenced RFP (the “Definitized Contract”); provided, however, that to the extent an issue is not covered in this Letter Contract, the Request for Proposal shall govern. *Once an authorized Contracting Officer executes the Definitized Contract, this Letter Contract shall automatically terminate and merge into the Definitized Contract.*

2. Scope of Work. The Contractor shall provide CMAR services for DC Infrastructure Academy at Spingarn High School, located at 2500 Benning Road NE, Washington, DC 20002

(the “Project”), as described in the Contractor’s Proposal dated [*Insert Date*], submitted in response to the subject RFP and Schedule of Values attached to this Letter Contract as **Exhibit A**.

3. Deliverables. In connection with the services provided pursuant to this Letter Contract, the Contractor shall provide, at a minimum, the deliverables in accordance with the requirements in the RFP, Schedule of Values attached to this Letter Contract as **Exhibit A** and Form of Contract in connection to the authorized work to the Department’s Program Manager and in the referenced instances to the Contracting Officer.

In the event that the Contractor fails to timely submit any such deliverable, the Contractor shall pay to the Department as liquidated damages One Thousand Dollars (\$1,000) per day after receiving written notice from the Contracting Officer of failure to submit each deliverable. This remedy is cumulative and does not limit any other right or remedy of the Department under the contract or applicable District law.

4. Not to Exceed Amount. The Not-to-Exceed (“NTE”) amount of this Letter Contract is \$950,000. In no event shall the Contractor be entitled to receive more than the NTE amount under this Letter Contract unless authorized in advance and in writing by a duly authorized Contracting Officer. This NTE amount includes all costs incurred by the Contractor in connection with the work authorized hereby.

5. Key Personnel. Key personnel shall include, at a minimum, the following individuals: (i) the Project Executive; (ii) the Field Superintendent; (iii) the Project Manager who will supervise the Project; (iv) the Project Manager who will supervise the Mechanical, Electrical, and Plumbing (“MEP”) work; and (v) the individual that will manage quality control and interact with the Department’s quality control representative (Safety/Quality Assurance/Quality Control Manager). The Contractor will not be permitted to reassign any of the Key Personnel unless the Department approves the proposed reassignment and the proposed replacement.

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

6. Insurance. At all times while working under this Letter Contract, the Contractor shall maintain insurance as described in the RFP. All such policies shall be endorsed to add the District of Columbia, including, but not limited to, its Department of General Services, and the respective agents, employees and offices of each as additional insureds.

7. Duration. Once signed by the Contractor, the Letter Contract will become effective on the date the Letter Contract is executed by the Department. This Letter Contract will terminate on the earlier to occur of the following: (i) the date the Definitized Contract becomes effective; or (ii) [Insert Date]. DGS reserves the right to terminate this Letter Contract, in whole or specified part, for convenience in the manner described in Article 5 of the Department of General Services Standard Contract Provisions General Provisions for Construction Contract.

8. Billing. All invoices shall be submitted directly to the Department at the address specified in the RFP. Purchase Order numbers should be included in all future invoices and accounting records. Properly prepared invoices with the necessary backup shall be paid within thirty (30) days of receipt. Invoices not paid by that date shall bear interest in accordance with the Quick Payment Act.

9. Use of DGS' ProjectTeam. The Contractor shall utilize the Department's current project management software ("ProjectTeam") system to submit any and all Project Documentation required to be provided by the Contractor for the Project, including, but not limited to: (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) invoices/applications for payment (full package including all forms required by DGS); (v) certified payrolls (in addition to upload via LCP Tracker); (vi) drawings and specifications; (vii) punchlist; and (viii) other Project Documents as may be designated by the Department. The Contractor also shall require all subcontractors and subconsultants to utilize ProjectTeam for the Project execution.

Electronic storage and transmission of information via ProjectTeam system shall be compliant with the provisions of the Document Security section of these General Requirements.

10. Invoice Submittal. The Contractor shall create and submit payment requests in an electronic format through the DC Vendor Portal, <https://vendorportal.dc.gov>. The Contractor shall submit proper invoices on a monthly basis. To constitute a proper invoice, the Contractor shall enter all required information into the Portal after selecting the applicable purchase order number which is listed on the Contractor's profile. Properly prepared invoices with the necessary backup shall be paid within thirty (30) days of receipt. Invoices not paid by that date shall bear interest in accordance with the Quick Payment Act. For assistance with the registration process call (202) 741-5200 or visit <http://vendorportal.dc.gov> to submit an inquiry.

11. Purchase Order Number. This Letter Contract will become effective on the date the Letter Contract is executed by the Department. The Department's Contracting & Procurement Division will issue a purchase order number and will be sent in a separate cover. That number should be included in all future invoices and accounting records. In the event that you do not obtain a

purchase order number please contact Ahmad Stanekzai at ahmad.stanekzai@dc.gov directly to obtain this number.

12. Ownership and Use of Documents. All documents and work product prepared by the Contractor shall become the property of the Department upon the payment of invoices submitted under the Letter Contract.

13. Trade Work/Site Control. Unless otherwise directed by the Department, the Contractor shall not perform any trade work or take control of the site. Any authorization to proceed with trade work will include appropriate provisions relating to compliance documents (first source employment agreement, Department of Small and Local Business Development (DSLBD)), bonds, insurance, and safety procedures. At a minimum, however, the Department's Standard Contract Provisions for Construction shall apply and in addition to the requirements set forth in any such subsequent authorization, prior to commencing any construction activity, the Contractor shall provide the Department's Contracting Officer with certificates evidencing insurance, a payment and performance bond having a penal value equal to the then value of the Letter Contract and the Contractor's agreement of indemnity.

14. Entire Agreement; Modification. This Letter Contract, along with the Standard Contract Provisions for Construction Contracts (**Exhibit B**) supersede all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to this Letter Contract shall be effective against the Department and unless made in writing signed by the Department. Notwithstanding the provisions of this Section 14, nothing herein shall limit the Department's ability to unilaterally modify this Letter Contract.

15. Davis Bacon Act Wage Determination. The Contractor agrees that the work performed under this Letter Contract shall be subject to the Davis Bacon Wage Determination as set forth in **Exhibit C** in effect at the time of Letter Contract execution by the Department.

16. Living Wage Act. The Contractor agrees that the work performed under this Letter Contract shall be subject to the Living Wage Act in effect at the time of Letter Contract execution by the Department. As such, the Contractor and its subcontractors shall comply with the wage reporting requirements imposed by the act as set forth in **Exhibit E**.

ISSUED BY:

ACCEPTED BY:

By: _____
Name: Ahmad M. Stanekzai
Title: Contracting Officer
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

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



EXHIBIT D

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]



GOVERNMENT OF THE DISTRICT OF COLUMBIA
REVISED EMPLOYMENT PLAN



I. REVISED FIRST SOURCE EMPLOYMENT PLAN

GOVERNMENT-ASSISTED PROJECT/CONTRACT INFORMATION

DISTRICT CONTRACTING AGENCY: _____
CONTRACTING OFFICER: _____
TELEPHONE NUMBER: _____
TOTAL CONTRACT AMOUNT: _____
EMPLOYER CONTRACT AMOUNT: _____
PROJECT NAME: _____
PROJECT ADDRESS: _____
CITY: _____ STATE: _____ ZIP CODE: _____
PROJECT DESCRIPTION OF WORK: _____

PROJECT START DATE: _____ PROJECT END DATE: _____
EMPLOYER START DATE: _____ EMPLOYER END DATE: _____

EMPLOYER INFORMATION

EMPLOYER NAME: _____
COMPANY NAME: _____
EMPLOYER ADDRESS: _____
CITY: _____ STATE: _____ ZIP CODE: _____
TELEPHONE NUMBER: _____ FEDERAL IDENTIFICATION NO.: _____
CONTACT PERSON: _____
TITLE: _____
E-MAIL: _____ TELEPHONE NUMBER: _____
EMPLOYER DESCRIPTION OF WORK: _____

ARE YOU A SUBCONTRACTOR YES NO

IF YES, NAME OF PRIME CONTRACTOR: _____

PRIME CONTRACTOR WILL MEET HOURS WORKED PERCENTAGES REQUIREMENTS FOR ENTIRE PROJECT OR PER EACH SUBCONTRACTOR

II. EMPLOYMENT HOURS TO BE WORKED PROJECTIONS

First Source law requires EMPLOYERS (winning bidders) to submit a revised Employment Plan.

A. For construction projects receiving \$5 million or more in government assistance, Employers to provide projection of the total number of hours to be worked on the project by trade.

JOURNEY WORKER

Provide a projection of the total number of journey worker hours, by trade, to be worked on the project or contract and the total number of journey worker hours, by trade, to be worked by District residents.

This page to be completed by Employer _____
Employer Initials



**GOVERNMENT OF THE DISTRICT OF COLUMBIA
REVISED EMPLOYMENT PLAN**



Projection of Total Number of Journey Worker Hours	Trade	Projection of Total Number of Journey Worker Hours by DC Residents <i>(First Source Law requires 20%)</i>

APPRENTICE

Provide a projection of the total number of apprentice hours, by trade, to be worked on the project or contract and the total number of apprentice hours, by trade, to be worked by District residents.

Projection of Total Number of Apprentice Hours	Trade	Projection of Total Number of Apprentice Hours by DC Residents <i>(First Source Law requires 60%)</i>

SKILLED WORKER

Provide a projection of the total number of skilled laborer hours, by trade, to be worked on the project or contract and the total number of skilled laborer hours, by trade, to be worked by District residents.

Projection of Total Number of Skilled Labor Hours	Trade	Projection of Total Number of Skilled Labor Hours by DC Residents <i>(First Source Law requires 51%)</i>

COMMON LABORER

Provide a projection of the total number of common laborer hours to be worked on the project or contract and the total number of common laborer hours to be worked by District residents.

Projection of Total Number of Common Laborer Hours	Trade	Projection of Total Number of Common Laborer Hours by DC Residents <i>(First Source Law requires 70%)</i>

This page to be completed by Employer	<hr style="width: 100%; border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Employer Initials
---------------------------------------	--



**GOVERNMENT OF THE DISTRICT OF COLUMBIA
REVISED EMPLOYMENT PLAN**



B. EMPLOYMENT HIRING PROJECTIONS

ALL EMPLOYERS:

Please indicate ALL new position(s) you will create as a result of the project. If you WILL NOT be creating any new employment opportunities, please complete the attached justification sheet with an explanation. Attach additional sheets as needed.

JOB TITLE	# OF JOBS		SALARY RANGE	UNION MEMBERSHIP REQUIRED NAME LOCAL#	PROJECTE D HIRE
	F/T	P/T			
A					
B					
C					
D					
E					
F					
G					
H					
I					
J					
K					

This page to be completed by Employer	_____ Employer Initials
---------------------------------------	----------------------------



**GOVERNMENT OF THE DISTRICT OF COLUMBIA
REVISED EMPLOYMENT PLAN**



C. JUSTIFICATION SHEET: Please provide a detailed explanation of why the Employer will not have any new hires on the project.

This page to be completed by Employer

Employer Initials



GOVERNMENT OF THE DISTRICT OF COLUMBIA
REVISED EMPLOYMENT PLAN



D. EMPLOYMENT PROJECTIONS (Continued)

- IV. A remediation strategy to ameliorate any problems associated with meeting these worked hours percentage requirements, including any problems encountered with contractors and subcontractors.

- V. The designation of a senior official from the general contractor who will be responsible for implementing the hours worked percentages and reporting requirements.

- VI. Provide descriptions of the health and retirement benefits that will be provided to District residents working on the project or contract.

- VII. Provide a strategy to ensure that District residents who work on the project or contract receive ongoing employment and training opportunities after they complete work on the job for which they were initially hired and a review of past practices in continuing to employ District residents from one project or contract to the next.

This page to be completed by Employer	_____ Employer Initials
---------------------------------------	----------------------------



GOVERNMENT OF THE DISTRICT OF COLUMBIA
REVISED EMPLOYMENT PLAN



D. EMPLOYMENT PROJECTIONS (continued)

- VIII.** Provide a strategy to hire graduates of District of Columbia Public Schools, District of Columbia Public Charter Schools, community-based job training providers, and hard-to-employ residents.
- IX.** Please disclose past compliance with the First Source Employment Agreement Act of 1984 or the Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011 and the Davis-Bacon Act, where applicable, and the bidder or offeror's general District-resident hiring practices on projects or contracts completed within the last two (2) years.
- X.** Please note that EMPLOYERS on construction projects must submit weekly certified payrolls from all subcontractors at any tier working on the project or contract, as well as make such payroll and personnel records available upon request at job sites to the contracting District of Columbia agency.

This page to be completed by Employer

Employer Initials



**GOVERNMENT OF THE DISTRICT OF COLUMBIA
REVISED EMPLOYMENT PLAN**



Once approved, this revised employment plan shall not be amended except with the approval of Department of Employment Services.

By:

EMPLOYER Senior Official (Print)

Date

EMPLOYER Senior Official (Signature)

Name of Company

Address

Telephone

Email

Signature Department of Employment Services

Date

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



EXHIBIT E

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

"General Decision Number: DC20220002 08/05/2022

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).

<p>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:</p>	<ul style="list-style-type: none"> . 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.
<p>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:</p>	<ul style="list-style-type: none"> . 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

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 passage 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

ELEC0026-017 09/07/2020

	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, ladders 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

 PAIN0051-015 06/01/2021

	Rates	Fringes
PAINTER		
Brush, Roller, Spray and Drywall Finisher.....	\$ 25.50	11.27

 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 08/01/2021

	Rates	Fringes
--	-------	---------

PLUMBER.....\$ 45.92 20.35+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

* 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.

=====
 ** 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.

=====

END OF GENERAL DECISIO"

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



EXHIBIT F

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

Disclaimer:

When using this Guide to develop contracts between stakeholders regarding the use of BIM to plan, design, construct, and operate buildings, the information herein should not be considered a substitute for legal, business, insurance or financial advice. Each stakeholder or party to a contract is strongly encouraged to seek the advice of attorneys, and business, insurance, and financial counselors and advisers, as each stakeholder deems appropriate, when drafting, reviewing, and negotiating all contracts and clauses including, but not limited to, all terms and conditions, contract and project management requirements, intellectual property rights, and the electronic storage and transfer of documents and data.

NATIONAL BIM GUIDE FOR OWNERS

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We also would like to thank the American Institute of Architects (AIA); American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE); and Building Owners and Managers Association International (BOMA) for their support in completing this project, as well as the U.S. Department of Defense – Defense Health Agency for financial support.

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FOREWORD

Recent SmartMarket Reports by McGraw Hill Construction (now Dodge Data & Analytics) indicate the business value of Building Information Modeling (BIM) is increasing. *The Business Value of BIM in North America: Multi-Year Trend Analysis and User Ratings (2007-2012)* showed BIM adoption increasing from 17% in 2007 to 71% in 2012, with 62% of respondents among the industry perceiving a positive return on their investment in BIM. *The Business Value of BIM for Owners (2014)* identified 68% of U.S. Owners surveyed as either requiring or encouraging BIM for their projects.

The National Institute of Building Sciences is proud to introduce the *National Building Information Modeling Guide for Owners (NBGO)*, intended to outline for the building Owner how to develop and implement requirements for BIM application in internal policies and procedures as well as in contracts to plan, design, construct, and operate buildings.

As BIM adoption in the U.S. continues to rise, the Owner stands to benefit most, by implementing BIM as a tool to maximize a building's value throughout its lifecycle. BIM potentially facilitates better-informed Owner decision-making, design-intent communication, project coordination across various phases, enhanced project delivery schedule and budget management, post-construction asset and facility management, building automation and control, and many other benefits, including increased property resale values of the building, as well as leasing revenues.

We authored the *NBGO* to assist Owners in working with the other members of the building team to maximize the potential of BIM on their projects. We would welcome your comments and feedback as you put the *NBGO* to work for you.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry L. Green". The signature is fluid and cursive, with a large initial "H" and "G".

Henry L. Green, Hon. AIA

President

National Institute of Building Sciences

January 1, 2017

EXECUTIVE SUMMARY

The intended audience for this Guide is the building Owner. The Guide defines an approach to creating and fulfilling Building Information Modeling (BIM) requirements for a typical project from the Owner's standpoint.

Merely requiring BIM on a project does not equate to success if the Owner's goals for the project are not clearly set and BIM requirements do not correlate to achieving those goals. BIM must be well planned and properly executed; not just BIM, but "BIM DONE RIGHT,"¹ aligning the right amount and types of resources to achieve the right results.

This Guide builds on the premise that BIM, in and of itself, is not the end but rather the means to a number of potentially valuable project delivery outcomes for the Owner. It offers a toolset addressing three broad areas the Owner should understand in order to direct the Project Team to BIM DONE RIGHT: process, infrastructure and standards, and execution.

The Process for using BIM effectively on a project begins with defining BIM requirements in the Owner's contracts with service providers (to plan, design, construct, and operate the building) and with other stakeholders based on the project delivery method (design-bid-build, design-build, IPD, etc.). Early on, a successful BIM process includes identifying the roles and responsibilities of key project stakeholders with respect to information modeling as well as creating a BIM Project Execution Plan (PxP), an outcome-driven BIM roadmap that details how the project will be completed. Process also includes managing the project for compliance with the PxP and contract requirements, including the project deliverables.

Infrastructure and standards acknowledges the high degree of human collaboration and software interoperability needed for successful project information modeling, particularly as the project moves from phase to phase. To achieve the necessary level of interactivity, the Owner must require all members of the Project BIM Team to adhere to a framework of standards and structures from the project's onset.

Execution encompasses creating a Project Execution Plan (PxP), a master plan for how information modeling will be done and managed, at the inception of a project. The PxP documents the Owner's and the Project BIM Team's mutual agreement on how, by whom, when, why, to what level, and for what project outcomes (called "BIM Uses") information modeling will be used.

While the Guide highlights the essential requirements for BIM, it also offers options for Owners who wish to go beyond minimum requirements. And finally, while the guide uses the term "building" generically, in keeping with the terminology of "Building Information Modeling," it is intended to apply to information modeling for the built environment; i.e., site elements and facilities as well as buildings.

1. INTRODUCTION

1.1 PURPOSE

The purpose of the National Building Information Modeling Guide for Owners (NBGO) is to outline for the building Owner how to develop and implement requirements for the application of Building Information Modeling (BIM) for internal policies and procedures, and explain how to include these requirements in contracts to plan, design, construct and operate buildings. This Guide uses the term “building” generically, in keeping with the terminology of “Building Information Modeling.” It is intended to apply to information modeling for the built environment: site elements and facilities as well as buildings.

1.2 SCOPE

This Guide establishes recommendations for processes, standards, and deliverables for a BIM-enabled project that can be continually shared and agreed upon by the Owner and the rest of the Project BIM Team, which can include planners, constructors, facilities managers, and subcontractors, as well as designers.

1.3 USE

The recommendations in this Guide should be used by the Owner to create specific project requirements for BIM based on the project’s unique and individual needs that can then be followed and implemented by the Project BIM Team to enhance facility value.

Many aspects of the building industry are discovering increased value in BIM. Owners, architects, engineers, contractors, subcontractors, and facility managers all have collective and individual interests for the project and their business continuity, respectively. BIM has the capacity to be used within each phase of a project – from conceptual, through final design, construction, and on to operations – with a variety of applications ranging from Clash Detection, Quantity Takeoff, Scheduling, FM operations, and many others. While each application or ‘use’ of BIM offers value in itself and any project participant engaging in these various ‘uses’ could state they are ‘doing BIM’; the efforts won’t likely yield optimal results without proper planning, coordination, and execution. It is the project team’s activities in concert with the Owner’s requirements that provide the greatest potential lifecycle value. This is “BIM Done Right” and helping Owners achieve this for their projects is the goal of this Guide.*

*--Johnny Fortune
BIM/IT Director, Bullock Tice Associates*

* Tice, John, Bullock Tice Associates BIM DONE RIGHT, a BIM-enabled, client-focused delivery approach and strategy (2015).
<http://www.bulltice.com/>

2. PROCESS

At the project's inception, the Owner establishes the intent and general requirements for the building. Collectively, these are known as the Owner's Project Requirements (OPR), and are defined by the National BIM Standard – United States® (NBIMS-US™) Version 3² (V3) as the 'Owner's written documentation of the functional requirements of the "facility" and the expectations of how it will be used and operated. They include project and design goals, budgets, limitations, schedules.' These requirements are transferred into the building's "basis of design," (BOD), used by the building's design team to define the approach and parameters for designing the building to meet the Owner's requirements. The data developed during design is then transferred by the design team into construction documents, which become the record of all the building's physical elements. As each building element's construction is completed, it is either accepted through traditional design team construction contract administration practices and/or commissioned by an independent Commissioning Authority that the final construction meets the OPR and that the functional performance of the element has been verified.

As the project moves from phase to phase, the information contained within the BIM grows in both quantity and specificity. The nature of BIM technology and the interoperability (ability to be exchanged and used) of the data contained within the BIM allow different Owners to use the BIM in multiple ways, depending on their specific needs. In addition to design and construction, BIM applications can include asset management, building automation and control, interdisciplinary coordination, scheduling, cost estimating, and integrated construction specifications.

Models generated during planning, design, construction, and operations continue to serve as information resources used to keep the building operating at optimal efficiency. When well planned and executed, the use of BIM may reduce the building life-cycle cost. Using BIM in concert with planning and team building, with its shared and continually updated information, also helps the team minimize conflicts, cuts down on repetition and duplication of tasks, and helps to optimize planning, design, construction, and operations.

The process for enabling BIM to be used effectively on a project should follow these steps:

1. Define minimum BIM requirements in the Owner's contracts with service providers (planning, design, construction, operations, etc.) and other stakeholders based on the project delivery method (design-bid-build, design-build, IPD, etc.).
2. Identify the roles and responsibilities of key project stakeholders with respect to information modeling.
3. Collaboratively create a BIM Project Execution Plan (PxP) with key project stakeholders.
4. Manage the project for compliance with the PxP and contract requirements, including Model and Data Deliverables, through periodic reviews.

Where the model(s) is to be used for design/documentation and then for construction, the BIM PxP should address model exchange procedures, i.e., how the model(s) can migrate between project phases effectively with minimum effort. First, the Project BIM Team members need to coordinate the BIM Uses they seek to leverage when they determine the model exchange procedures. For example,

model coordination would require a high degree of geometric accuracy for the design model. Once BIM Uses are identified, the team should decide who is developing which models, and when these models are exchanged. The BIM PxP should be used to organize responsibilities and modeling requirements.

2.1 DEFINE BIM REQUIREMENTS

BIM requirements are defined by the Owner’s overall goals, business practices, and corporate culture and are shaped by the OPR. They are developed on a project-by-project basis, as the Project BIM Team selects BIM Uses to achieve these requirements. The Owner should provide any resources, such as feasibility studies and/or access to stakeholder interviews, for the BIM Project BIM Team to define Owner-related goals. Once the Owner’s project BIM goals are defined, the Project BIM Team should also ensure that these BIM goals can be met with current technology practices and required team competencies. The project BIM goals should lead to the choice of BIM Uses and additional BIM requirements.

2.1.1 BIM Uses and Requirements

The Owner should at a minimum require the five Essential BIM Uses described in Section 4.2.2: Existing Conditions, Design Authoring, Design Review, three-dimensional (3D) Coordination, and Record Modeling. Project conditions may justify other Enhanced BIM Uses, as described in Section 4.2.3, or Owner-Related Uses, as described in Section 4.2.4. The Project BIM Team should develop the recommended BIM Uses for the project by leveraging resources provided in the National BIM Standard– United States® (NBIMS-US™) Version 3 (V3) along with other resources. NBIMS-US™, developed by the National Institute of Building Sciences buildingSMART alliance®, contains core consensus-approved standards regarding the exchange of information and standard practices for implementing BIM on a project.

Once BIM Uses are defined, the Level of Development (LOD) requirements should be determined. There are Default LOD, Template LOD, and Custom LOD (see Section 3.6.4). An Owner can adopt a Default LOD that references established LOD requirements, such as the United States Army Corps of Engineers (USACE) Minimum Modeling Matrix (M3).³ The Owner also can use existing templates to develop LOD requirements, such as the American Institute of Architects (AIA) G-202 Building Information Modeling Protocol.⁴ It also is possible for Owners to develop a custom LOD matrix for their organization, but if they do so, they should adhere to the LOD spec definitions. Any of these three forms of LOD specification provides a means for Owners to develop contract requirements for models and data requirements.

2.1.2 Project Delivery Method

The choice of project delivery method for the project affects the way in which the BIM is developed and how information is exchanged. A design-build (DB) project may only have one Project BIM Manager, while a design-bid-build (D-B-B) project should have one BIM Manager for design and another one for construction. Similarly, the Owner should understand that the project delivery method will affect the level of responsibility that the Owner assumes for information management and

exchange between project phases. For example, in D-B-B, the Owner may be responsible for information exchange between design stakeholders and construction stakeholders. The project contracts should define responsibilities for the design and construction contracting entities, and, therefore, the Level of Development (LOD) and division of responsibilities. Information exchange across contracting parties also should be clearly defined and closely managed.

2.1.3 Intellectual Property.

Project deliverables should be clearly and completely defined in the Owner/designer and Owner/contractor agreements, especially if the PxP is developed after contracts have been executed. The intellectual property rights of the Owner should be clearly defined and validated in the PxP. The Owner should, at a minimum, have the right to use the project data defined as project deliverables in the BIM PxP. Project data should include the:

- Model files (BIM, CAD)
- Drawing files (CAD, electronic sheets such as PDFs, and/or plot files)
- Electronic manuals
- Tabular/textual information derived from BIM (e.g., spreadsheets)
- Reference files necessary to supplement other project data

Publicly funded projects are subject to the governing authority's acquisition requirements. Federally funded projects are governed per Federal Acquisition Regulation (FAR) Part 27, Patents, Data, and Copyrights.⁵ Any exceptions to ownership rights should be clearly noted in the project contract(s), documented in the BIM PxP, and approved by the Project BIM Team. Ownership of project data is conveyed to the Owner at the time of project closeout. Owner reuse rights should be defined in the Owner/stakeholder contracts. The Project BIM Team should review this guide, the BIM PxP, and the

Commentary:

When using this Guide to develop contracts between stakeholders regarding the use of BIM to plan, design, construct and operate buildings, the information herein should not be considered a substitute for legal, business, insurance or financial advice. Contracts may have important legal, business, insurance and financial consequences. Each stakeholder or party to a contract is strongly encouraged to seek the advice of attorneys, and business, insurance, and financial counselors and advisers, as each stakeholder deems appropriate, when drafting, reviewing, and negotiating all contracts and clauses including, but not limited to, all terms and conditions, contract and project management requirements, intellectual property rights, and the electronic storage and transfer of documents and data.

project contract(s) to determine governing requirements and permissions and/or limitations for ownership, conveyance, and/or reuse of data. The project contract conditions and terms take precedence over this guide, and, as with all contract documents, it is advisable to seek the advice of legal counsel.

2.1.4 Final Turnover Requirements

The Owner should consider the final deliverable requirements for project data. Owners should review their current information needs for operations and maintenance, and establish data requirements that support those needs. The Owner also should consider how BIM can support future facilities management and operations, and develop requirements that support future needs as well. At a minimum, major equipment should be described by facility attributes such as make, model, manufacturer, and serial number. Additional attributes include warranty information, parts lists, maintenance schedules, and manufacturer contact information.

2.2 TEAM ROLES AND RESPONSIBILITIES

2.2.1 Owner's BIM Representative(s)

Especially for larger and more complex projects, the Owner should designate an Owner's BIM Representative. The Owner's BIM Representative should have a clear understanding of BIM and the OPR. The Owner's BIM Representative should, at a minimum:

- Represent the Owner's requirements and be able to effectively communicate them to other stakeholders.
- Serve as the primary liaison between the Owner and the Project BIM Manager(s) for all BIM-related issues.
- Have oversight of BIM requirements in all project phases, from planning through the construction of the project, and at least the beginning of the operations phase.
- Receive, review, and approve BIM deliverables.

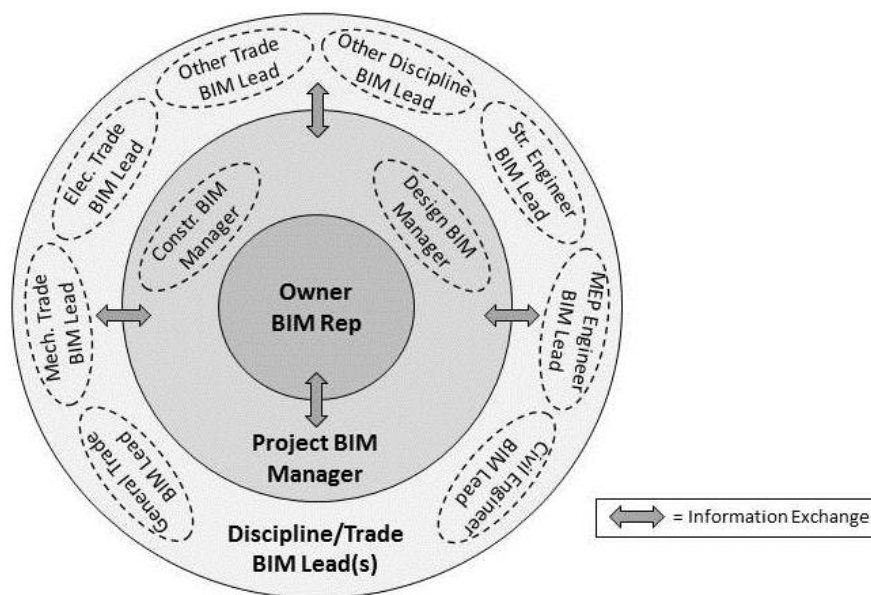


Figure 1. BIM Role and Responsibility Chart

2.2.2 Project BIM Manager Role

The project should have a designated Project BIM Manager. The Project BIM Manager role may be fulfilled by more than one person; for example, many projects have a lead design BIM Manager and a lead construction BIM Manager (see Figure 1). The Project BIM Manager should have sufficient BIM education and experience for the size and complexity of the project, as well as the relevant proficiency in the proposed BIM authoring and coordination software selected for use on the project. In the absence of an Owner's BIM Representative, the Project BIM Manager should serve as the main point of contact with the Project BIM Team for all BIM-related issues.

During each phase of a project, the Project BIM Manager at a minimum should:

- Lead the process of creating and updating the BIM PxP in accordance with the OPR.
- Verify compliance of the PxP deliverables.
- Coordinate all updates for individual models, specialized models, and databases.
- Administer Project Quality Management and Data Security Management.
- Develop, coordinate, publish, and verify necessary configurations required for integration of project data.
- Facilitate distribution of project data.
- Compile project data for review and coordination.
- Facilitate design review.
- Meet with relevant project stakeholders for review of turnover documents.
- Deliver model(s) and Facility Data to Owner for use in operations.

2.2.3 Discipline/Trade BIM Leads

Each discipline/trade should assign an individual to the role of BIM lead for the duration of the project. These individuals should have the relevant BIM experience required by the complexity of the project. The discipline/trade BIM lead maintains a continuous interface with the Project BIM Manager.

The responsibilities of the discipline/trade BIM leads for their respective discipline/trade include:

- Act as the lead BIM contact for the discipline/trade.
- Develop and manage exchange of models.
- Maintain and manage integrity of the model.
- Assume additional roles and responsibilities as defined to support the PxP and other contractual requirements.

2.2.4 Collaboration

The Project BIM Team should not rely on information exchange as the sole means of project communication; information exchange is not collaboration. The Project BIM Team should schedule regular BIM coordination meetings during which team members meet to discuss design and construction issues, using the model as a shared resource. The frequency of such interactions depends on the project's goals, BIM Uses, and Project BIM Team members' capabilities.

Through the BIM project planning process, the Project BIM Team should agree on how and in what ways the Project BIM Team members will collaborate using the BIM. All project stakeholders involved with modeling should develop and agree to a project-specific BIM PxP. This plan should include the requirements for information exchange among the parties, as well as for expected interactions with the model.

2.3 BIM PROJECT EXECUTION PLANNING

The BIM Project Execution Plan (PxP) is the central document for BIM implementation. This plan should be authored by the Project BIM Team collectively, and onboarding processes should be developed for Project BIM Team members who join the project after the initial plan has been developed. The steps of BIM PxP include:

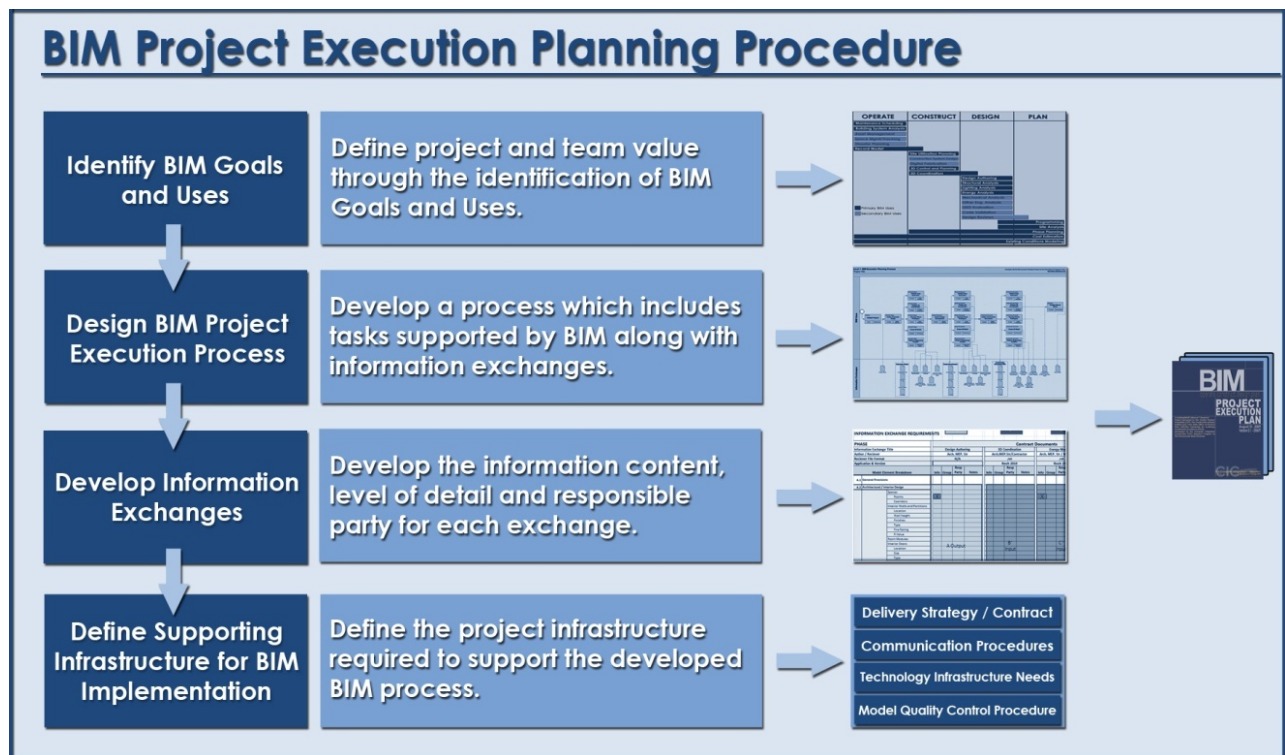


Figure 2. BIM Project Execution Planning Procedure⁶

The BIM PxP should contain all content necessary to document the process of implementing BIM on a project. Specific BIM PxP content requirements can be found in Section 4.1 of this document. Specifically, the team should develop plans and protocols to meet the OPR, including, as a minimum, file sharing and data security.

2.3.1 File Sharing Requirements

The file sharing requirements will vary depending on the project’s BIM Uses. At a minimum, the PxP should include a description of the:

- File system(s) the team will use to exchange, merge, and visualize models
- Schedule for or frequency of model updates and clash detection checks
- Tools and process to be used for clash detection checking
- Process to be used to generate drawings from coordinated models

2.3.2 Data Security

Owners should apply their existing data security standards to BIM protocols. The Owner should consider the security risks in terms of the protection of data. The Owner may wish to consider including data restrictions procedures, such as check-out and check-in, as well as stipulating the degree of access control for project participants. The Owner should require the Project BIM Team to complete a Data Security Protocol that complies with data security requirements as defined below.

2.3.2.1 Data Security Protocol (DSP). As part of the PxP, the Project BIM Team should develop and submit a Data Security Protocol (DSP) to the Owner that outlines security protocols to be implemented for the project. The DSP should be approved by the Owner prior to commencing work. At a minimum, the DSP should address:

- User access rights and permissions, outlining the various roles and degrees of access to the data. Roles should correlate to those defined in this guide and the BIM PxP. The DSP also should identify any additional user access required.
- Data protection, documenting how the data will be protected from:
 - Accidental loss
 - File Corruption (malware, viruses)
 - Misuse/negligence
 - Unauthorized conveyance
 - Deliberate attack (internal or external)
- Data process and handling protocol procedures for:
 - Exchange: How and with what frequency data will be exchanged. The DSP should align with other requirements in the BIM PxP and provide more detail specific to data exchange.
 - Maintenance: Describe the maintenance plan for all data sources, transmission devices, and storage devices used for the project.
 - Backup: Describe in detail the backup scheme implemented by the Project BIM Team, including frequency and retention of backups.
 - Archiving: Describe the storage, retrieval, and retention system to be used by the Project BIM Team.

2.4 MANAGING PROJECT REQUIREMENTS AND DELIVERABLES

2.4.1 Quality Planning

The entire Project BIM Team is responsible for quality control. However, the team should specify roles and responsibilities for model management and quality management for the project. The BIM PxP includes the management strategies for implementing BIM Uses and requirements. Quality

management processes should be used to ensure BIM is created for downstream uses of the model data.

The quality standards for the modeling activities should be discussed in detail at the early stages of the project. The following items should be developed by the Project BIM Team prior to the start of the modeling activities:

- A clearly defined Quality Assurance (QA) and Quality Control (QC) section within the BIM PxP
- A detailed QA approach for monitoring the modeling process
- A detailed QC approach to test the final deliverables for compliance with the quality standards

Each QA and QC activity should identify a Project BIM Team member specifically responsible for performing the task. The QA and QC approaches may also be incorporated into project contracts to ensure compliance.

2.4.2 Quality Assurance

Quality assurance procedures should be defined to ensure that the Project BIM Team members are performing the modeling process defined within the BIM PxP. The QA activities should also be consistent with the contract. Minimum QA activities should include:

- Definition and validation of testing or prototyping process to verify the model meets the minimum modeling requirements
- Validation of resource availability and capabilities to perform modeling activities
- Review of the information exchange definitions to assure that the deliverables are clearly defined and unambiguous

Additional QA activities may include:

- Periodic reviews of the modeling procedures to ensure that the activities being performed are consistent with the initial plan
- Documentation of the final modeling process for future reference by Project BIM Team members

2.4.3 Quality Control

Quality control tests should be defined to verify that the project deliverables comply with the project requirements. The Project BIM Manager should verify that all required deliverables are submitted and appropriately distributed as defined within the BIM PxP and any additional contractual agreements.

The following QC activities should be performed on all project data delivered to the Owner:

- Verification of the file or data exchange metadata as defined within the BIM PxP to include (as appropriate for the data exchange types):
 - Date of submission
 - File type (if file)
 - File name (if file)
 - Database access instructions (if there is database content)
 - General description of content

- Data schema (organization) of the file, including version, date created, and date modified by buildingSMART International (as appropriate)
- Description of the data exchange standard (if an open standard)
- Validation of the proper file type, naming convention, and appropriate software version
- Validation of final submitted model files (content) against the information exchange standard:
 - Manual validation of a specified sample of elements to verify that the information is properly structured and accurate. The sample size may vary based upon the level of criticality of the information element. The sampling procedure should be defined within the BIM PxP
 - Visual model inspection to review general model content
 - Inspection of the coordinate system to ensure that all model files have a common coordinate system
- Validation that model clashes have been resolved per the owners predefined minimum requirements and the criteria established within the BIM PxP.

The tests should be performed within an agreed-upon time before or after project milestones, as specified by the contract.

Additional QC activities may include:

- **Checks:** All Project BIM Team members should check the modeling content that they receive from other team members or the Owner to verify that the exchanges contain valid field entries and the proper information elements. Project BIM Team members should report any unusual information content.
- **Project Data Submission Log:** The Project BIM Team should develop and use a Project Data Submission Log, which includes model/modeling compliance issues and corrective actions. The Project BIM Manager should review the Project Data Submission Log, participate in collaborative team resolution, and provide direction when needed.

3. INFRASTRUCTURE AND STANDARDS

3.1 TECHNOLOGY INFRASTRUCTURE

For the purposes of this Guide, *infrastructure* is defined as the entire technology system used for a BIM project. It broadly encompasses BIM as the digital representation of the physical and functional characteristics of the built environment. The use of the term *platform* in this section applies to all project-relevant computing platforms (hardware and software), including but not limited to computers, servers, network devices, backup systems, and file-sharing systems, be they resident on a local network or web/cloud based. Computing platforms are part of an Owner's and other project stakeholders' technology infrastructure, along with networks and physical workspaces.

Computing platform generally and broadly applies to the computer hardware and operating systems (OS) on which computer programs or software are designed to run. The Owner should consider current hardware and OS, and software-specific application capabilities that exist within his/her own organization and the organization of other project stakeholders—as well as future hardware and OS capabilities that are preferred or can be anticipated. Infrastructure requirements should be considered for all project phases, from planning concept through what will be available during the facility management and operations phase of the project. For each project phase, the Owner should consider how information is created, stored, exchanged, secured, backed up or archived, and delivered, and whether each should be localized, cloud- or web-based, or a hybrid.

The Owner should require that any BIM-related work products be:

- Compatible with the Owner's computer platform requirements
- Capable of supporting current and legacy file formats
- Agnostic (i.e., designed to be compatible across most common OS, hardware or software systems), adaptable, and scalable with respect to potential future computing
- Able to support open, consensus standards to maximize future compatibility

Additionally, the Owner should consider requiring the Project BIM Team to use specific technology infrastructure to support the Owner's overarching business and project goals.

All technology infrastructure used for a project should be documented in the BIM PxP.

3.2 STANDARDS

3.2.1 Categories of Standards

The Owner should consider three broad categories of BIM standards: Organizational (internal) Standards, Primary Standards, and Reference Standards. Organizational Standards and Primary Standards for BIM (or appropriate portions of them) should be cited in the Owner's contract language with other stakeholders as the minimum acceptable standards when BIM is used and BIM deliverables are required. Merely citing the standard by name in a contract will not ensure that any use of BIM on a project or BIM deliverable required will meet an Owner's current and future needs.

Commentary:

Standards, as used in this guideline, are documents created to establish minimum levels of quality or achievement that are acceptable. Mandatory standards are those that have been formally adopted by a code agency or government entity (authority) such as municipalities, state or federal agencies, or departments. Voluntary standards are those non-mandatory standards used by Owners and other organizations and industries to set minimally acceptable standards of quality and achievement.

BIM is not a mandatory requirement in the United States. However, numerous countries around the world are beginning to write BIM requirements into their local and federal codes and statutes.

This section addresses the standards that Owners should reference when requiring BIM. These requirements include, but are not limited to, the Owner's internal policies, procedures, and requirements (Organizational Standards), as well as Primary and Referenced Standards. The Owner should include these standards in the OPR.

3.2.2 Standards in this Guide

The following standards should be used when applying this guide. Where the Owner already has Organizational Standards and OPRs or other agency-specific requirements that reference these standards or modify them, those standards should be used in conjunction with the guidance provided here. For dated references, only the edition cited applies. For undated references, the latest edition (including any amendments) applies.

The National BIM Standard– United States® (NBIMS-US™) Version 3 (V3), developed by the National Institute of Building Sciences buildingSMART alliance®, contains core consensus-approved standards regarding the exchange of information and standard practices for implementing BIM on a project. In addition to NBIMS-US™ V3, the buildingSMART International has developed multiple open information exchange standards. All information exchanges that require an open, standard format should comply with the information exchange standards approved within NBIMS-US™ V3 or approved by buildingSMART International. The current approved information exchange standards include:

- Construction to Operations Building information exchange (COBie) (NBIMS-US™ V3)
- Design to Spatial Program Validation (SPV) (NBIMS-US™ V3)
- Design to Quantity Takeoff for Cost Estimating (NBIMS-US™ V3)
- Design to Building Energy Analysis (BEA) (NBIMS-US® V3)
- Building Programming information exchange (BPie) (NBIMS-US™ V3)
- Electrical System information exchange (Sparkie) (NBIMS-US™ V3)
- Heating, Ventilation and Air Conditioning information exchange (HVACie) (NBIMS-US™ V3)
- Water System information exchange (WSie) (NBIMS-US™ V3)
- IFC 2x3 Coordination View (NBIMS-US™ V3) (http://www.buildingsmart-tech.org/downloads/view-definitions/coordination-view/sub-schema/CoordinationView_V20_EntityList_IFC2x3_Version16_Final.pdf)

These standards are available at no cost on the NBIM-US™ V3 website, <https://www.nationalbimstandard.org> [login required]

Approved by buildingSMART International but not yet included in NBIMS-US™ V3 are:

- IFC4 Reference View (buildingSMART International)
www.buildingsmart-tech.org/specifications/ifc-view-definition/ifc4-reference-view⁷
- IFC4 Design Transfer View (buildingSMART International)
<http://www.buildingsmart-tech.org/specifications/ifc-view-definition/ifc4-design-transfer-view>⁸

The NBIMS-US™ V3 also outlines a standard procedure for the development and documentation of a BIM PxP. (See NBIMS-US™ V3, Section 5.3: BIM Project Execution Planning Guide.) The Project BIM Team should follow this standard planning approach and document format.

NBIMS-US™ V3 also outlines by reference common information classifications defined within the OmniClass tables. When applicable, these information classification tables should be used to maintain standard information terminology and classifications.

In addition to NBIMS-US™-V3, there are other important standards that should be considered, including ISO 16739:2013,⁹ which outlines the data schema for the Industry Foundation Classes, an open data schema for storing information regarding a building project. The United States National CAD Standard® (NCS) Version 6 (V6) should also be used to ensure that the final design documentation complies with standards.

These standards sometimes can cover similar subject areas. While areas of overlap or conflict should be identified in the BIM PxP, it is possible for inconsistencies between the documents to come to light during the project. In these instances, the Project BIM Manager should be notified immediately. In response, the Project BIM Manager should determine, in consultation with the Owner and other stakeholders, which document will take precedence or whether amendments are required.

Where an OPR is unique and its Organization Standards differ or are more stringent than the minimum requirements established by referencing the NBIMS-US™, the NBIMS-US™ and its referenced standards should be formally extended, modified, and supplemented by clear and specific language in the Owner's contracts with other stakeholders.

3.2.3 Open Standards Format for Supporting Information

To ensure the life-cycle use of building information, information supporting common industry deliverables should be provided in open standards, along with their native file formats where applicable. The formats used should be specified in the BIM PxP and should include the following standards as appropriate:

- Industry Foundation Class (IFC), Model View Definition (MVD) formats. Three most commonly used model views are: Coordination View, COBie, and GSA Design to Spatial Program Validation¹⁰.
- Additional open standard formats, such as gbXML¹¹.

For those contract deliverables whose open standard formats have not yet been finalized, the deliverable should be provided in a mutually agreed upon format that allows the reuse of building information outside the context of the proprietary BIM software.

3.3 SPACE AND GRAPHICAL STANDARDS

Commentary:

This section identifies standards and requirements for graphical output and/or paper printing.

3.3.1 Owner-Specified Guidelines and Standards

The Owner should specify any additional guidelines and standards for drawings and spaces. Rooms and spaces should adhere to the format as defined therein.¹²

3.3.2 Drawing

The United States National CAD Standard® (NCS) should be incorporated by reference. Graphical output from BIM should comply with the NCS per the clarifications outlined in its BIM Implementation Section. Sheet sets should be organized and numbered per the NCS. All annotation symbol requirements therein should be adhered to.

3.3.3 Sheet Layout

In addition to the sheet layout requirements in the NCS, all sheets should maintain a consistent size and orientation throughout the set. Title block borders should maintain the same positioning on each sheet to allow for overlay and appropriate printing of the extents of the sheet.

3.3.4 Areas/Rooms/Spaces

Identifying tags and schedules for areas, rooms, and spaces should comply with the NCS.

3.3.5 Digital Documentation and Archiving

Copies of all approved submittals and other documents normally provided in traditional paper-based formats should be provided Portable Document Format (PDF) format, or other open electronic document format. Documents authored directly by the Project BIM Team should be transformed to PDF to allow searching of the documents and selection of text within the document. Documents authored by others, but used by the Project BIM Team (such as manufacturer product data sheets), should be provided as PDFs made available by the manufacturer. If not available as PDFs from their authors, the documents should be scanned to create PDF documents. PDFs should comply with the following ISO Standards:

- ISO 19005-3 (2012): Document management—Electronic document file format for long-term preservation—Part 3: Use of ISO 32000-1 with support for embedded files (PDF/A-3).¹³
- ISO 32000-1 (2008): Document management—Portable document format—Part 1: PDF 1.7.¹⁴

PDFs of construction documents should comply with the *Guideline for Construction PDF Documents*¹⁵ available from the Construction PDF Coalition. Additionally, the Construction PDF Coalition provides a web form for customizing the requirements on its website.

3.4 FILE STRUCTURE

Well-run BIM PxP and project data have well-defined project file naming and folder organization standards. The folder structure should be defined in the PxP. The project file sharing system should have the high level branches of the folder structure pre-populated in the system at the beginning of the project.

Since record documents will be distributed through the folder system, the project folder organization should align with the division of responsibilities of the stakeholders. It is beneficial to establish a file permission strategy on the shared folder system, where only appropriate organizations in the project have write permissions within their assigned folders, and the remainder of the team has read-only permission. At the highest level, the folder system should be controlled by the project administration.

File naming conventions similarly are needed to establish coherency of project documentation and simplify high level understanding of the file contents. The file naming system may identify a set of data fields to be contained in the file name. A typical file standard will establish a clear order on file name attributes with a reserved delimiter such as underscore (_) to identify the divisions between fields. The NCS provides a proposed naming convention for files, including standard contract documents <https://www.nationalcadstandard.org/ncs6/>

3.4.1 Owner-Specified Requirements

The project should comply with any Owner-specified platform requirements. The following sections are provided as examples for Owners who do not have predefined requirements. Regardless of the requirements used, the naming conventions should be consistent.

3.4.2 Folder Naming

Folder names should be numbered or alphabetized to control order. Folder names should be clear indicators as to what the folder contains (e.g., a folder for Models could be named *07_ Models*).

3.4.3 File Naming

File names should contain a discipline designator (such as “A” for Architectural) as defined in the NCS. Custom naming schema should be clearly documented in the BIM PxP.

- Sheet file names (regardless of file format, such as PDF) should comply with NCS, unless otherwise dictated or allowed by the Owner. At a minimum, they should include the sheet number (e.g., A-101.PDF)
- Model file names should contain discipline designator within the name, as outlined in the NCS (e.g., A-FP01.ext).

3.4.4 Component Naming Conventions

The naming conventions used for the following should be documented in the BIM PxP: e.g. Systems/Elements/Objects/Components/Parameters.

3.4.5 Submittal Package

All files should be organized and stored in an appropriately named folder as part of the submittal package. The submittal package should contain the deliverables as outlined in this document, the BIM PxP, and the project contract(s). The submittal package should also contain any support, source, reference, and/or linked files necessary to maintain file integrity.

3.4.6 File Sharing

The Owner should require that the team use a model sharing system. If the Owner does not designate a system, then the Project BIM Manager should provide a model sharing system for the sharing of individual and merged models. The model sharing system should consider:

- Project BIM Team access, including real-time access and synchronization of models
- Automated versioning of models
- Data security
- Maintenance and archiving of the previous model versions
- Permission-based access for each team member to upload their models

3.4.7 Data Transmittal Requirements

At a minimum, all transmitted data should include the following printed on the media or included as metadata as applicable per media type (i.e., CD/DVD would have printed labels, whereas model files would include metadata):

- Project title
- Project location
- Contract number
- Designer(s) of record and/or contactor(s) (general or sub)
- Classifications for the data (i.e., sensitive, classified, etc.)
- Contents of the transmittal, including date created, date modified, version, etc.
- Author and/or responsible individual
- Recipient(s)

Any additional information required by the Owner or identified in the BIM PxP should be included.

3.5 MODEL STRUCTURE

Model structure defines the highest level of decomposition (breakdown into component parts) of the digital model(s). Model structure should align with the Owner's Project Requirements (OPR) and selected BIM Uses, as defined in NBIMS™-V3 Section 5.9: The Uses of BIM.

If, for technological limitations or work share requirements, the model must be decomposed to a structure below a single building, then each model should be clearly denoted as a portion of a building,

and one composite model per building should be provided for each deliverable. Separate model files (i.e., discipline-specific or separated by level, etc.) are insufficient as a final deliverable. A holistic composite model is necessary, even if the composite model is only used as a container for links and/or references (i.e., a means of packaging all related files for delivery).

The model structure should be clearly defined in the BIM PxP.

3.6 MODEL REQUIREMENTS

The Owner should develop or adopt/adapt well-defined contract requirements to ensure the project model data requirements are met. The BIM Contract Requirements should address model requirements such as modeling responsibility, the modeling process, minimum model contents, Facility Data to be captured, and Level of Development (LOD). Because proper BIM planning at project inception is imperative to success and demands thorough understanding, it is recommended that the Owner procure the services of a specialized BIM consultant or identify one of the contracted parties to assist in identifying and defining the model/modeling requirements.

Alternatively, the Owner could consider following the example of successful Owner implementation of BIM requirements within NBIMS-US™ V3, Section 5.8: Practical BIM Contract Requirements, which outlines BIM Contract Requirements developed by the United States Army Corps of Engineers (USACE) to “ensure consistent and usable BIM project deliverables and BIM process. These BIM Contract Requirements consist of Contract Language, a Project Execution Plan (PxP) Template, and a Minimum Modeling Matrix (M3).”¹⁶

If the USACE M3 is adapted for use, it should reflect the Owner’s particular requirements and objectives, specifically in the Instructions (Tab 2), Phasing (Tab 3), and Model Element LOD/Grade goals. Once the template is complete, the tables should be restricted to read-only for the project (unless project-specific variations are specifically desired and permitted in the contract).

It should be understood that with any BIM Contract Requirements—developed or adopted and adapted—there may be an information gap between what is required for the final BIM deliverables to the Owner and what is required for each team member to perform their required and/or recommended BIM Use. It is the responsibility of the individual members of the Project BIM Team to provide the information necessary for the project’s selected BIM Uses.

Generally, BIM should include the necessary process and content to produce accurate construction documents (e.g., plans, elevations, sections, schedules, and integrated specifications) and Record Model project data (e.g., equipment, manufacturer, and model number).

3.6.1 Modeling Responsibility

Project stakeholders’ modeling responsibilities should be clearly defined within the BIM PxP. Each model element should be assigned to a Model Element Author (MEA) and a corresponding LOD for the element clearly defined; consequently, each MEA is required to provide the elements at the LOD specified in the BIM PxP or a corresponding LOD worksheet. Each MEA is responsible for attaching any data or metadata to the model elements as required by the contract, BIM PxP, or as needed to facilitate the project’s selected BIM Uses.

Model elements are most typically assigned to a MEA that also has the design or construction responsibility of the element. For example, a structural engineer or modeler is typically the MEA for structural slabs during the design phase. Models are typically divided by discipline or trade. As such, it is important that not only the MEA is identified for any given element but also the model in which the element is to reside. While there may be a duplication of some elements across multiple models, an MEA and LOD worksheet identifies the source responsible for the information and, therefore, that source is considered to be accurate and reliable.

3.6.2 Modeling Process

The project participants should fully implement industry- and software vendor-identified best practices and workflows for all aspects of modeling. These include, but are not limited to, using 3D geometry for representing physical characteristics of project and facility components and elements, using relevant object categories when possible, adding sufficient attribute information to elements, following proper naming conventions for all levels and types of data and metadata, and setting up shared resources and parameters to enable automatic display or extraction of model information to other formats (e.g., schedule or tabular formats).

Model elements should be used to produce representations shown in graphical legends and should match the graphical representations shown in other views and drawings. Model elements requiring a host or connection to some other component should be done within the same model whenever possible (e.g., a door is not freestanding but requires a wall as its host, so both door and wall should reside in the same model). Consideration should be given to how project phasing, display of content by other discipline/trade models, and workflows or features associated with specific software will be executed. The overall process utilized should be documented in the BIM PxP.

Modeling process requirements should not be overly prescriptive, but the general and minimum expectations should be established and responsibilities clearly defined as part of the BIM PxP.

Generally, the modeling process and responsibilities should include:

- Use of a standardized classification system organized according to NBIMS-US™ Section 2.5: OmniClass Table 21 Elements
- Use of IFC-compliant software (within one version of the latest certification available)
- Use of BIM software (within one release version of the latest available) that is capable of meeting the OPR per project-specific selected BIM Uses
- Use of the appropriate tool(s) within the BIM software selected to create or document the building element being represented
- The model(s) should remain current and represent design intent. The Project BIM Team should update the model(s) with any revisions as required to complete the work, or at a minimum, at each project milestone.

The Project BIM Team should document the choice of platform in the BIM PXP.

While the modeling process and corresponding models may vary per project, the following graphic is an example of typical model progression across project phases and could serve as an information flow map for an Owner implementing BIM requirements.

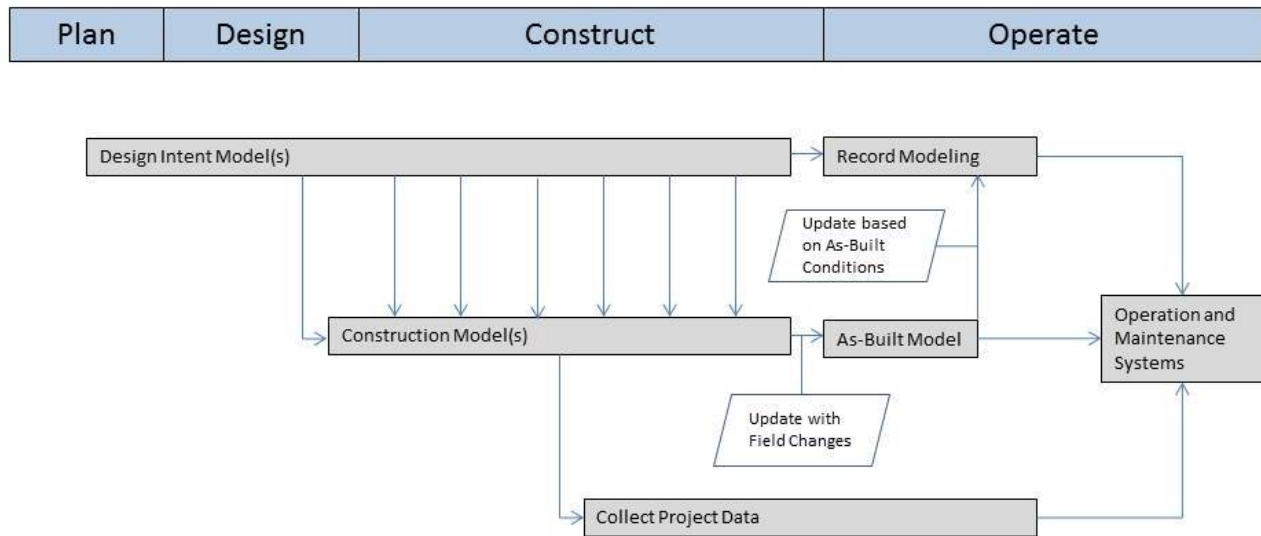


Figure 3. Lifecycle Model Requirements: A Sample Process

Project BIM Team members should use BIM application(s) and software(s) to develop and document the project. Design professionals should create the Design Intent Model(s) and use them to produce accurate construction documents. Construction professionals should use the Design Intent Model(s) and the construction documents as a starting point for developing the Model(s). Similarly as the Construction Model(s) are progressed during construction, they serve as the basis for Project Data (which oftentimes includes tabular or textual-based information). Also during construction, the various Construction Model(s) combine to develop an As-Built model that captures more-detailed construction conditions (e.g., trade-specific fabrication models). As the project progresses, the As-Built Model—along with the continual stream of project correspondence and information back to the Design professionals—facilitates the update of the Design Intent Model(s) into a Record Model. The construction model typically has highly detailed components that are not always an efficient source of information for operations and maintenance; hence the Record Model is developed from the Design Intent Model to provide a lightweight model. In general, the Record Model, along with the As-Built Model and Project Data, provides facilities management personnel with varying degrees of information in multiple formats to best support FM uses and activities.

3.6.3 Model Contents

Models and corresponding elements or sub-elements should be modeled at full scale (1:1) using actual (not nominal) dimensions. Models should include all content necessary to meet the requirements in the BIM PxP. Further content may be specified in the BIM LOD. General considerations for model content requirements include the following:

- Models should include all system components and connection points to utilities and/or components, whether site or building related. These components should include all information

parameters and annotations required to produce accurate drawings, details, schedules, and sheets.

- All Furniture, Fixtures, & Equipment (FFE) should be properly identified by make, model number, and building/department/room or space in which it resides.
- Clearance zones required for code compliance, access (such as needed for equipment, hatches, and panels), safety, maintenance, gauge reading, and other operations should be modeled.
- Any required layer of the systems, for example, insulation, double layered systems, or enclosures should be modeled.

3.6.4 Project Data

The Project BIM Team should develop Project Data for all elements that make up the model (e.g. doors, air handlers, electrical panels, etc.). This Project Data should include all material definitions and attributes that are necessary for the project planning, design, construction, and operations. All elements should be assigned the proper classification and category. All life safety and fire protection components and systems should be clearly identified as such. Minimum Project Data requirements should be identified in the BIM PxP.

3.6.5 Level of Development (LOD)

The Owner should define the desired LOD for BIM content that enables the project's specific organizational and project goals. The Owner may elect to reference an LOD standard holistically for all model content, or require a specific LOD per model or model element *and* by discipline, trade, and/or phase. When implementing an LOD, the Owner can use the default LOD, a template LOD, or develop a custom LOD. It should be understood that BIM cannot be successfully accomplished without some LOD defined for each model deliverable, which is typically recorded in a spreadsheet or worksheet. In general, the standard LOD definitions are defined in the BIMForum LOD Specification 2015, which is available as part of NBIMS-US™V3.¹⁷

Default LOD: If the Owner elects to reference an existing LOD without making modifications, use of the USACE Minimum Modeling Matrix (M3) is recommended, as it defines a minimum LOD of elements for a design model and a Record Model deliverable.

Template LOD: Several LOD templates are available to the Owner, but it is recommended that the Owner use a nationally recognized form. The Owner may adapt the USACE M3¹⁸, use the AIA G-202 – 2013 document¹⁹, or implement the Penn State University Model Element Matrix²⁰ or the PSU Project Execution Planning Guide.²¹ Alternatively, the Owner may elect to use the worksheet provided with the BIMForum LOD Specification 2015 Model Element Matrix.

Custom LOD: Owners may elect to develop his/her own LOD Matrices identifying LOD and model element authors for models or model elements. Owners should adhere to the BIMForum LOD Specification 2015 definitions to avoid confusion among the Project BIM Team members.

At a minimum, BIM content should be developed to an adequate level to support:

- Establishment and communication of design intent

- Necessary content for construction documents
- Overall BIM requirements developed by the Owner
- Optional BIM requirements from this Guide chosen by the Owner
- Essential BIM Uses as identified in Section 4.2.2 of this document
- Enhanced BIM Uses that the Owner selects from Section 4.2.3 of this document
- Additional data and metadata necessary to achieve additional BIM Uses as documented in the BIM PxP

In summary, diligence should be given during project planning to select appropriate BIM Uses and develop a detailed BIM PxP, as these are the impetus for determining and assigning an adequate LOD.

4. EXECUTION

Commentary:

The BIM PxP should be developed to provide a master information/data management plan and assignment of roles and responsibilities for model creation and data integration at project initiation. The team members and Owner should jointly agree on how, when, why, to what level, and for which project outcomes BIM will be used.

In those projects where construction information is available during the design phase, the BIM PxP would address both design and construction activities. The BIM PxP should be considered a living document and should be continually developed and refined throughout the project development life cycle.

4.1 BIM Project Execution Plan (PxP)

BIM Project Execution Planning is “a process performed by a Project BIM Team to design the execution strategy for implementing BIM on the project. The final product of the execution planning process is a documented BIM Project Execution Plan (PxP).”²² To maximize the effectiveness of BIM, the execution plan should be designed in the early stages of a project and focus on the decisions required to define the scope of BIM implementation on the project, identify process impacts of using BIM, define the team characteristics needed to achieve the modeling, and quantify the value proposition for the appropriate level of modeling at the various stages in the project life cycle.

4.1.1 Development of the BIM PxP

The BIM PxP, created early in the project, should be considered a living document that evolves throughout the project. The BIM PxP should be developed and refined by the Project BIM Team to document the collaborative process of how BIM will be executed throughout the project life cycle.

The initial version of the BIM PxP should be developed by the Project BIM Manager, assisted by the Owner and the Project BIM Team (as referenced in NBIMS-US™ V3, Section 5.4), to detail the BIM requirements for the project. It should be submitted for approval to the Owner.

The BIM PxP should be refined by the entire Project BIM Team as design progresses. If a contractor is not procured for preconstruction services, the design team and Owner should develop the collaborative BIM PxP and coordinate with the contractor when the contractor is procured.

The BIM PxP should be reviewed and coordinated with the entire Project BIM Team prior to construction and submitted to the Owner for final approval. The BIM PxP should be reviewed with specialty contractors prior to execution of their contracts. Any revisions to the BIM PxP should be submitted to the Owner for final approval.

The Project BIM Team should use the PxP template in the NBIMS-US™ V3, Section 5.4: BIM PxP Content, which identifies the minimum BIM requirements to develop an acceptable BIM PxP. The PxP should specify how different versions of the model will be stored and retrieved as the project progresses.

4.2 BIM Uses

Commentary:

BIM Uses can be broadly categorized into authoring tools, auditing tools, and analytic tools. Some applications are designed or written to address a single task. Other uses are written to perform multiple tasks and are often referred to as “integrated software tools.” The BIM Uses listed below can be either single-task applications or be part of integrated software tools.

BIM Uses focused on single tasks should be interoperable with the other BIM Uses used on a project. “Interoperability” is the ability of diverse systems and organizations to work together (inter-operate). Interoperability can be used in a technical systems engineering sense, or in a broader sense, including social, political, and organizational factors that affect system-to-system performance.

Interoperable BIM Uses are software programs designed to use the inputs and outputs of other BIM applications to perform the task and generate the output that the BIM Use being applied was designed to perform. Interoperable software reduces the amount of time required to manually exchange information and input it into single-task software. It also minimizes the risk of data transfer errors often caused by manual information exchange methods.

4.2.1 BIM Use Definition

A BIM Use is a method of applying Building Information Modeling during a facility's life cycle to achieve one or more specific objectives.²³ The nature of BIM technology allows different Owners to use the model in multiple ways, depending on their projects’ specific needs. As the project moves from phase to phase, the information contained within the BIM grows in both quantity and specificity.

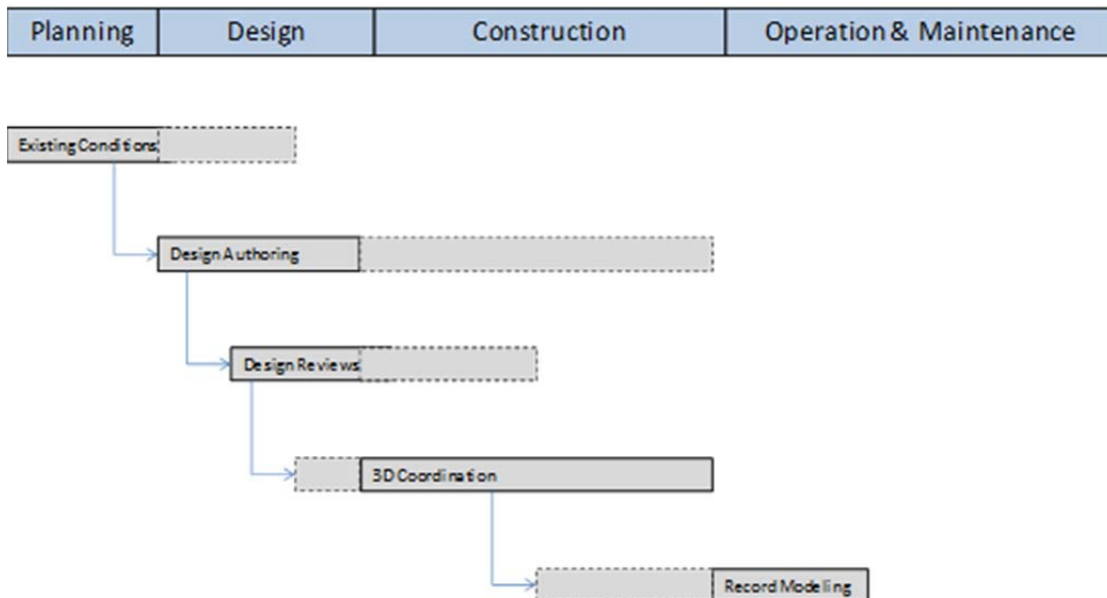


Figure 4. Minimum BIM Example

BIM Uses are characterized in this Guide as Essential BIM Uses, Enhanced BIM Uses, and Owner-Related Uses of BIM. The brief definitions below have been extracted and enhanced from the BIM Project Execution Planning Guide and the BIM Planning Guide for Facility Owners. BIM Uses should be considered and aligned with project goals, selected based on added value to the Owner, and clearly documented in the BIM PXP. This guide uses the term “building” generically, in keeping with the terminology of “Building Information Modeling.” It is intended to apply to information modeling for the built environment: site elements and facilities as well as buildings.

4.2.2 Essential BIM Uses

The following BIM Uses should be applied on all projects:

- **Existing Conditions:** A process in which the Project BIM Team develops a model (geometry and information) of the existing conditions for a site, facilities on a site, or a specific area within a facility. This model can be developed in multiple ways, depending on what is desired and what is most efficient. Once the model is developed, it can be queried for information and can be modified.
- **Design Authoring:** A process in which software is used to develop a BIM of the design. Design authoring tools are a first step toward implementing BIM, and the key is integrating the geometric representation of elements in the model with element properties. Construction drawings should be produced from and remain consistent with the models.
- **Design Review:** A quality management process in which a model is used to allow stakeholders to verify whether the design meets the OPR and to visualize criteria such as layout, sightlines, lighting, security, ergonomics, acoustics, textures and colors, etc. Virtual mock-up can be done in high detail, even on a part of the building, such as the façade, to quickly analyze design alternatives and solve design and constructability issues. If properly executed, these reviews can resolve design issues.
- **Coordination:** A process in which model elements can be organized and coordinated, and clash detection software can be used to identify conflicts between model elements within the BIM.
- **Record Modeling:** A process in which a model contains an accurate depiction of the physical and functional conditions and environment of a facility and its assets at a point in time. With the continuous updating and improvement of the Record Model and the capability to store more information, the model contains a true depiction of space with a link to information, such as serial codes, warranties, and maintenance history of all the components in the building. Eventually, the Record Model also contains information linking pre-build requirements to as-built conditions. This allows the Owner to monitor the project relative to the OPR.

4.2.3 Enhanced BIM Uses

- **Cost Estimating:** A process in which a model can be used to generate an accurate quantity take-off and cost estimate early in the design process and provide cost effects of additions and

modifications, with the potential to save time and money and avoid budget overruns. This process also allows designers to see the cost effects of design modifications in a timely manner.²⁴

- **Phase and 4D Planning:** A process in which a four-dimensional (4D) model (a model with the added dimension of time) is used to effectively plan the phased occupancy in a renovation, or to show the construction sequence and space requirements for laydown areas and temporary construction on a building site. 4D modeling is a powerful visualization and communication tool that can give a Project BIM Team a better understanding of project milestones and construction plans. (See also Construction Systems Design).
- **Site Analysis – Development:** A process in which BIM and GIS tools are used to evaluate properties in a given area to determine the most optimal site location for a future project. The site data collected is used to first select the site and then position the building based on the OPR.
- **Site Utilization – For Construction:** (See Phase and 4D Planning).
- **Digital Fabrication:** A process that uses machine technology to prefabricate objects directly from a model. The model is used as input into manufacturing and fabrication equipment for production of components, systems, and assemblies.
- **3D Location and Layout:** A process that utilizes a model to lay out the building assemblies and produce lift drawings, which are the two-dimensional (2D)/three-dimensional (3D) component drawings used by forepersons during site construction.
- **Engineering Analysis:** The integrated and/or interoperable tools that allow the use of the physical and material properties of project elements, assemblies, and systems within the model for engineering analysis, simulation, and documentation. Examples include structural engineering, energy analysis, daylighting, HVAC, plumbing, fire protection, life safety, and electrical systems design and documentation.
- **Sustainability Analysis:** The integrated and/or interoperable tools that allow the use of the physical and material properties of building elements, assemblies, and systems within the model for developing sustainable design elements. Examples include documenting sustainable features and attributes and documenting sustainable features for compliance with building rating systems.
- **Codes and Standards Compliance:** A process in which validation software is used to check the model parameters against applicable codes and standards. Code and standard validation is currently in its infant stage of development within the United States and is not in widespread use. However, as model checking tools continue to develop code and standard compliance software with more codes and standards, validation should become more prevalent within the

design industry. Examples may include building code compliance, energy code compliance, accessibility compliance, etc.

- **Construction Systems Design:** A process to design and analyze the contemporary systems (e.g. formwork, glazing, tie-backs, etc.).

4.2.4 Owner-Related BIM Uses

- **Asset Management:** A process in which project data is linked to a Record Model to aid in the maintenance and operation of a facility and its assets. These assets, consisting of the physical building, systems, surrounding environment, and equipment, must be maintained, upgraded, and operated at an efficiency that will satisfy both the Owner and users in the most cost-effective manner.
- **Disaster Planning and Management:** A process in which emergency responders have access to critical building information in the form of a model and information system. The BIM provides critical building information to the responders to improve the efficiency of the response and minimize the safety risks. The dynamic (real time) building information could be provided by building automation systems (BAS), life safety (fire alarm and fire protection), and security systems, while the static building information, such as geometry, floor plans, points of egress and access, and equipment schematics, reside in a model. These systems are integrated and made interoperable so that emergency responders can link to an overall system. The BIM—coupled with the BAS, life safety, and security systems—clearly displays where the emergency is located within the building, possible routes to the area, and any potentially hazardous locations within the building.
- **Space Management:** A process in which BIM is used to effectively distribute, manage, and track appropriate spaces and related resources within a facility. A model allows the facility management team to analyze the existing use of the space and effectively apply transition planning management towards any applicable changes. Maintenance scheduling is a process in which the functionality of the building structure (walls, floors, roof, etc.) and equipment serving the building (mechanical, electrical, plumbing, etc.) are maintained over the operational life of a facility.

4.3 Model Deliverables

The project execution plan should clearly define the deliverables that are to be transmitted to the owner at the completion of construction. These deliverables may include a design intent model in both native and open standard format; a construction model; and operations and maintenance data (see Figure 3). The model content for each of these deliverables should be clearly defined within the contract documents for each responsible party, as well as in the BIM PxP. The following sections provide a description of each deliverable.

Design Intent Model: The Model(s) from the design team that captures the intended design. This model is used for project BIM Use execution, digital design mock-ups, decision support, and coordination. The approved model is a contract document for submission to the Owner and for construction handover.

Construction Model: The Model(s) based on criteria that relates the facility's fabrication and construction. These models are developed from the Design Intent Model during construction coordination. The files are typically combined using a cross-platform 3D model viewing software to accommodate subcontractor file formats and a higher LOD. This new information is reviewed by the design team for approval.

As-Built Model: The Model(s) capturing conditions at the completion of construction. It should be initially based upon the Design Intent Model and increasingly incorporates project information as construction progresses.

Record Model: The Model(s) prepared for operations and maintenance. Typically the Design Intent Model is used as a baseline and then is updated to incorporate all the changes during construction. This is intended to be a "lightweight model" with enough detail to enable facilities management operations without overly detailed elements. This model may also include laser scan data. The Record Model will contain accurate attribute data on major equipment and systems for facilities management documented in the BIM PxP. The Record Model typically is updated by the designer from information provided by the contractor (e.g., digital mark-ups, photography, and laser scans). It may be used during commissioning or updated to reflect commissioning data.

Operations and Maintenance Data: This deliverable includes asset inventory with asset name, classification, and location. Owners should consider operations and maintenance data deliverables to include attributes such as make, model, and serial number of key components. Construction Operations Building information exchange (COBie), is an example of facilities data exchange (as referenced in NBIMS-US™ V3, Section 4.2.)

The Project BIM Team should provide deliverables in compliance with the phases described in the BIM PxP. At each phase, the Project BIM Team should provide a written report confirming that consistency checks, as identified in the Quality Management section of the BIM PxP, have been completed. This report should be discussed as part of the review process and should address any identified interferences and constructability issues.

The Project BIM Team should provide the Owner with the following, as identified in the BIM PxP:

- Updated BIM PxP
- 2-D drawing deliverables printed directly from the model in PDF format. Documents are to be stamped and signed in traditional practice to comply with the Owner Design and Construction Standard and local permitting requests.
- Construction Model(s) per discipline

- A 3-D interactive review format of the model in the latest version of software, as required in the BIM PxP. The file format for reviews can change between submittals.
- Construction Submittals. All construction submittals, requests for interpretation (RFIs), and change order requests (CORs) should make use of the model for clear interpretations.
- Record model(s)
- A report generated from the model of all assets and attributes
- A report verifying the model/modeling compliance with Owner Project Data exchange requirements
- A report verifying the accuracy of the delivered model elements and asset attributes
- An interference (clash detection) check report
- A list of all submitted files. The list should include a description, directory, and file name for each file submitted. Identify files that have been produced from the submitted model and Project Data.

The BIM PxP should define additional model deliverables for the project. Deliverable deadlines should be aligned with project milestones, for example:

- Schematic Design
- Detailed Design
- Construction Documents
- Bid/Procure
- Contract
- Notice to Proceed
- Construction
- Substantial Completion
- Commissioning
- Final Inspection
- Occupancy/Operations and Maintenance
- 10-Month Warranty Review

5. GLOSSARY

(Please note that references to “model” and any related requirements refer to individual models, such as a particular discipline/trade model, as well as to composite or federated models.)

As-Built Model: The model(s) capturing conditions at the completion of construction. It should be initially based upon the Design Intent Model and increasingly incorporates information as construction progresses.

Attributes: descriptors that represent the characteristics of elements (e.g., name, length, weight, price, manufacturer, model, warranty information, etc.)

BIM Element Matrix: A structure that defines the elements to be modeled for each phase of the design and construction process.

BIM Project Execution Plan (PxP): A plan that defines how BIM will be implemented throughout the project life cycle.

BIM Use: A method of applying Building Information Modeling during a facility's life-cycle to achieve one or more specific objectives, as defined by Kreider, R., and Messner, J. I. *The Uses of BIM* (2013). Pennsylvania State University, University Park, PA. <http://bim.psu.edu>

Building Information Model (BIM)/Model, as defined in the National BIM Standard – United States® Version 3: The digital representation of physical and functional characteristics of a facility. As such it serves as a shared knowledge resource for information about a facility, forming a reliable basis for decisions during its life cycle from inception onwards.”

Construction Model: The model(s) based on criteria that relates the facility’s construction.

Construction Operations Building information exchange (COBie), as defined in the National BIM Standard – United States® Version 3: The format for the exchange of information about building assets such as equipment, products, materials, and spaces.

Data Security Protocol (DSP): A definition of the security requirements for data to be implemented for the project and incorporated into the BIM PxP.

Design Intent Model: The model(s) from the design team that captures the intended design.

Industry Foundation Class (IFC): The Industry Foundation Class (IFC) is a data standard (specification) maintained by buildingSMART International and accepted as ISO Standard 16739. It is intended to allow the exchange of building and construction industry data between software applications. It is a platform neutral, open file format specification that is not controlled by a single vendor or group of vendors.

Level of Development (LOD) (as defined the BimForum website, November 2015): The degree to which the element's geometry and attached information have been thought through—the degree to which Project BIM Team members may rely on the information when using the model.

Model: See Building Information Model.

Model Element: A portion of the model(s) representing a major component, assembly, or construction entity (part) which, in itself or in combination with other parts, fulfills a predominating function of a construction entity.

Model Element Author (MEA): The party responsible for creating or updating any given model element.

Model View Definition (MVD): An IFC View Definition, or Model View Definition, MVD, defines a subset of the IFC schema that is needed to satisfy one or many exchange requirements of the building industry. The method used and propagated by buildingSMART to define such Exchange Requirements is the Information Delivery Manual, IDM (also ISO/DIS 29481). An IFC Model View Definition defines a legal subset of the IFC Schema (being complete) and provides implementation guidance (or implementation agreements) for the IFC concepts (classes, attributes, relationships, property sets, quantity definitions, etc.) used within this subset.

OmniClass™: A classification system for the construction industry.

Owner: Person or entity that represents and controls financial interests of a property, building, or development.

Owner's Performance Requirements (OPR): The Owner's written documentation of the functional requirements of the building and expectations of how it will be used and operated. They include project and design goals, budgets, limitations, and schedules.

Organizational Standards: Standards unique to every Owner and include the Owner's written policies, procedures, and processes. The Owner is encouraged, when creating any Organizational Standards that will be used as part of the contract language, PxPs, and OPRs, to document them in writing, especially when it comes to expected outcomes and deliverables.

Primary Standards: Standards written typically by local, national, and international organizations and industry groups by consent or consensus that establish minimum levels of performance and quality and are used for comparative evaluation and verification of compliance. Primary Standards are often adopted by an agency, organization, industry, or government body.

Project Data: Project data is the written and graphical information used to plan, design, construct and operate the building. It should include Model files (BIM, CAD); drawing files (CAD, electronic sheets such as PDFs, and/or plot files); electronic manuals; tabular/textual information derived from BIM (e.g., spreadsheets); and reference files necessary to supplement other project data.

Project Life Cycle: The full development of a building project from conception to demolition, including four phases (Planning, Design, Construction, and Operations).

Project Quality Management: a subset of project management that includes the actions required to ensure that the project will satisfy the needs for which it was undertaken. It consists of quality planning, quality assurance, and quality control.

Project BIM Team: typical members include the Owner, architect, engineers, contractors, subcontractors, and other stakeholders. The Project BIM Team members can vary by phase; stakeholders or participants will be introduced to and leave the Project BIM Team as the project progresses through its life cycle.

Record Model: The model(s) prepared for Operations and Maintenance. Typically the Design Intent Model is used as a baseline and then is updated to incorporate all the changes during construction. This is intended to be a lightweight model with enough detail to enable facilities management operations without overly detailed elements.

Reference Standards: Standards included by reference in Organizational Standards, Primary Standards, and Contract Documents and carry the full force and effect of their requirements as if their entire text had been replicated in full where referenced. Care should be taken when including Reference Standards in an Organizational Standard, Primary Standard, or Contract Document to be specific whether compliance with the entire Reference Standard is required or whether only compliance with certain portions of the Reference Standard is required. Reference Standards not only reduce a primary document's size, but also improve a primary document's usefulness and effectiveness by relying on other standards-development organizations with better-suited expertise on particular subjects.

6. REFERENCE DOCUMENTS

- The American Institute of Architects, AIA Document G202™ – 2013, *Project Building Information Protocol Form* (2013).
<http://www.aia.org/aiaucmp/groups/aia/documents/pdf/aiab099086.pdf>
- buildingSMART International, *IFC4 Design Transfer View*. <http://www.buildingsmart-tech.org/specifications/ifc-view-definition/ifc4-design-transfer-view>
- buildingSMART International, *IFC4 Reference*. www.buildingsmart-tech.org/specifications/ifc-view-definition/ifc4-reference-view
- Construction PDF Coalition, *Guideline for Construction PDF Documents* (August 2014).
<http://cpcoalition.com/guidelines/>
- Computer Integrated Construction Research Program. *BIM Project Execution Planning Guide – Version 2.1*. Pennsylvania State University (2011). <http://bim.psu.edu>
- Green Building XML (gbXML) Schema Inc., *gbXML Version 6.01* (2015) <http://www.gbxml.org/>
- International Property Measurement Coalition, *International Property Measurement Standards* (2014), www.ipmsc.org
- International Standard Organization, ISO 16739:2013, *Industry Foundation Classes (IFC) for data sharing in the construction and facility management industries* (2013).
http://www.iso.org/iso/catalogue_detail.htm?csnumber=51622
- International Standard Organization, ISO 19005-3: *Document management—Electronic document file format for long-term preservation—Part 3: Use of ISO 32000-1 with support for embedded files* (PDF/A-3) (2012).
<http://webstore.ansi.org/RecordDetail.aspx?sku=ISO%2019005-3:2012&source=google&adgroup=iso&gclid=CO7Zwc6X380CFYsmhgodTplJrw>
- International Standard Organization, ISO 32000-1: *Document management—Portable document format—Part 1: PDF 1.7* (2008).
<http://webstore.ansi.org/RecordDetail.aspx?sku=ISO%2032000-1:2008&source=google&adgroup=iso&gclid=CKaGurKY380CFcNahgod0ScCNg>

- Kreider, R., and Messner, J. I. *The Uses of BIM* (2013). Pennsylvania State University, University Park, PA. <http://bim.psu.edu>
- Levendowski, Brian, What Is Civil Information Modeling? Civil Information Modeling blog. (2013). <http://civilinformationmodeling.net/what-is-civil-information-modeling>
- McGraw Hill Construction (Dodge Data & Analytics) *Business Value of BIM in North America SmartMarket Report* (2012). <http://analyticsstore.construction.com/index.php/2012-business-value-of-bim-in-north-america-smartmarket-report.htm>
- McGraw Hill Construction (Dodge Data & Analytics), *The Business Value of BIM for Owners SmartMarket Report* (2014). <http://analyticsstore.construction.com/index.php/smartmarketreports/BIMforOwnersSMR.html?sourcekey=presrel>
- National Institute of Building Sciences buildingSMART alliance®, *National BIM Standard – United States® Version 3* (2015). <https://www.nationalbimstandard.org/>
- National Institute of Building Sciences buildingSMART alliance®, *United States National CAD Standard® Version 6* (2014). <https://www.nationalcadstandard.org/ncs6/>
- Project Management Institute, *A Guide to the Project Management Body of Knowledge (PMBOK® Guide)—Fifth Edition* (2013). www.pmi.org.
- Tice, John, Bullock Tice Associates (June 2016). <http://www.bulltice.com/>
- Tice, John, Bullock Tice Associates BIM DONE RIGHT, a BIM-enabled, client-focused delivery approach and strategy (2015). <http://www.bulltice.com/>
- United States Army Corps of Engineers, CAD/BIM Technology Center (2016). <http://www.erdc.usace.army.mil/Media/Fact-Sheets/Fact-Sheet-Article-View/Article/476676/cadbim-technology-center/>

- United States Army Corps of Engineers, USACE Minimum Modeling Matrix (M3), (2013). (Available as part of the National BIM Standard – United States® Version 3, Section 5.8: Practical BIM Contract Requirements, U.S. Army Corps of Engineers BIM Contract Requirements for Design Build Projects) <https://www.nationalbimstandard.org>
- United States Department of Defense Military Health System, *MHS Minimum BIM Requirements* (MBR) – Standards (2014). <https://home.facilities.health.mil/bim-for-the-mhs>
- United States Department of Veterans Affairs, VA BIM Guide (2010). va.gov/til/bim/BIMguide/
- United States General Services Administration, Federal Acquisition Regulation (FAR) Part 27, Patents, Data, and Copyrights (June 2016). <https://www.acquisition.gov/?q=/browse/far/27>
- United States General Services Administration, *GSA BIM Guide 02—Spatial Program Validation*, Version 2.0 (May 2015). http://www.gsa.gov/portal/mediaId/227487/fileName/GSA_BIM_Guide_02_Version_20.action
- United States General Services Administration, 3D-4D Building Information Modeling BIM Guide series (2007-2012). <http://www.gsa.gov/portal/content/105075>

7. CITATIONS

- ¹ Tice, John, Bullock Tice Associates BIM DONE RIGHT, a BIM-enabled, client-focused delivery approach and strategy (2015). <http://www.bulltice.com/>
- ² National Institute of Building Sciences buildingSMART alliance®, *National BIM Standard – United States® Version 3* (2015). <https://www.nationalbimstandard.org/>
- ³ United States Army Corps of Engineers, USACE Minimum Modeling Matrix (M3) (2013). (Available as part of the *National BIM Standard – United States® Version 3*, Section 5.8: Practical BIM Contract Requirements, U.S. Army Corps of Engineers BIM Contract Requirements for Design Build Projects) <https://www.nationalbimstandard.org>
- ⁴ The American Institute of Architects, AIA Document G202™ – *Building Information Protocol Form* (2013). <http://www.aia.org/aiaucmp/groups/aia/documents/pdf/aiab099086.pdf>
- ⁵ United States General Services Administration, Federal Acquisition Regulation (FAR) Part 27, Patents, Data, and Copyrights (June 2016). <https://www.acquisition.gov/?q=/browse/far/27>
- ⁶ Computer Integrated Construction Research Program. *BIM Project Execution Planning Guide – Version 2.1*. Pennsylvania State University (2011). <http://bim.psu.edu>
- ⁷ buildingSMART International, *IFC4 Reference* (2015). www.buildingsmart-tech.org/specifications/ifc-view-definition/ifc4-reference-view
- ⁸ buildingSMART International, *IFC4 Design Transfer View* (2015). <http://www.buildingsmart-tech.org/specifications/ifc-view-definition/ifc4-design-transfer-view>
- ⁹ International Standard Organization, *ISO 16739:2013, Industry Foundation Classes (IFC) for data sharing in the construction and facility management industries*, (2013). http://www.iso.org/iso/catalogue_detail.htm?csnumber=51622
- ¹⁰ United States General Services Administration, *GSA BIM Guide 02—Spatial Program Validation, Version 2.0* (May 2015). http://www.gsa.gov/portal/mediald/227487/fileName/GSA_BIM_Guide_02_Version_20.action
- ¹¹ Green Building XML (gbXML) Schema Inc., *gbXML Version 6.01* (2015). <http://www.gbxml.org/>
- ¹² International Property Measurement Standards (www.ipmsc.org). Reference should be made to building measurement standards, such as IPMS, for consistency in the measurement of floor areas.
- ¹³ International Standard Organization, *ISO 19005-3: Document management—Electronic document file format for long-term preservation—Part 3: Use of ISO 32000-1 with support for embedded files (PDF/A-3)* (2012). <http://webstore.ansi.org/RecordDetail.aspx?sku=ISO%2019005-3:2012&source=google&adgroup=iso&gclid=CO7Zwc6X380CFYsmhgodTplJrw>

¹⁴ International Standard Organization, *ISO 32000-1: Document management—Portable document format—Part 1: PDF 1.7* (2008). <http://webstore.ansi.org/RecordDetail.aspx?sku=ISO%2032000-1:2008&source=google&adgroup=iso&gclid=CKaGurKY380CFcNahgod0ScCNg>

¹⁵ Construction PDF Coalition, *Guideline for Construction PDF Documents* (August 2014). <http://cpcoalition.com/guidelines/>

¹⁶ United States Army Corps of Engineers, *USACE Minimum Modeling Matrix (M3)* (2013). (Available as part of the National BIM Standard – United States® Version 3, Section 5.8: Practical BIM Contract Requirements, U.S. Army Corps of Engineers BIM Contract Requirements for Design Build Projects) <https://www.nationalbimstandard.org>

¹⁷ National Institute of Building Sciences buildingSMART alliance®, *National BIM Standard – United States® Version 3* (2015). <https://www.nationalbimstandard.org/>

¹⁸ United States Army Corps of Engineers, *USACE Minimum Modeling Matrix (M3)*, (2013). (Available as part of the *National BIM Standard – United States® Version 3*, Section 5.8: Practical BIM Contract Requirements, U.S. Army Corps of Engineers BIM Contract Requirements for Design Build Projects) <https://www.nationalbimstandard.org>

¹⁹ The American Institute of Architects, AIA Document G202™ – 2013, *Project Building Information Protocol Form* (2013). <http://www.aia.org/aiaucmp/groups/aia/documents/pdf/aiab099086.pdf>

²⁰ National Institute of Building Sciences buildingSMART alliance®, *National BIM Standard – United States® Version 3* (2015). <https://www.nationalbimstandard.org/>

²¹ Computer Integrated Construction Research Program. *BIM Project Execution Planning Guide – Version 2.1*. Pennsylvania State University (2011). <http://bim.psu.edu>

²² Computer Integrated Construction Research Program. *BIM Project Execution Planning Guide – Version 2.1*. Pennsylvania State University (2011). <http://bim.psu.edu>

²³ Kreider, R., and Messner, J. I. *The Uses of BIM* (2013). Pennsylvania State University, University Park, PA. <http://bim.psu.edu>

²⁴ International Cost Measurement Standards (ICMS) (www.icms-coalition.org/). ICMS may help to maximize the benefits of any cost analysis by providing clarity in the categorization of costs.

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



EXHIBIT G

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

District of Columbia Department of General Services
Standard Contract Provisions

GENERAL PROVISIONS

(Architectural & Engineering Services Contract)

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 fail 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 had 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 after 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 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 1985, 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 persons 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 10a-10d), and Executive Order 10582. December 17, 1954 (3 CFR, 1954-58 Comp., p. 230), as amended by Executive Order 11051, September 27, 1962 (3 CFR, 1059—63 Comp., p. 635), the Architect-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.