

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



**REQUEST FOR PROPOSALS
DESIGN-BUILD SERVICES
FOR
UPSHUR RECREATION CENTER MODERNIZATION**

Solicitation Number: DCAM-23-CS-RFP-0029

Solicitation Issue Date: October 19, 2023

**Pre-Proposal Conference
and Site Visit:** October 24, 2023, at 10:00 A.M.
4300 Arkansas Avenue NW, Washington, DC 20011

Due Date for Questions: October 30, 2023, at 4:00 P.M.

Proposal Due Date: November 15, 2023, at 2:00 P.M.

Site Visit:

Interested vendors must notify the POC indicated within Section 1.7. The due date to submit the names of participants for the site visit is October 23, 2023, at 4:00 PM

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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 Parks and Recreation (“DPR”), is issuing this Request for Proposals (“RFP”) to solicit design-build proposals (“Proposal(s)”) from offerors (“Offeror(s)”) interested in serving as the design-builder (the “Design-Builder” or the “Contractor”) for an All-Inclusive Upshur Recreation Center, located at 4300 Arkansas Avenue NW, Washington DC 20011.

1.1 Project Overview and Background

The Department anticipates awarding a design-build contract (“Contract”) to the Offeror whose Proposal is most advantageous to the District pursuant to the evaluation and award criteria in Part 3. The Project includes full design and construction services for a new Recreation Facility.

The Design-Builder shall design and construct an all-inclusive building to best execute the DPR programmatic needs. In general, the Design-Builder will be required to program, fully design and construct an all-inclusive recreation center by modernizing the existing Upshur Recreation Center or demolishing the existing center and constructing a new all-inclusive Upshur Recreation Center and associated park or a combination of both whichever is most advantageous to DPR and the district and can be accomplished within the approved project budget based on the 100% finalized Design Development documents. The programming, design, construction, modification, revitalization, and renovations will include but are not limited to the recreation center, overall Project landscaping, site furnishings, amenities, signage, hardscaping, and all improvements to comply with American Disabilities Act. Without limiting the generality of foregoing, the Design-Builder shall be required to provide all management, personnel, design services, labor, materials, and equipment necessary to complete the Project. All work shall be code compliant and installed per DGS and DPR standards, specifications, manufacturer recommendations and applicable industry standards (collectively, the “Project”).



The existing Upshur Recreation Center is a smaller site, sitting on rolling green space. The center's outdoor features include large park space (with grills), a baseball/multi-use athletic field, two outdoor basketball courts, a playground with adjacent shaded picnic tables and toddler swings, a dog park, and an outdoor, summer swimming pool.

Inside, the center boasts a computer lab, kitchen, and a multi-purpose room. In addition, the Center offers a variety of outdoor sports programs (basketball, tee-ball, and soccer), after-school programs, and summer camps.

A secure, web-based, electronic project management (“ePM”) system, ProjectTeam, shall be utilized by the Design-Builder to accommodate the information needs of all Project participants. The ePM system will be implemented at the beginning of the design stage and maintained continuously through the completion of the Project closeout. All DGS and the Design-Builder’s team communications must be captured and recorded in the ePM system. User licenses and training will be provided for all members of the Design-Builder’s team who will require access to the ePM system. The members of the Design-Build team shall be required to be trained on ProjectTeam and shall be responsible for viewing trainings at www.projectteam.com/dgs.

1.1.1 Project Sustainability Requirements

1.1.1.1 LEED and Green Construction Code Requirements: The Project shall be designed in such a way to incorporate, at a minimum, LEED Silver principles. Evaluation will be required to determine if the level of renovation qualifies for LEED certification; if the Project does qualify the District will require the innovation LEED Pilot Credit – Integrative Process for Health Promotion (<https://www.usgbc.org/credits/new-construction-core-and-shell-schools-new-construction-retail-new-construction-healthc-106>), green roof credits through the Department of Energy and Environment (“DOEE”) Stormwater Retention Credit program and RiverSmart Rooftops Rewards and Rebate program), and Energy Star Certification. The Design-Builder will be responsible for applying for and achieving Energy Star Certification and filing the DOEE Stormwater Retention Credit and RiverSmart Rooftops registration forms. The Design-Builder shall also comply with the recently adopted International Green Construction Code.

1.1.1.2 Net Zero Energy and Energy Consumption Requirements: The District is particularly interested in Upshur Recreation Center becoming a Net Zero Energy building, and the Department requires the design-build team to use net zero strategies in the building’s design and to attain certification through the International Living Future Institute’s (ILFI) Zero Energy Building program.

The building shall be design-built to operate at an annual Energy Use Intensity (EUI) of 20 or less. In addition to meeting ILFI Zero Energy certification, this EUI threshold is necessary for DC government to be in compliance with the DC Building Energy Performance Standards (BEPS) law. Additional information can be found in the DGS Energy Management Plan (EMP). The EMP follows Mayor Bowser’s 2019 signing of the Clean Energy DC Omnibus Amendment Act of

2018, which established the DC Building Energy Performance Standards (BEPS) that require building owners to meet energy reduction targets by actively improving the energy performance of their buildings over time.

- a. In coordination with DGS-Sustainability and Energy Division, the A/E shall monitor and adjust the building's energy systems for two years after commissioning to ensure the annual EUI score is maintained. The DGS-Sustainability and Energy Management Division's Solar Program will provide solar technical assistance for designing the roof and other potential areas to solar-ready standards. The Department contemplates entering into a solar photovoltaic (PV) power purchase agreement in the future for Upshur Recreation Center through a separate contract with a solar developer.

1.1.1.3 Design Excellence Criteria Narrative (Add Peer to Peer Review worksheet)

During the Design Phase, the Design-Builder shall develop a design for the Project that is consistent with the District's Comprehensive Plan, inter-agency goals, and the DGS Design Excellence Program objectives. The Design Phase will include participation in the Design Excellence Peer Review which will convene three times during the design phase; twice in the conceptual phase and once in the Schematic phase. The peer reviews will focus on discussing the Design Excellence design principles. During the preliminary conceptual design phase, the creation of three preliminary design options will be created, each option will include its own specific budget scenario and schedule. The purpose of the peer review is not to mandate solutions but to highlight opportunities to strengthen the design and fulfill project requirements.

1.2 Reserved

1.3 Project Budget and Funding Limitations

The Department is allocating a budget of \$19,000,000.00 for this Project ("Project Budget") for full services of design, construction, public art, Inspections, Furniture, Fixtures, and Equipment ("FF&E"), and six (6) months maintenance costs. The Offeror shall assume approximately 80% of the design and construction budget will be available in Fiscal Year ("FY") 2024, approximately 20% will be available in FY 2025, and the Offeror shall be expected to execute the design and construction work in accordance with the available funding. Accordingly, Offerors are to base their Proposals on the approved budget. The Department requires that this Project will start upon execution of Notice to Proceed ("NTP") issued by the Contracting Officer ("Contracting Officer" or "CO") and be ready for staff, and DPR Program for 2026 further described in **Section 1.6** of the RFP. However, the contract between the Department and the Design-Builder ("Agreement", "Contract" or "Design-Build Agreement") will require submission to and approval by the Council of the District of Columbia. As part of the Project Budget, Offerors shall include the following allowances: Permit Allowance (\$180,000.00), Public Art Allowance (\$75,000.00), Utility Allowance (\$75,000.00), and Public Space Improvements Allowance (\$100,000).

1.4 Compensation

The Design-Build Agreement will be a cost-plus fixed fee with a guaranteed maximum price (“Guaranteed Maximum Price” or “GMP”) type contract. The form of Agreement (“Form of Contract”) is attached as **Attachment M**. Offerors are not required to submit trade costs or 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.

1.5 Substantial Completion Date

The Project shall be completed as follows:

1.5.1 The Substantial Completion Date is January 5, 2026 (“Substantial Completion Date”).

For the avoidance of doubt, “Substantial Completion” is defined as follows:

- A. The Project’s construction and installation work have been completed with only minor punchlist items remaining to be completed;
- B. The Project has obtained a Department of Buildings (“DOB”) Certificate of Occupancy, final DOB Certification of Occupancy shall be received within thirty (30) days of Substantial Completion; and all other required permits or approvals have been obtained;
- C. All Operation and Maintenance Manuals have been finalized, submitted, and approved per Section 2.9.3 of the RFP. Per Section 2.2.1.2, all Operations and Maintenance Manuals shall be submitted to the Department six months prior to Substantial Completion;
- D. Required trainings per Turnover Manual have been scheduled within thirty (30) days of the Substantial Completion Date; The Design-Builder shall provide final videotaped recordings within thirty (30) days of the Substantial Completion Date;
- E. Draft Warranties have been submitted and approved per Section 2.9.3 of the RFP;
- F. The Project has obtained DC Department of Health (DOH) approval of the kitchen and health suite;
- G. The facility and site have been deep cleaned and cleared of any construction debris;
- H. The Project is ready for the Department and DPR to use it for its intended purpose;
- I. All equipment, supplies, materials and items to be installed have been installed in accordance with the manufacturer’s specifications and industry standards and have undergone and passed the requisite testing and inspections; and
- J. Commissioning is complete and a final punch list is documented with completion dates established per Section 2.9.1 of the RFP.

The Design-Builder shall be expected to maintain the facility, even if the conditions of the Substantial Completion have been met, until achieving Final Completion. The responsibility of maintaining the facility is part of the budget outlined in **Section 1.3**. Maintenance shall be done according to the Maintenance and Operations Plan that will be developed during the Design Phase.

1.5.2 The Final Completion Date is March 9, 2026 (“Final Completion Date”).

For the avoidance of doubt, “Final Completion” is defined as follows:

- A. All punch list items are completed within the timeframe specified per Section 2.9.1 of this RFP;
- B. All Trainings are completed per Section 2.9.2 of this RFP;
- C. All Final Warranties and Manuals are completed within the timeframe specified per Section 2.9.3 of this RFP;
- D. The Design-Builder has removed all materials, debris, and equipment from the site; and
- E. All remaining turnover requirements per **Attachment U** (Turnover Manual) of this RFP are complete.

1.5.3 The Administrative Completion Date is April 6, 2026 (“Administrative Completion Date”).

For the avoidance of doubt, “Administrative Completion” is defined as follows:

- A. All invoicing is complete;
- B. LEED, WELL, Net Zero, and any other applicable certificates are complete; and
- C. The Eleven Month Walk is complete per Section 2.9.4 of this RFP.

1.6 Project Delivery Method and Schedule

The Department intends to implement the Project through a design-build approach. The scope of work for the Project (“Scope of Work”) will be divided into two phases: (i) the design and preconstruction phase; and (ii) the construction phase.

During the Design/Preconstruction Phase, the Design-Builder, in consultation with the Department, will be required to (i) develop and advance the design in accordance with the Department’s programming requirements to permit drawings/specifications and submit for permit(s); (ii) in coordination with the Department develop a project phasing plan; (iii) progress the permit drawings/specifications for the Project to construction documents (“Construction Documents”); (iv) participate in any ongoing community engagement process; and (v) develop an early funding release package and a GMP for the Project. In developing the GMP, the Design-Builder will be required to obtain quotes from trade subcontractors based on the approved design documents. The process by which the GMP will be formed is more fully described in the Agreement. Construction and construction administration services for early authorized work may also occur.

During the Construction Phase, the Design-Builder, in consultation with the Department, will be required to provide construction and construction administration services to construct the modernized Recreation Center and assist DPR in relocating FF&E and other items, as necessary for the District to occupy and operate the facility.

The Project needs to be completed and available for occupancy by DPR by the Substantial Completion Date.

In general, the Department envisions the following schedule and has established the following preliminary milestone dates for the entire Project. While the Department is amenable to shifting the interim design milestones dates, the Department requires that the Design Development Documents, which will serve as the basis for the Design-Builder’s GMP, be completed and approved no later than **November 2024**. Any shift in the interim design milestones dates must be approved by DGS and must provide for the durations for DPR and DGS design reviews reflected in the milestone schedule below.

| Activity | Approx. Start Date | Approx. End Date |
|---|------------------------------|-------------------------|
| Notice of Award | December 29, 2023 | |
| NTP/Design Start | January 12, 2023 | |
| Concept Design Package Submission | 12 weeks or earlier from NTP | |
| GMP Proposal Submission and Approval (Based upon Design Development Documents) | May 2024 | December 2024 |
| Full Building Permit Submission | 36 weeks from NTP | |
| Full GMP Construction Start | 61 weeks from NTP | |
| Substantial Completion Date | January 5, 2026 | |
| Final Completion Date | March 9, 2026 | |
| Administrative Completion Date | April 6, 2026 | |

1.7 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: Obaidullah Ranjbar
 Title: Contracting Office
 Department of General Services
 Contracts and Procurement Division
 Mailing address: 3924 Minnesota Avenue, NE | 5th Flo
 Washington, DC 200019
 Email: obaidullah.Ranjbar@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 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 DESIGN-BUILD SERVICES FOR UPSHUR RECREATION CENTER MODERNIZATION.

Only a duly authorized Contracting Officer shall have the authority to direct the Contractor to start the Project or to issue change orders, contract modifications, or change directives on the Department’s

behalf. The Project Manager and Contracting Officer’s Technical Representative shall not have the authority to modify any of the rights and obligations of the Department or the Contractor pursuant to the proposed Contract, or to issue change orders, contract modifications, or change directives.

PROGRAM MANAGER AND CONTRACTING OFFICER’S TECHNICAL REPRESENTATIVE (“COTR”):

The COTR for the proposed Contract is:

Margaret Thacker
Senior Project Manager
Department of General Services
3924 Minnesota Avenue, NE | 5th Floor
Washington, DC 20019
Email: margaret.thacker@dc.gov

PROJECT MANAGER (“PM” or “Project Manager”)

The name and contact information for the Project Manager for the proposed Contract is as follows:

Sean Garganio
Project Manager
Department of General Services
3924 Minnesota Avenue NE | 5th Floor
Washington, DC 20019
Email: sean.garganio@dc.gov

1.8 Design-Builder Designated Point of Contact

All Offerors responding to this RFP shall provide the name, address, phone number, and email address of their designated point of contact to the Department’s POC as part of its Proposal, as noted in **Section 1.7**. 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.

1.9 Procurement Schedule and Project Milestones

The Department anticipates conducting the procurement of the Project in accordance with the following list of milestones leading to the award of the Agreement. The schedule is subject to revision and the Department reserves the right to modify this schedule as it finds necessary, in its sole discretion.

1.9.1 Forecasted RFP Schedule

- RFP Advertisement: October 19, 2023
- Pre-Proposal Conference and Site Visit: October 24, 2023, at 10:00 A.M

- RFP Questions due to the Department: October 30, 2023, at 4:00 P.M.
- Proposals Due date: November 15, 2023, at 2:00 P.M
- Notice of intent to award (anticipated): December 29, 2023
- Notice to Proceed / Letter Contract (if any) January 12, 2024

1.9.2 Project Schedule

The Department has established the following milestones for the completion dates for the Project, and Offerors shall base their Proposals on such milestones:

- 1.9.2.1. Substantial Completion Date shall be no later than the date set forth in **Section 1.5.1**; and
- 1.9.2.2. If an Offeror proposes a Substantial Completion Date earlier than that shown in **Section 1.5.1**, and the Department agrees to such proposed date, such proposed date will be deemed by the Department as the contractual Substantial Completion Date for all purposes, including liquidated damages.

1.10 Selection Criteria

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

1.11 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.

1.12 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 1.9.1** of this RFP. The Department will review all questions and/or requests for clarification received and, if it deems appropriate, in its sole discretion, may modify the RFP Documents through an addendum. Offerors shall base their Proposals on the terms and conditions of the RFP Documents included in the issued addenda.

Attachments to this RFP include the following:

| | |
|----------------------|---|
| Attachment A1 | Concept Design, Schematic Design, Design Development Milestone Requirements (Per Section 2) |
| Attachment B | Reserved |
| Attachment C | Form of Offer Letter |
| Attachment D | Bidder/Offeror’s Certification Form |
| Attachment E | Tax Affidavit |
| Attachment F | Davis-Bacon Wage Rates |
| Attachment G | Bid Bond Form |
| Attachment H1 | Standard Contract Provisions for Construction Contracts |
| Attachment H2 | Standard Contract Provisions Architectural and Engineering Services Contracts |
| Attachment I | SBE Subcontracting Plan |
| Attachment J | First Source Agreement and Employment Plan |
| Attachment K | 2023 Living Wage Act |
| Attachment L | Past Performance Evaluation Form |
| Attachment M | Form of Contract - Design-Build Agreement |
| Attachment N | Form of Notice to Proceed and Letter Contract |
| Attachment O | Bid Guarantee Certification |
| Attachment P | Conflict of Interest Disclosure Statement |
| Attachment Q | Release of Lien Forms |
| Attachment R | Equal Employment Opportunity (“EEO”) Policy Statement |
| Attachment S | Certification to Furnish Performance and Payment Bonds |
| Attachment T | Payment and Performance Bonds |
| Attachment U | DGS Project Turnover Manual |
| Attachment V | National Building Information Modeling (BIM) Guide |
| Attachment W | Department’s Quality Control Master Program |
| Attachment X | Campaign Finance Reform Self-Certification Form |

1.13 Obligation to Meet All of the Requirements of the RFP Documents

If awarded the Agreement, the Design-Builder will be obligated to meet all of the requirements of the RFP Documents including, but not limited to, completing the Project within the Project Budget, in accordance with the Project Schedule (“Project Schedule”) and within the Agreement.

1.14 Offeror’s Pre-Proposal 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 an understanding of all terms and conditions for the performance of the Offeror's work on the Project; and
- f) Notify the Department in writing of all conflicts, errors, ambiguities, or discrepancies that the 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 Design-Builder to provide any and all design, permitting and construction including, but not limited to, temporary utilities, public art installation, furniture, fixtures, equipment and coordination, move-in logistical support for a full functional turn-key Project. The Project shall be complete, operating, and ready for use on or before the Substantial Completion Date and within the Project Budget as specified in **Part 1, Section 1.3**, and **Section 1.5** of this RFP.

The Project will be located at Upshur Recreation Center, at 4300 Arkansas Avenue NW, Washington, DC 20011

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

- a) To confirm the design and construction of the Project in accordance with the RFP Documents, including all applicable attachments.
- b) To provide all design, construction, and construction management services necessary to implement the goals of the Project inclusive of, but not limited to, the following: civil, architectural, electrical, structural, and mechanical design services as required for the Project; construction management services inclusive of budgeting, value engineering ("Value Engineering"), scheduling, Project phasing, Project administration, management, and coordination of subcontractors. Design scope shall also include full design and specifications, with minimum of two options for basis-of-design for each, of the FF&E for GMP pricing.
- 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 provide the necessary design, consultants and documentation for all permitting, zoning, historic preservation and US Commission of Fine Arts approvals.
- f) To provide move coordination and logistics support for the Project.

2.1 Design-Builder's Duties; General Intent

- a) The Design-Builder will be required to work with the Department and DPR through a collaborative design process to advance the programmatic needs to a fully realized Project in accordance with the available Project Budget. The Design-Builder will be required to engage in extensive preconstruction efforts to ensure that the design is developed in a manner consistent with the Department's goals for the Project (e.g., programmatic, budgetary, schedule and quality); and to develop a comprehensive Project phasing.
- b) To provide logistics support, plan to solicit competitive trade bids for the construction work, including all required inspections for material testing, code inspections, and industrial

hygienist 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 outline in **Section 1.6**. The Design-Builder will be required to provide a “turn-key” Project ready for occupancy by DPR and shall be responsible for all items of cost except for those items set forth in **Section 2.12** of this RFP.

2.2 Design and 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 GMP amendment (“GMP Amendment”). The Department will issue a Notice to Proceed for preconstruction services (the “Preconstruction NTP” or “Letter Contract”), attached hereto as **Attachment N**. 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 Standard Contract Provisions (for Construction Contracts and Architectural/Engineering Services Contracts) and the Preconstruction NTP, the order of precedence shall be: the Standard Contract Provisions; Preconstruction NTP; and the RFP.

The Design-Builder’s initial task will be to perform a feasibility study with a design narrative to a complete schematic design, develop a phasing plan and budget for the Project. As part of this effort, the Design-Builder shall prepare and provide the following initial deliverables:

2.2.1.1 Feasibility Study

- a. Charrette Sessions and Survey
 - i. The Contractor shall facilitate up to two (2) meetings with DGS, DPR and other Project stakeholders (for example, facilities representatives and community groups) to better understand the requirements of the Project. These meeting shall include charrette sessions that will allow for creative solutions to the needs of the District and community, as well as avoiding unworkable programming or design. At the end of the charrette sessions and informational meetings, the Contractor shall produce a report summarizing the meetings and its recommendations for the final Project based on those meetings. This shall be known as the Stakeholder Analysis.
 - ii. The Contractor shall facilitate at least one (1) community meeting. At this meeting the Contractor shall explain the Project, the reasons for the Study and solicit feedback from attendees on what program elements they would like to see in the new Center. The meeting shall be run by the Contractor to encourage maximum participation by the attendees and allow DGS and DPR to understand the community’s priorities. It shall be expected that this meeting will be in person, virtual or hybrid with respect to community request.
1. Note that the meetings, sessions, and charrettes mentioned herein shall be separate

from regular progress meetings with DGS.

- b. Zoning Analysis
 - i. The Contractor shall review the current zoning regulations in place in and around the Center, and how these regulations create risks and opportunities for the new Center. The Contractor shall perform an analysis on what zoning exceptions, if any, must be sought in order for the Project to be successful. Further, the analysis must take in to account the impacts of any zoning modifications on the amount of required parking at the site.
- c. Historical Analysis
 - i. The Contractor shall analyze the historical status of the existing building, and how this status creates risks and opportunities for the new Center.
- d. Geotechnical Survey
 - i. The Contractor shall undertake a geotechnical study using all industry best practices. The Contractor shall obtain soil borings of sufficient quantity to identify any conditions that may impact the design for any footings, foundations, utilities, sidewalks, below-grade facilities (including pools), parking lots, etc. The geotechnical survey will be published in full as an addendum to the Feasibility Study Report, and the Feasibility Study Report shall include notes on how the conditions identified in the report will impact the design of the new Center. The Contractor shall be responsible of obtaining all permits required to undertake the Geotechnical Survey.
- e. Environmental Site Assessment
 - i. The Contractor shall undertake a Phase I environmental site assessment. This shall include a comprehensive description of the existing environmental conditions at the site. Such an assessment must describe the natural geological, hydrological, and biological resources of the area including any endangered species; describe the man-made resources including site land use, transportation patterns, zoning, population density and demographics; and describe the human resources including the social factors, aesthetic features, historical, archeological, and architectural aspects of the environment.
- f. Further, as part of the Assessment, the Contractor must:
 - i. Identify and describe both primary and secondary environmental impacts, beneficial and adverse, anticipated from the proposed project on all natural, man-made, human, and economic resources during all aspects of the site preparation, construction and operation.
 - ii. Discuss the remedial, protective, and mitigation measures to be taken as part of the project in response to adverse environmental impacts. Mitigating measures refer to those methods used to ensure that the project is brought into compliance with all governing regulations including, but not limited to air, water quality, noise control, solid waste, radiation, and land use regulations.
 - iii. Describe in detail those impacts which cannot be reduced to acceptable levels, their implications, and the reasons why the action is being proposed notwithstanding their effect. Where abatement measures can reduce

adverse impacts to acceptable levels, discuss the effectiveness, costs of the abatement measures, and the basis for considering the adequacy of the determination.

- iv. The analysis of alternatives should be sufficiently detailed and rigorous to permit independent and comparative evaluation of the benefits, costs, and environmental risks of the Project and each reasonable alternative.

g. Site Survey

- i. The Contractor shall conduct all necessary surveys including, but not limited to, topographical, utilities, high water lines, floodplain delineation, wetlands delineation and any, and all, features necessary for DGS to implement a successful project and as may be required by federal and local agencies for the receipt of building permits. The Contractor must identify the base flood elevation at the site to determine how it will impact the design for any footings, foundations, underground utilities, trenches and drainage.
- ii. The Contractor shall conduct a boundary survey. The Contractor must determine the existence of and extent of any easements or encroachments. Contractor shall produce a scaled drawing that depicts the boundaries of the site. Data used must be prominently noted on the drawing.
- iii. The Contractor shall conduct a utility survey to identify any and all above-ground or below ground utilities that are inside of or adjacent to the property (this shall include any utilities in the public right of way that borders the property). The Contractor shall produce a scaled drawing that depicts all utilities found on the survey. The Feasibility Study Report shall include notes on what utilities, if any, may need to be relocated or upgraded for the Project.

h. Programming Documents and Space Plans

- i. The Contractor shall create programming documents that break-down the size and quantity of each room in the Center and add the figures to estimate the size of the future Center. It shall be assumed that multiple revisions to the programming documents will be required.
- ii. The Contractor shall create space plans showing its recommendations for the layout of the Center. It should be assumed that multiple revisions to the space plans will be required.

i. Comprehensive Plans

- i. The Contractor shall analyze how the suggested program for the Center aligns with the District's Comprehensive Plan, and any long-term DPR master plans.

j. Cost Estimate and Design/Construction Schedule

- i. Contractor shall create a detailed cost estimate for the approved Programming Documents and Space plans described in (f) above. The Contractor shall specifically analyze the cost impact, if any, of Net Zero certification for the new Center. The cost estimates shall take into account the following: (i) results of surveys and studies and their impact on the design and construction means and methods, (ii) escalation to the expected

mid-point in construction, (iii) past similar projects completed by DGS and (iv) other historical cost information. The cost estimates shall be in CSI format or another format approved by DGS.

- ii. Contractor shall produce a Project schedule showing both design and construction activities. The schedule shall be submitted in P6 format.

Feasibility Study Report

1. The Design-Builder will be required to modernize the existing Upshur Recreation Center into an all-inclusive facility catering to people of all ages and abilities. Building amenities shall include but are not limited to:
 - a. Program to be based off the Feasibility Study.
 - b. Pool/Pool House
 - c. Fields/Playgrounds
 - d. Recreation Center
 - e. Basketball Courts

2. Contractor, at the end of the Study, shall create a Feasibility Study Report. The Feasibility Study Report shall incorporate the findings from all the activities described above and shall include, at minimum, the following elements:
 - i. Description of the Project and site
 - ii. Site photographs
 - iii. Summary of stakeholder meetings and charrettes, including all reports
 - iv. Results from community survey
 - v. Zoning Analysis
 - vi. Historical Analysis
 - vii. Geotechnical Report
 - viii. District comprehensive plan
 - ix. Environmental Site Assessment
 - x. Site Survey, Boundary Survey and Utility Survey
 - xi. List of agencies, federal and local, with jurisdiction over the project including a list of all permits and approval required for the Project to commence, continue and be completed.
 - xii. Project risk log
 - xiii. Drawings and plans
 - xiv. Meeting minutes
 - xv. Memorandums

Contractor shall submit a draft report to DGS and DPR within the schedule referenced in Section 1.6. DGS and DPR shall be given up to twenty-one (21) calendar days to review the draft report. After receiving comments, the Contractor shall make all requested revisions to the draft report to create a final report within ten (10) days of receiving comments from DGS.

2.2.1.2 Baseline Schedule. Within ten (10) days after the Preconstruction NTP is issued, the Design-Builder 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 Design-Builder 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 Design-Builder and any other affected parties to properly plan the Project. The Baseline Schedule shall include but not be limited to the following key milestones:

- a) Building Systems Assessment Submission (within 14 days of NTP)
- b) Construction Management Plan Submission (within 14 days of NTP)
- c) Concept Design Submission (within 12 weeks of NTP)
- d) Concept Design Department review period (14 days)
- e) Early Start Agreement(s) Submission Date(s)
- f) Schematic Design Submission
- g) Schematic Design Department review period (14 days)
- h) Design Development Submission
- i) Design Development Department review period (21 days)
- j) GMP Submission Date
- k) Construction Document Submission
- l) Permit Submission(s)
- m) Anticipated Permit approval(s)
- n) Release dates for the key subcontractors and long-lead materials, include the following, if applicable:
 - a. Elevator(s)
 - b. Switchgear
 - c. Transformer
 - d. Generator
 - e. Security cameras
 - f. Door hardware
 - g. Playground equipment
 - h. Kitchen equipment
 - i. Furniture
 - j. Windows, storefront, and curtainwall
- o) Excavation completion
- p) Below-grade structure completion
- q) Above-grade structure completion
- r) O&M final submission (required 6 months before Substantial Completion)
- s) Temporary weather-tight completion
- t) Weather-tight completion
- u) Permanent power completion
- v) MEP systems operational
- w) Sitework completion
- x) Building trade inspections, include the following trades:
 - a. Elevator
 - b. Plumbing

- c. Mechanical
- d. Electrical
- e. Fire Alarm
- f. Sprinkler
- y) Final building inspection
- z) DOB COO application review period (10 days)
- aa) Conditional or Final Certificate of Occupancy obtained
- bb) Staff Move-in (3 weeks before student move-in)
- cc) Student Move-in (3rd Monday in August)

The Baseline Schedule shall include durations and logic ties for those building systems that the Design-Builder is recommending for replacement. The Baseline Schedule must also be submitted in Primavera 6 native format and shall be updated by the Design-Builder, at a minimum, on a monthly basis.

2.2.1.3 Concept Design. No later than twelve (12) weeks after the Preconstruction NTP is issued, the Design-Builder shall prepare and submit a proposed concept design for the DPR program outlined in per the completed feasibility study. As part of the concept design phase, the Department requests three (3) concept options or alternatives. Each of the concept designs shall contain at least the level of detail contemplated in industry best practices for a concept design. The design submittal shall specifically identify any deviations from the DPR Program Specifications and shall explain the rationale and cost implications associated with such deviation. The Department shall have the right to disapprove the concept design submittal for any reason. Following review of the concept design submissions by DPR and the Department, the Department shall approve a final concept design. The Design-Builder shall revise the concept design submission as necessary to incorporate comments, feedback and other direction provided by DPR and the Department. The Design-Builder's pricing shall assume that such revisions will be required, and such revisions shall not entitle the Design-Builder to additional compensation. The requirements for the Concept Design are as referenced in **Attachment A1**. A checklist verifying all requirements are met using **Attachment A1** shall be provided as a coversheet for the Concept Design submission to the Department.

2.2.1.4 (a) Preliminary Budget Estimate. Concurrently with the delivery of the concept design, the Design-Builder 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 Preliminary Budget 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 Design-Build Fee, the cost of general conditions, and contingencies shall be broken out in separate line items. The primary purpose of the Preliminary Budget Estimate is to aid the Department and the Client Agency in understanding the costs associated with key elements of the Project to better prioritize and manage the use of the funding allocated to this Project. All estimates shall be broken out into three categories: renovation, new construction, and site work, where applicable.

2.2.1.5 Construction Management Plan. The Design-Builder shall submit a draft of its construction management and Project phasing 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, existing and adjacent building surveys plan, temporary fire protection measures, Project signage, pest control, construction staging plan, and construction logistics plan.

2.2.1.6 Additional Preconstruction Services. In addition to those items enumerated above, the Design-Builder 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.

2.2.1.7 Disincentive Fee for Failure to Timely Provide Deliverables. The Design-Builder acknowledges that the Department is engaging the Design-Builder to provide an extensive level of preconstruction support services to minimize the potential for cost overruns, schedule delays or the need for extensive Value Engineering/re-design late in the Project and that the deliverables required under Section 2.2.1 and Section 2.15 are key to identify the value of such services. In the event the Design-Builder fails to deliver any of the deliverables required in Section 2.2.1 and Section 2.15 (and unless such failure is the result of any event of Force Majeure), the Design-Builder shall be subject to a disincentive fee in an amount of Seven Thousand Five Hundred Dollars (\$7,500) plus Five Hundred Dollars (\$500) per day after receiving written notice from the Contracting Officer of failure to submit such deliverables.

2.2.2 Design Management.

During the Design and Preconstruction Phase, the Design-Builder, in consultation with the Department, shall (i) develop conceptual plan and cost estimates; (ii) develop a draft final conceptual site plan/response and cost estimate; (iii) prepare and submit soft and hard copies of the complete set of 35% Schematic Design Documents; (iv) prepare and submit soft and hard copies of the complete set of 60% Design Development Documents, Specifications and the Design-Builder’s cost estimate and schedule; (v) prepare soft and hard copies of the complete set of 95% Construction Documents, Specifications and Design-Builder’s cost estimate and schedule; (vi) review existing condition assessment and recommendation; and (vii) obtain all necessary building permits to support the Project Schedule. Without limiting the generality of the foregoing, during the Preconstruction Phase, the Design-Builder shall: (i) work with its Architect and any design consultants to advance the design for the Project in consultation with the Client Agency, the Department, and its Program Manager; (ii) obtain bids from trade subcontractors to perform the work described in the Design Development 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 Design & Preconstruction Phase, the Design-Builder shall schedule and attend regular meetings with the Department, the Program Manager, and the Design-Builder's Architect.

Between the time the Preconstruction NTP is issued and the time the GMP is accepted by the Department, the Design-Builder shall use commercially reasonable best efforts to ensure that: (i) the design evolves in a manner that is consistent with the Department's budget and programmatic requirements, as the same were defined and established by the Department at the end of the concept design; (ii) the design work is properly coordinated; and (iii) the required design deliverables are produced on or before the dates contemplated in the Project Schedule. As part of this undertaking, the Design-Builder shall provide the following:

2.2.2.1 Schematic Design. The Design-Builder shall prepare a schematic design for the Project that is a logical development of the approved concept design and is consistent with the Department's schedule, budget and programmatic requirements. The schematic design shall contain at least the level of detail contemplated in industry best practices for a schematic design. The design submittal shall specifically identify any deviations from the approved concept design and shall explain the rationale, cost, and time implications associated with such deviation. The Department shall have the right to disapprove the schematic design submittal for any reason. The Design-Builder shall provide maintenance and repair cost services for major design components and mechanical, electrical and plumbing ("MEP") systems selected at the schematic design phase, which includes conducting a 40-year life cycle cost analysis, which includes a detailed list of replacement costs, maintenance costs, an estimate of repair costs, anticipated energy costs, and a list of other relevant life cycle costs. Following a review of the schematic design submission by DPR and the Department, the Design-Builder shall make revisions to the schematic design submission as necessary to incorporate comments, feedback, and other direction provided by DPR and the Department. The Design-Builder's pricing shall assume that such revisions will be required, and such revisions shall not entitle the Design-Builder to additional compensation. The requirements and tasks for the Schematic Design are as referenced in **Attachment A1**. A checklist verifying all requirements are met using **Attachment A1** shall be provided as a coversheet for the Schematic Design submission to the Department.

2.2.2.2 Schematic Budget Update. Concurrent with submission of the schematic design, the Design-Builder shall submit a budget update. The budget update shall be submitted in the same format as the preliminary budget estimate and shall show variations from preliminary budget estimate. The Design-Builder shall include a cost estimate and value engineering analysis and detailed recommendation for Project savings (even if the Project is not over budget). To the extent the budget update shows an overrun from the approved budget, the Design-Builder shall submit value engineering (not scope reductions, but true value engineering that

allows the design to meet all Project requirements within budget) suggestions that would return the Project to budget. Only the Department shall have the authority to increase the Project budget, and absent such direction, the Design-Builder shall proceed on the assumption that the budget remains as originally directed by the Department.

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

Concurrently with the Schematic Design Budget Estimate, the Design-Builder 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.

2.2.2.3.1 Early Start Work & Long Lead Materials

The Department may release the Design-Builder to commence Early Start Work including but not limited to hazardous material abatement, interior demolition, geothermal, below grade work, utility work, or other early activities, as applicable. It is envisioned that this work may be released by the Department in advance of the GMP.

If the Design-Builder 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 start shall be made by the Department in its sole and absolute discretion.

2.2.2.4 Design Development. The Design-Builder shall prepare a set of Design Development Documents that is a logical development of the approved schematic design and is consistent with the Department's schedule, budget and programmatic requirements. The Design Development Documents shall contain at least the level of detail contemplated in industry best practices for Design Development Documents. The design submittal shall specifically identify any deviations from the approved schematic design and shall explain the rationale and cost implications associated with such deviation. The Design-Builder shall include a cost estimate and Value Engineering Analysis and Detailed Recommendation for Project savings (even if the Project is not over budget). The Design-Builder shall provide maintenance and repair cost services, which includes conducting a 40-year life cycle cost analysis, which includes a detailed list of replacement costs, maintenance costs, an estimate of repair costs, anticipated energy costs, and a list of other relevant life cycle costs. The Design-Builder shall further refine and expand upon the Maintenance and Operations Plan that was submitted in the schematic submission under **Section 2.2.2.1**. The Department shall have the right to

disapprove the Design Development Documents submittal for any reason. The requirements and tasks for Design Development are as referenced in **Attachment A1**. A checklist verifying all requirements are met using **Attachment A1** shall be provided as a coversheet for the Design Development submission to the Department.

2.2.2.5 Permits. The Design-Builder shall be responsible for preparing and submitting all of the required permit applications that are necessary to complete the Project. The Design-Builder shall develop a list of the required permits and shall track the progress of all such permits through the review process. The Design-Builder shall update the Department with the status of each permit that is required for the Project. The Design-Builder shall engage such permit expeditors as the Design-Builder deems necessary or appropriate in light of the Project's schedule. The Design-Builder shall participate in DOB's Velocity accelerated plan reviews and permit approval program as part of the permit allowance included in this Contract. The Design-Builder shall provide the resources necessary to support these requirements.

2.2.2.6 Entitlements. The Design-Builder shall prepare, as part of the design and pre-construction phase, such materials and make such presentations as are necessary to obtain the required land use and entitlement approvals. Approvals may be required from but not limited to (i) the Office of Zoning, (ii) Office of Planning (OP), and (iii) the Commission of Fine Arts (CFA).

2.2.3 GMP Formation

The Design-Builder shall provide the Department with a GMP based on the Design Development Documents. The Department anticipates an early start agreement ("ESA") and subsequent one GMP package. The ESA and the GMP associated with this Project shall be agreed upon in the manner set forth in this **Section 2.2.3**.

2.2.3.1 Manage Bidding Process. The Design-Builder shall manage the trade bidding process in accordance with the approved bidding procedures and shall use commercially reasonable best efforts to obtain at least three (3) qualified and bona fide bids for each trade package in excess of One Hundred Thousand Dollars (\$100,000). The Design-Builder 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 Design-Builder's evaluations of all bids, and the basis for the Design-Builder'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 Design-Builder's adherence to all contractual requirements including, without limitation, affirmative action requirements and subcontracting requirements.

2.2.3.2 Prepare Bid Tabs. The Design-Builder shall provide the Department with an analysis of the bids received and as a copy of each such bid. To the extent that the Design-Builder's award recommendation is based on scoping adjustments, the Design-Builder shall clearly identify the scoping adjustment and the need for such adjustments. 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.).

2.2.3.3 Submission of GMP Proposal. Based on the trade bids, the Design-Builder shall submit a GMP Proposal to the Department using ProjectTeam. The GMP Proposal shall include the following elements:

- a) A list of drawings, specifications, addenda, general, supplementary and other conditions on which the GMP is based.
- b) A list of unit prices and allowance items and a statement of their basis. The Offeror shall include allowances as stated in **Section 1.3**.
- c) Assumptions and clarifications made in preparing the GMP Proposal, noting in particular any exclusions. The assumptions and clarifications shall take precedence over the drawings and specifications. The Design-Builder 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 aesthetics, functionality or performance.
- d) The proposed GMP, including a statement of the detailed cost estimate organized by trade categories, allowances, contingency, and other items and the fees that comprise the GMP.
- e) An update to the Project's schedule to which the Design-Builder 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, and without any change to the Substantial and Final Completion Dates unless approved by the Department's Contracting Officer.
- f) A subcontracting plan setting forth the names and estimated dollar volume of the work that will be performed by LSBDEs, as certified by the Department of Small and Local Business Development, upon which the GMP is based.
- g) A summary of Capital Cost vs Operating Cost Eligibility.
- h) A list of additive alternates or deductive alternates with defined executable dates, if any.
- i) GMP and any Council Package cost estimate summary shall be broken down into three categories as applicable: New Construction, Renovation and Sitework.
- j) Each GMP may include an agreed upon sum as the Design-Builder's Contingency and the Owner contingency, each of which shall be identified as a separate line item in the GMP's Schedule of Values.

A. Construction contingency

i. The Design-Builder's Contingency shall be utilized to compensate for the increased Cost of the Work incurred by the Design-Builder due to unforeseen circumstances relating to construction of that Project which resulted in an unavoidable increase in costs, except when deemed the responsibility of the Department in accordance with this Contract. If the Design-Builder fails to include all of the required scope of work in the bid packages, Design-Builder Contingency may be used to purchase the omitted scope, until the Design-Builder's Contingency balance reaches zero or until the balance equals the anticipated subcontractor modifications. All requests to use the Design-Builder's Contingency shall be submitted as a Request for Change Order ("RCO"). Charges to the Design-Builder's Contingency shall not become due and payable until the RCO is approved in writing by the Department's Contracting Officer and becomes a Change Order. If the Design-Builder's Contingency reaches zero, any cost overruns or charges that could have been charged to the Design-Builder's Contingency shall be the sole responsibility of the Design-Builder.

ii. If bids are received below the applicable line items in the GMP, the surplus will be added to the Design-Builder's Contingency for that Project. If bids exceed the agreed-upon line items in a GMP, the deficiency will be charged to the Design-Builder's Contingency for that Project, however, such events shall not be cause to increase the GMP.

iii. Once all subcontracts anticipated by a GMP have been awarded, including any self-performed work, the Department may require the Design-Builder to reduce the Design-Builder's Contingency to an amount as agreed to by the parties to reflect the Design-Builder's risk from that point in the Project forward.

iv. Upon Final Completion of the Project, any remaining Design-Builder's Contingency, if any, shall be reduced to zero by a Contract Modification and the Design-Builder shall have no entitlement to the balance.

B. Owner contingency

i. The Department retains the right to increase the GMP in lieu of charging any cost to the Owner contingency. Any unused Contingency, whether Department Contingency or the Design-Builder Contingency, shall be reconciled to a zero balance via a Contract Modification upon Final Completion.

ii. When the Design-Builder proposes to use the Owner contingency, the Design-Builder shall prepare an RCO, identifying the amount sought to be charged to the Owner contingency, the reasons why the amount should be charged to that Contingency and demonstrating to the satisfaction of the Department that the costs to be incurred are necessary for the Work and are the responsibility of the Department. At all times,

the Design-Builder shall avoid and mitigate Department Contingency costs whenever possible. Before payment or as part of an audit, the Design-Builder and the Department shall have authority to verify the actual costs incurred. No costs may be charged to the Owner contingency until the RCO is approved in writing by the Department and becomes a Change Order.

iii. The Owner contingency shall be an amount, determined by the Department, which will be available to compensate the Design-Builder for the increased Cost of the Work incurred by the Design-Builder due to a Contract Modification or to other increases in the Cost of the Work which the Department determines, in its sole discretion, is its responsibility. The Department may increase, decrease or eliminate the Owner contingency at any time.

2.2.3.4 Approval of GMP. The Department and the Design-Builder 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 to the Council for the District of Columbia. **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.** In the event the Department and the Design-Builder are unable to agree upon the GMP or the schedule for the Project, the Department shall have the right to terminate the Agreement and assume any trade subcontracts held by the Design-Builder. In such an event, the Design-Builder shall only be entitled to fifty percent (50%) of the Preconstruction Fee.

2.2.3.5 Self-Performed Work. The Design-Builder 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.

2.2.4 Early Release

2.2.4.1 Abatement, Selective Demolition and Early Construction. Once the concept design has been approved, the Department may release the Design-Builder to commence hazardous material abatement and interior demolition, or other early activities, as applicable. It is envisioned that this work may be released in advance of the GMP.

2.2.4.2 Long Lead Materials. The Department will release funding for long-lead items once the Schematic Design Documents have been approved. If the Design-Builder 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 start shall be made by the Department in its sole and absolute discretion.

2.2.5 Construction Documents

The Design-Builder shall manage the completion of the design of the Project. As part of this effort, the Design-Builder shall undertake the following activities:

2.2.5.1 Mid-Point Construction Document Review. Based on the approved Design Development Documents and any approved Value Engineering, the Design-Builder shall prepare a set of Construction Documents. It is contemplated that the Construction Documents will be issued in several different sets (i.e. architectural, electrical, mechanical, structural, etc.). As each such set reaches a point where it is approximately Fifty percent (50%) complete, the Design-Builder shall prepare and submit a progress printing to the Department for its review and comment.

2.2.5.2 Construction Document Review & Coordination. The Design-Builder shall complete each of the Construction Documents packages in a manner that addresses the concerns raised by the Department during the review contemplated in this **Section 2.2.5.2** for such package. The Design-Builder shall issue one or more set of permit documents to the Department for its review and approval (“Permit Set”). With regard to each such set, the Design-Builder shall highlight (or bubble) any aspect of the design that represents a material deviation from the approved Design Development Documents and shall address in a narrative format the impact, if any, such departure shall have on the Project’s aesthetics, functionality or performance. The Department shall have the right to disapprove the Construction Documents for any reason. If the Department disapproves the Construction Documents, the Design-Builder will not be entitled to any additional compensation. If, however, the Department disapproves a Construction Document that is a logical extension of the approved Design Development Documents, the Design-Builder will be entitled to an adjustment to the GMP and/or the Project Schedule unless such a package departs from the Scope of Work fairly reflected in the GMP Drawings and Specifications and in such event the Design-Builder shall be required to prepare a revised design that complies with the GMP drawings and specifications (“Drawings and Specifications”) and without any entitlement to an increase in the GMP or an adjustment of the Project Schedule.

2.2.5.3 Code Review. The Design-Builder shall submit the Permit Set to the DOB in order to obtain the necessary building permits to construct the Project. The Design-Builder shall monitor the permit process and shall incorporate any changes or adjustments required by the Code Official. The Design-Builder shall also issue any such changes to the Department for its review and approval. In this submittal, the Design-Builder shall highlight (or bubble) any aspect of the design that represents a material deviation from the permit set documents and shall address in a narrative format the impact, if any, such departure shall have on the Project’s aesthetics, functionality or performance. Subsequent to obtaining the necessary building permits, the Design-Builder shall prepare one or more sets of “issued for construction documents” (the “IFC Set(s)").

2.2.5.4 Design Changes. If it should become necessary to amend any of the approved IFC Set(s), the Design-Builder shall prepare an amendment to the drawings and shall submit such amendment to the Department for its review and approval. In this submittal, the Design-Builder shall highlight (or bubble) any aspect of the design that represents a material deviation from the permit set documents and shall address in a narrative format the impact, if any, such departure shall have on the Project's aesthetics, functionality or performance. In the event the Department does not approve such document within ten (10) business days after issuance, unless otherwise denied, such document shall be deemed approved, provided however that the Department has not advised that such document is still under review.

2.2.5.5 Final Maintenance and Operations Plan. The Design-Builder shall submit, for the Department's review, a final Maintenance and Operations Plan. The Maintenance and Operations Plan shall be based on the final IFC Set(s). The approved Maintenance and Operations Plan shall form the basis of the Design-Builder's maintenance of the building following Substantial Completion.

2.3 Construction Phase

Based on the approved plans and specifications, the Design-Builder shall construct the Project. During the Construction Phase, the Design-Builder shall be required to cause the Work to be completed in a manner consistent with the design documents and phasing plan approved by the Department 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 Design-Builder shall be responsible for paying for and obtaining all necessary permits and to pay all necessary fees for utility connections and the like.

The construction phase services shall include, but are not necessarily limited to:

- a) Manage all aspects of the construction of the Project.
- b) Manage weekly progress meetings. Progress meetings include site visits from design consultants with field reports reviewed on a monthly basis.
- c) Provide completed Quality Control checklists for implementation of the Project.
- d) Review and process shop drawing submissions, RFI's, etc.
- e) Prepare meeting notes and records of decisions/changes made.
- f) Conduct pre-closeout inspections.
- g) Review closeout documents for completeness, such as As-Built Drawings based on the Design-Builder's red line drawings and/or coordinated set developed during the subcontractor coordination process. As-Built Drawings should be transmitted to DGS in hard copy, PDF, CAD, and BIM formats.

The Work shall be accomplished in accordance with the following:

2.3.1 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.

2.3.2 Compliance with Other Requirements. In performing the Work, the Design-Builder and its subcontractors shall comply with all of the applicable provisions of the Standard Contract Provisions and the requirements set forth in **Section 2.5** (Site Safety), **Section 2.7** (Workhours; Coordination with DPR and the Community), and **Section 2.8** (Quality Control Plan) of this RFP.

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

2.3.4 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.

2.3.5 Weekly Progress Meetings. Throughout the Work, the Design-Builder shall conduct weekly progress meetings following the Design-Builder's generated agenda with the Department's PM and key trade subcontractors. The Design-Builder shall draft and circulate the meeting minutes on a weekly basis.

2.3.6 Move-in Assistance. The Design-Builder shall assist DPR in relocating FF&E, as applicable. The GMP shall include an allowance and Scope of Work for these activities.

2.3.7 Delay Liquidated Damages. In addition to the disincentive fee provided for in **Section 2.2.1.7** relating to deliverables, if the Scope of Work is not substantially complete by the Substantial Completion Date, the Design-Builder shall be subject to liquidated damages in the amount of Five Hundred Dollars (\$500) per day. These damages shall not apply if the delay is the result of Force Majeure and the Design-Builder otherwise complies with the provisions set forth in the Standard Contract Provisions.

2.3.8 Salvage Value and Stored Items. The Design-Builder 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.

2.3.9 Protection of Existing Elements. The Design-Builder shall protect all existing features, public utilities, and other existing structures during construction. The Design-Builder shall protect existing, site improvements, trees, and shrubs from damage during construction. Protection extends to the root systems of existing vegetation. The Design-

Builder shall not store materials or equipment, or drive machinery, within the drip line of existing trees and shrubs.

2.3.10 Building Information Modeling. Building Information Modeling (“BIM”), **Attachment W**, is required to be used throughout the facility lifecycle, including all project phases from project planning and concept design through construction, as-builts, and into facilities management. The Design-Builder must work collaboratively with all project stakeholders. It is expected by the Department that all the Design-Builder’s team members are to be committed to the use of BIM in the project, share their ideas of BIM expertise with the Design-Builder’s team, provide BIM data as requested by other stakeholders, 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.

2.4 Site Cleanliness

During the Project and/or as directed by the Department’s Program Manager, as the installation is completed, the Design-Builder shall ensure that the site is clear of all extraneous materials, rubbish, or debris.

2.5 Site Safety

2.5.1 General Responsibility. The Design-Builder shall provide a safe and efficient site, with controlled access. As part of this obligation, the Design-Builder 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 for construction contracts.

2.5.2 Safety Plan. Prior to the start of construction activities, the Design-Builder 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 Design-Builder 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 Department and DPR for their review and approval prior to the commencement of construction. Once the Safety Plan has been approved, the Design-Builder shall comply with the plan at all times during construction. The Design-Builder shall be required to revise the Safety Plan as may be requested by the Department or DPR at any time, including, but not limited to, as necessary to address any new national or local COVID-19 regulations, recommendations, or restrictions. The cost of revising and complying with the plan shall not entitle the Design-Builder to an increase in the GMP. The Design-Builder 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 Design-Builder shall comply with the requirements of **Article 27, Section A** of the Standard Contract Provisions for Construction Contracts, **Attachment H1**.

2.5.3 Safety Barriers/Fences. As part of its responsibility for Project safety, the Design-Builder 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 DPR. The Design-Builder 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 Design-Builder shall be responsible for site security and shall be required to provide such watchman as are necessary to protect the site from unwanted intrusion. Site Security shall be included in the Design-Builder's general conditions cost.

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

2.5.6 SPECIAL PROVISIONS RELATED TO THE COVID-19 EMERGENCY (if applicable)

2.5.6.1 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.

2.5.6.2 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.

2.6 Reporting Requirements

The Design-Builder shall be required to submit the following reports:

2.6.1 Monthly Report. The Design-Builder 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 Monthly Schedule Updates. The Design-Builder shall provide a Baseline Schedule update to the Department, on the progress of the entire Work at least monthly, in the same format set forth in **Section 2.2.1.2** 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 Design-Builder's best projection of the actual date by which Substantial Completion and Final Completion of the Project will be achieved. The Design-Builder 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.

2.6.3 Use of DGS Project Management Tools (ProjectTeam)

The Design-Builder shall utilize the Department's current project management software, ProjectTeam, to submit any and all project documentation required to be provided by the Design-Builder 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) GMP and any Submissions that require approval by DC Council (viii) punch list; and (ix) other Project documents as may be designated by the Department.

Electronic storage and transmission of information via ProjectTeam system shall be compliant with the provisions of DGS document security.

2.7 Workhours; Coordination with DPR and Community

2.7.1 Workhours. The Design-Builder shall comply with the applicable noise ordinances 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 Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder shall keep the Department informed of the construction activities and their potential impact on the community. The Design-Builder shall submit the plan to the Department prior to its implementation and such plan shall be subject to the Department's review and approval.

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

2.8 Quality Control Plan

2.8.1 General Obligation. The Design-Builder shall be responsible for all activities necessary to execute, manage, control, and document work for ensuring compliance with the contract documents. The Design-Builder's responsibility includes ensuring adequate quality control services are provided by the Design-Builder's employees, its subcontractors, vendors & suppliers at all levels from concept to completion including site assessment-investigations/discovery, schematic design, design development, pre-construction, construction and closeout phases. All Contract related work activities and their implementation procedures described within this quality control plan shall also address safety, measures to ensure regulatory permit & code compliance, submittal management, change document processing/incorporation, reporting, and all other functions necessary to achieve highest levels of quality during design and construction efforts. The Design-Builder's quality control plan (the, "Quality Control Plan") submittal must include statements affirming compliance with DGS QC Program requirements.

2.8.2 Quality Control Plan. Within thirty (30) days after the NTP, the Design-Builder shall develop a Quality Control Plan for the Project. A draft of the Quality Control Plan shall be submitted to the Department and shall be subject to the Department's review and approval. This draft shall comply with the guidelines and include at a minimum, the necessary components for Quality Control Plan development described within the Department's Quality Control Master Program (**Attachment W**). 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, and hierarchical arrangement detailing ongoing, regular interaction/coordination within the Design-Builder's teams, duties/responsibilities of quality control personnel, submittal procedures, schedule of specified inspection & testing requirements, deficiency correction procedures, issues & conflicts resolution, RFI documentation process, change management, as-built record keeping of contract documents and a listing of customized quality control procedures that will be required to ensure key elements of the Work are executed in conformance with design documents. Examples of a few key elements that necessitate focused attention and involvement of competent agencies include MEP-Energy systems startup/commissioning, security systems integration and building envelope multi-trade coordination. Mockup construction requirements must be incorporated into the plan, in order to establish a minimum standard of acceptance by the Department, for the Project's most visible and critical structural-architectural building elements like CIP concrete and exterior facades. The Quality Control plan must clearly describe requirements addressing involvement of qualified personnel for

critical building elements and any delegated design features that require engineered solutions, backed by supporting analysis data.

The Quality Control Plan must clearly describe quality control measures such as using DGS QC Program's 3 phase checklists recommended to be undertaken by the Design-Builder's team. Prior to construction phase commencing, the Design-Builder must advise the Department regarding the status of their drawing & specification documents, from a percentage completion standpoint. For that matter, the Design Phase quality control effort shall provide metrics to gauge whether the design documents – drawings and specifications – are as complete as possible, prior to contractor's groundbreaking. DGS QC Program Design Phase Checklists include metrics to perform this evaluation of design documents. Similarly, the Quality Control Plan must describe in detail the quality control mechanisms proposed to be implemented by the Design-Builder for ensuring adherence with design documents by way of minimal rework and maintaining the highest standards of construction. The Quality Control Plan must detail description of any 3rd parties suggested to be hired by the Department such as building envelope consultants and commissioning agent.

2.8.3 Implementation. During the Construction Phase, the Design-Builder shall perform regular quality control inspections and create reports using the 3 Phase inspection checklists included with DGS Quality Control Master Program Manuals based on such inspections pursuant to the Quality Control Plan. These quality control reports with the 3 Phase Checklists shall be provided to the Department electronically on a monthly basis. The Design-Builder 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. The following are the components that must at a minimum be included within the monthly Quality Control report submitted to DGS. All components must be updated regularly, and current versions included with monthly submissions to the Department.

1. A written narrative of Quality Control activities for the month supported by embedded, cross referenced photos. Should include 3 Phase checklists compiled on a regular basis as part of the Design-Builder's ongoing quality control efforts.
2. CPM updates and analysis reflecting status of critical submittals affecting work progress, elaborated further within the descriptive work narrative accompanying CPM baseline schedule and subsequent, regular updates' submissions to the Department.
3. Deficiency tracking log.
4. Test & Inspections log recording all related activities for the month and cumulative for the project. This must correspond and cross reference the Project's testing & inspections schedule described above within Section 2.8.2.

5. Submittal Schedule detailing status of all Project submittals.

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

2.9 Project Close-out

All requirements/procedures listed under this Section 2.9 must also be incorporated into the Quality Control Plan.

2.9.1 Punchlist. Before the Substantial Completion Date, the Design-Builder shall develop a punchlist. Once the punch list is prepared, the Design-Builder 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 Design-Builder shall correct all punchlist items no later than thirty (30) days after Substantial Completion is achieved.

2.9.2 Training. The Design-Builder shall provide training to DGS and DPR staff on all of the building systems, as applicable. The Design-Builder 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. All training shall be electronically recorded and turned over to the Department for future use.

2.9.3 Warranties & Manuals. Six months subsequent to the Substantial Completion Date, the Design-Builder shall prepare and submit the following documentation: (i) a complete set of product manuals (“O&M” or “Operation and Maintenance Manuals”), 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 Design-Builder shall prepare and submit: (i) a complete set of its Project files; and (ii) a set of record drawings, including BIM model(s). (iii) The Design-Builder shall provide a maintenance and repair cost services report, which includes conducting a 40-year life cycle cost analysis, which includes a detailed list of replacement costs, maintenance costs, an estimate of repair costs, anticipated energy costs, and a list of other relevant life cycle costs.

2.9.4 Eleven Month Walk. The Design-Builder 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 Design-Builder 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 Design-Builder and its mechanical subcontractor shall provide support to DPR and the Department during system start-up and in initial operation for the first heating and cooling season after Substantial Completion is achieved.

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 Design-Builder to subcontractors and suppliers, but only in accordance with the subcontracts and supply agreements;
- b) All amounts due to the Design-Builder under the terms of the Department's written authorization for the Design-Builder to perform any portion of the work as self-performed Work. If an authorization for the Design-Builder 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 Design-Builder, 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 Design-Builder'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.
- c) 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;
- d) Fees for obtaining all required approvals or permits associated with the abatement, demolition, utility abandonment, and utility relocation, and all trade permit fees and the building permit fee;

- e) Cost of the Design-Builder’s Architect/Engineer’s contract reimbursed at cost and without markup; provided, however, that such costs shall not exceed the Design Fee set forth in the Offeror’s Proposal. Any amounts in excess of the Design Fee shall not be reimbursable as a Cost of Work;
- 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 Design-Builder 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 Design-Builder shall pay the costs, without reimbursement;
- g) All bonds to jurisdictional agencies (utilities, stormwater 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 Design-Builder 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 shall propose a lump sum amount for the cost of General Conditions, and this lump sum amount shall be the extent of what the Contractor is entitled to recover for the cost of General Conditions (such cost, the “Lump Sum General Conditions Cost”). The Lump Sum General Conditions Cost 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 1.5; and (ii) the Contractor can demonstrate to the satisfaction of the Department that such additional General Conditions costs are necessary and not due to any fault of the Contractor, its subcontractors, materialmen, consultants or anyone making claims thereunder. To the extent the Design-Builder incurs General Conditions Costs in excess of the Lump Sum General Conditions Cost, the Design-Builder shall not be entitled to reimbursement for such amounts unless the Department authorizes, by written Contract Modification, an increase to the Lump Sum General Conditions Cost. Nonetheless, in such an event, if the Design-Builder exceeds the Lump Sum General Conditions Cost, the Design-Builder shall continue to be required to adequately staff the Project and provide all Construction Services. General Conditions may include, but are not limited to:

- a) Cost of construction staff;
- b) Fringe Benefits associated with construction staff;
- c) Payroll taxes and payroll insurance associated with construction staff;
- d) Staff costs associated with obtaining permits and approvals;
- e) Out-of-house consultants, including, but not limited to, permit expeditors, safety managers, and schedulers;
- f) Job vehicles;

- g) The field office(s) for the Design-Builder and Department, including, but not limited to: (i) trailer purchase and/or rental; (ii) field office installation, relocation and removal; (iii) utility connections and charges during the Construction Phase; (iv) furniture; (v) office supplies;
- h) Office equipment including, but not limited to: (i) computer hardware and software; (ii) fax machines; (iii) copying machines; (iv) voice/data system installation and use charges; (v) job radios;
- i) Local delivery and overnight delivery costs;
- j) Field computer network;
- k) First aid facility;
- l) Printing cost for drawings, bid packages, etc.;
- m) BIM Cost (software, seats, hardware);
- n) Parking costs for the construction staff;
- o) Salting sidewalks and shoveling snow on sidewalks that surround the site; and
- p) Exterior site fencing, fence wrapping and construction signage.

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(b)(1)**.
- b) Fees for any permits or licenses the Design-Builder requires to conduct its general business operations.
- c) Capital expenses and interest on capital employed for the Work.
- d) The cost of home or regional offices, it being understood that compensation for such costs included in the Design-Build Fee.
- e) Sales or use taxes, unless the Design-Builder establishes that applicable law required payment of such taxes.
- f) Costs due to the errors or omissions of the Design-Builder or its subcontractors or suppliers at all tiers, negligent or otherwise.
- g) Costs dues to breach of Contract by the Design-Builder 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 Design-Builder 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 Design-Build Fee and Award Fee Calculations

The Design-Builder's compensation shall consist of (i) Preconstruction Fee; (ii) the Design-Build Fee; and (iii) the Lump Sum General Conditions Cost bid by selected Offeror. The Preconstruction fee shall be Contractor's sole compensation for services performed during Preconstruction Phase.

In addition, the Design-Builder shall be entitled to recover at cost and without mark-up its design costs, as defined in **Sections 2.10.1(f)** and **3.4.6**, subject, however, to the Design Fee proposed by the selected Offeror which limits shall serve as a cap on the design budget. The Design-Builder shall only be entitled to fifty percent (50%) of the Preconstruction Fee if the Design-Builder and the Department are unable to agree to a GMP, as set forth in more detail in the Design-Build Agreement. Entitlement to the Design-Build Fee shall be determined as described more fully below:

2.11.1 Lump Sum General Conditions Cost. The Lump Sum General Conditions Cost shall be the amount paid by the Department for those costs described in **Section 2.10.2**. The Lump Sum General Conditions Cost shall not be increased or decreased as a result of change orders or change directives unless such changes extend the duration of the Project beyond the time identified in **Section 1.5**. To the extent the Design-Builder incurs General Conditions costs in excess of the Lump Sum General Conditions Cost, the Design-Builder shall not be entitled to reimbursement for such amounts. In such an event, the Design-Builder shall be required to adequately staff the Project.

2.11.2 Base Design-Build Fee. The Design-Build Fee shall be divided into two categories. Sixty percent (60%) of the Design-Build Fee shall be referred to as the “Base Design-Build Fee” and the remaining forty percent (40%) shall be at risk (the “At Risk Portion”) and shall be used to establish and fund the award fee pool (the “Award Fee Pool”). The Base Design-Build Fee shall be paid in monthly progress payments with fifteen percent (15%) of the Base Design-Build Fee being allocated to the Preconstruction Phase of the Project (“Preconstruction Fee”), eighty-five percent (85%) being allocated to the Construction Phase. 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 Design-Build Fee will be re-allocated such that the then-existing portion of the Base Design-Build Fee allocated to each phase shall be evenly spread over the then-remaining duration of the phase.

2.11.3 Award Fee Determination. The Design-Builder shall be entitled to the At-Risk Portion as follows:

a) If a GMP is agreed upon by the Design-Builder and the Department within twelve (12) months after issuance of the NTP and the GMP is less than the Project Budget as set forth in Section 1.3, the Design-Builder shall earn twenty-five percent (25%) of the At-Risk Portion (i.e. 10% of the Design-Build Fee).

b) The Design-Builder shall be eligible to earn up to twenty-five percent (25%) of the 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 Design-Builder and the Department within

sixty (60) days after award. The Award Fee Evaluation Committee shall consist of the following people:

- i. DGS Capital Construction Division (CCD) Deputy Director or their designee
- ii. DPR Chief of Facilities or their designee
- iii. DGS CCD representative
- iv. DPR Facilities representative

Panelist shall not be an individual who has day-to-day interactions or involvement on the Project. Panelist shall not be an individual who is presently involved in an active project with the Design-Builder. Upon Substantial Completion, the Award Fee Evaluation Committee shall inspect the Project and assess, for each of the areas of the Project listed below, the overall appearance, functionality and level of quality found in the Work. In making this determination, the Award Fee Evaluation Committee shall average their individual scores into a single score based upon the following scale:

- i. 0 points – the Design-Builder failed to meet the minimum requirements of the Project and/or quality.
- ii. 1 point – the Design-Builder marginally met the minimum requirements of the Project and/or quality with major deficiencies
- iii. 2 points – The Design-Builder marginally met the minimum requirements of the Project and/or quality with minor deficiencies
- iv. 3 points – The Design-Builder met the requirements of the Project and/or quality with minimal deficiencies
- v. 4 points – The Design-Builder met some requirements and/or quality and exceeded others. There were no deficiencies.
- vi. 5 points – The Design-Builder exceeded most, if not all, the requirements of the Project and/or quality with no deficiencies.

If the Award Fee Evaluation Committee's average score is 4 points or greater, then the Design-Builder shall be entitled to the full award fee. If the average score is less than 4, then the average score shall be divided by four (4) and then multiplied by the award fee. That shall be the amount of the award fee that shall be given to the Design-Builder. Example 1: The average score is 3.5 and the award fee is \$200,000. The Design-Builder shall be entitled to \$175,000. Example 2: The average score is 4.1 and the award fee is \$200,000. The Design-Builder shall be entitled to \$200,000. At a minimum, the Award Fee Evaluation Committee shall evaluate the following for their scoring:

- i. Main entrance to building, both exterior and interior
- ii. Playground, if included
- iii. Playing fields, if included
- iv. Gymnasium
- v. Façade, not including windows
- vi. Windows (exterior), including any framing
- vii. Public space that was part of the Design-Builder's scope
- viii. Discovery Commons area(s)
- ix. Workout Room
- x. Multipurpose Room

- xi. Locker Rooms
- xii. Level of completeness of punch list
- xiii. Historic elements, if included
- xiv. Plantings and landscaping
- xv. Interior finishes in hallways
- xvi. Interior finishes in classrooms
- xvii. Interior finishes in offices

Prior to being eligible for the Quality Incentive walk, all quality control and quality assurance related deficiencies documented by the District shall be resolved and accepted as resolved by the District.

c) If the Design-Builder achieves Substantial Completion of the Project as stated in Section 1.5 on time the Design-Builder shall be entitled to receive twenty five percent (25%) of the At Risk Portion (i.e. 10% of the Design-Build Fee). Entitlement to this portion of the Award Fee Pool shall be based on the final outcome of the Project and the Project has been successfully turned over to the District. For the avoidance of doubt, the Design-Builder shall not be entitled to earn such portion of the Award Fee Pool even if the failure to deliver on-time was caused by DPR, the Department, delays resulting from the permitting or zoning process, or an event of Force Majeure.

d) If the Design-Builder achieves Final Completion of the Project as stated in Section 1.5, the Design-Build Fee and the final amount due to the Design-Builder (inclusive of the Preconstruction Fee, the Design Fee, the earned portions of the Award Fee, the Base Design-Build Fee and the Cost of General Conditions) is less than one hundred three percent (103%) or the GMP as originally established, the Design-Builder shall earn twenty-five percent (25%) of the At-Risk Portion (i.e. 10% of the Design-Build Fee). 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 Design-Builder 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 DPR, 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 Design-Builder provide a turn-key solution for the implementation of the Project, and the budget set forth in **Section 1.3** has been developed based on such a framework. The Design-Builder shall advance the Project in a manner consistent with such budget and the understanding that only the commissioning cost element is excluded from the budget set forth in **Section 1.3** of the RFP.

2.13 CAMPAIGN FINANCE REFORM ACT

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

2.14 Key Personnel; Diversion

2.14.1 Identification of Key Personnel for the Contractor. The following individuals shall be considered key personnel (“Key Personnel”) of the construction phase:

- i. Project Manager
- ii. Superintendent
- iii. Project Executive

2.14.2 Identification of Key Personnel of the Design-Builder’s Architect/Engineer

The following individuals shall be considered the Key Personnel of the Architect:

- i. Project Manager
- ii. Project Architect
- iii. Principal in Charge
- iv. Lead Mechanical Engineer
- v. Lead Envelope Consultant
- vi. Net Zero/LEED Consultant
- vii. Pool Consultant

2.14.3 Key Personnel Replacement Disincentive Fee. All members of the Design-Builder’s Key Personnel shall be subject to replacement fees for their removal or reassignment by the Design-Builder. In each instance where the Design-Builder removes or reassigns one of the key personnel as being subject to replacement fees (but excluding instances where such personnel becomes unavailable due to death, termination of employment or disability) without the prior written consent of the Department’s Contracting Officer, the Design-Builder shall owe to the Department the sum of Twenty Five Thousand dollars (\$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 Design-Builder’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, to replace or to reduce the scope of services of the Design-Builder in the event that a member of the Key Personnel has been removed or replaced by the Design-Builder without the consent of the Department. In the event the Department exercises the right to remove, to replace or to reduce the scope of services of the Design-Builder, the Department shall have the right to enforce the terms of the Agreement and to keep in place those members of the Design-Builder’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 Design-Builder’s team approved by the Department.

2.15 Deliverable List

The Design-Builder 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 Design and Preconstruction Phase Deliverables

Design and preconstruction deliverables shall include, but not be limited to:

- a) Project Schedule.
- b) List of Long Lead Items that could adversely impact the Project's schedule and recommendations for purchase.
- c) Concept Cost Estimate and Concept Designs.
- d) Schematic Cost Estimate and Schematic Design.
- e) Design Development Cost Estimate and Design Development.
- f) Permit Set of Construction Documents Cost Estimate and Permit Set of Construction Documents.
- g) Permit Set of Construction Documents, including DOB plan review responses.
- h) Issued for Construction Documents.
- i) Life Safety Floor Plans.
- j) List of subcontractors from which the Design-Builder intends to solicit bids and bidding procedure.
- k) Trade bid tabulations, including all subcontractor proposals.
- l) Report outlining Value Engineering strategies.
- m) GMP Proposal.
- n) Construction Phase Baseline Schedule.
- o) Statement of constructability within ten (10) days of the conclusion of the Design and Preconstruction Phase, executed by both the Design-Builder and the Project Architect/Engineer.
- p) Insurance Certificates.
- q) Payment and Performance Bonds.

2.15.2 Construction Deliverables

Construction deliverables shall include, but not be limited to:

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

- j) Closeout documents (Product Manuals, Warranties, etc.).
- k) Quality Control Plan.
- l) Quality Control Inspection Reports.
- m) Corrective Action Plan if applicable.
- n) ProjectTeam submissions.
- o) Invoices and Acceptable Application for Payment with Release of Liens and Claims (**Attachment Q**).
- p) Insurance Certificates.
- q) Performance and Payment Bonds.
- r) Certificate of Substantial Completion executed by the Design-Builder's Architect/Engineer and submitted to the Department for review, concurrence and approval.
- s) Documents that may be required by Contracting Officer from time to time.

2.15.3 Close-Out Deliverables

Close-out deliverables shall include those outlined in **Attachment U** (DGS Turnover Manual) including, but not limited to the below items. If there is a conflict between **Attachment U** and the deliverable list below, **Attachment U** shall prevail.

- a) A complete set of the Design-Builder'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) Final Maintenance and Operations Plan.

2.16 Licensing, Accreditation and Registration

The Design-Builder and all of its subcontractors and sub-consultants (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 Design-Builder 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 as stated in **Attachment F1** is applicable to this Project. As such, the Design-Builder and its trade subcontractors shall comply with the wage and reporting requirements imposed by that Act. At such time as the Design-Builder is preparing its GMP, the Design-Builder 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 Design-Builder 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. Additionally, the Department seeks an innovative and efficient approach to successfully delivering this multi-phase Project.

2.20 Living Wage Act

The Contractor agrees that the Work performed under the proposed contract shall be subject to the living wage act in effect at the time of the 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 **Attachment K**.

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 of the Design-Builder (**10 points**)
- b) Key Personnel of the Design-Builder (**10 points**)
- c) Past Performance, Relevant Experience & Capabilities of the Design-Builder's Architect-Engineer (**10 points**)
- d) Key Personnel of the Design-Builder's Architect/Engineer (**10 points**)
- e) Project Management Plan & Schedule (**40 points**)
- f) Price (**20 points**)
- g) Certified Business Enterprise ("CBE") Preference (up to **12 points**)

3.1 Evaluation Process

The Department shall evaluate Offerors' proposals ("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 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.

3.3 Oral Presentation

The Department does not intend to interview Offerors and the 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 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 submission will be re-scored at the conclusion of the oral presentation.

3.3.1 Length of Oral Presentation

If applicable, 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.

3.3.2 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.

3.3.3 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.

3.3.4 Topics

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

3.4 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 experiences of the members of the evaluation panel and others involved in the evaluation process. 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.

3.4.1 Past Performance, Relevant Experience & Capabilities of the Design-Builder (10 points)

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

- i. Demonstrated experience with Design-Build of new construction of similar Recreational 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 sf)
- iv. Demonstrated Experience with Design-Build renovation of facilities of historic significance from a similar era.

The Offeror shall ensure that a minimum of three (3) Past Performance Evaluation forms **Attachment L** for the Contractor, are completed and submitted on behalf of the Offeror directly to the Department's POC stated in **Section 1.7** by the due date for Proposals as specified in **Section 5.3**. A copy of those past performance forms shall be included in the Offeror's proposal. The past performance evaluation ("PPE") forms shall address at least one of the 5 projects requested in **Section 5.4.3 (a)**.

In the case of an Offeror without a record of relevant past performance or for whom information on past performance is not available (i.e. no PPE forms can be provided), 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.

3.4.2 Key Personnel of the Design-Builder (10 points)

The proposed Key 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 in accordance with the requirements of **Section 5.4.4**. The Offeror shall identify the following:

- i. Project Manager and his/her experience on similar type projects. Provide a list of at most 5 (five) completed projects and a list of all current projects (if any) and their completion dates.

- ii. Superintendent and his/her experience on similar type projects. Provide a list of at most 5 (five) completed projects and a list of all current projects (if any) and their completion dates
- iii. Project Executive and his/her experience on similar type projects. Provide a list of at most 5 (five) completed projects and a list of all current projects (if any) and their completion dates

If the Offeror is proposing more than one (1) person in any of the above positions, the Offeror shall clearly identify which person shall be evaluated as the Key Personnel.

Offerors shall submit the identification of their Key Personnel for the Contractor and convey at a minimum the following experience requirement(s) for each Key Personnel:

- i. The Project Manager's minimum experience requirements are as follows:
 - a. Minimum of seven (7) years of professional experience. Of the 7 years' experience the Project Manager shall have a minimum of two (2) years' experience working as a Project Manager or two (2) years of experience working on a project of an equal to or greater contract value to the Project
- ii. The Superintendent's minimum experience requirements are as follows:
 - a. Minimum of five (5) years of professional experience. Of the 5 years' experience the Superintendent shall have a minimum of two (2) years' experience working as a Superintendent or two (2) years of experience working on a project of an equal to or greater contract value to the Project
- iii. The Project Executive's minimum experience requirements are as follows:
 - a. Minimum of ten (10) years of professional experience. Of the 10 years' experience the Project Executive shall have a minimum of five (5) years' experience working as a Project Executive or five (5) years of experience working on a project of an equal to or greater contract value to the Project.

3.4.3 Past Performance, Relevant Experience & Capabilities of the Design-Builder's Architect-Engineer (10 points)

The Department desires to engage a Design-Builder with a design team component that possesses the experience necessary to accomplish the objectives set forth in the RFP. The Architect/Engineer of the Offeror will be evaluated based on their:

- i. Design experience of ground-up new recreation facilities and site analysis of building orientation strategy in a setting similar in size and budget to the proposed Project.
- ii. Design experience with projects where programmatic elements drove design decisions, and how those elements were balanced with site constraints and stakeholder input.
- iii. Demonstrated past performance with DC, or similar jurisdiction, navigating through permitting, other regulatory/utility agencies.

- iv. Demonstrated Experience with Design-Build. Also include experience working with DC Historic Preservation Office and the Commission of Fine Arts or similar agencies in other jurisdictions.

The Offeror shall ensure that a minimum of three (3) Past Performance Evaluation forms **Attachment L**, for the Design-Builder's Architect/Engineer, are completed and submitted on behalf of the Offeror directly to the Department's POC stated in **Section 1.7** by the due date for Proposals as specified in **Section 5.3**. A copy of those past performance forms shall be included in the Offeror's proposal. The PPE forms shall address at least one of the 5 projects requested in **Section 5.4.3 (a)**.

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.

3.4.4 Key Personnel of the Design-Builder's Architect-Engineer (10 points)

The Department desires that the design component of the Design-Builder assigned to this Project be individuals who have experience in designing and completing similar type projects as the Project. The personnel so assigned should have the necessary experience and professional credentials for the role each such individual is assigned. The proposal shall be organized in accordance with the requirements of **Section 5.4.4**, and at a minimum, should identify:

- i. Project Manager and his/her experience on similar type projects. Provide a list of at most five (5) completed projects and a list of all current projects (if any) and their completion dates.
- ii. Project Architect and his/her experience on similar type projects. Provide a list of at most five (5) completed projects and a list of all current projects (if any) and their completion dates.
- iii. Principal in Charge and his/her experience on similar type projects. Provide a list of at most five (5) completed projects and a list of all current projects (if any) and their completion dates.
- iv. Lead Mechanical Engineer and his/her experience on similar type projects. Provide a list of at most five (5) completed projects and a list of all current projects (if any) and their completion dates.

- v. Lead Envelope Consultant and his/her experience on similar type projects. Provide a list of at most five (5) completed projects and a list of all current projects (if any) and their completion dates.

Offerors shall submit the identification of their Key Personnel for the Design-Builder's Architect/Engineer and convey at a minimum the following experience requirement(s) for each Key Personnel:

- i. The Project's Manager's minimum experience requirements are as follows:
 - a. Minimum of seven (7) years of professional experience. Of the 7 years' experience the Project Manager shall have a minimum of five (5) years' experience working as a Project Manager or 5 years of experience working on a project of an equal to or greater contract value to the Project
 - b. Bachelor's Degree or higher
- ii. The Project Architect's minimum experience requirements are as follows:
 - a. Minimum of five (5) years of professional experience. Of the 5 years' experience the Project Architect shall have a minimum of three (3) years' experience working as a Project Architect or 3 years of experience working on a project of an equal to or greater contract value to the Project
 - b. Bachelor's Degree or higher
- iii. The Principal in Charge minimum experience requirements are as follows:
 - a. Minimum of ten (10) years of professional experience. Of the 10 years' experience the Principal in Charge shall have a minimum of five (5) years' experience working as a Principal in Charge or 5 years of experience working on a project of an equal to or greater contract value to the Project
 - b. Bachelor's Degree or higher
- iv. The Lead Mechanical Engineer minimum experience requirements are as follows:
 - a. Minimum of seven (7) years of professional experience. Of the 7 years' experience the Lead Mechanical Engineer shall have a minimum of five (5) years' experience working as a Lead Mechanical Engineer or 5 years of experience working on a project of an equal to or greater contract value to the Project
 - b. Bachelor's Degree or higher
- v. The Lead Envelope Consultant minimum experience requirements are as follows:
 - a. Minimum of seven (7) years of professional experience. Of the 7 years' experience the Lead Envelope Consultant shall have a minimum of five (5) years' experience working as a Lead Envelope Consultant or 5 years of experience working on a project of an equal to or greater contract value to the Project
 - b. Bachelor's Degree or higher

3.4.5 Project Management Plan & Schedule (40 points)

Offerors are required to submit with their proposal a Project Management Plan and Schedule (“Management Plan”). The Management Plan should clearly explain how the Design-Builder intends to manage and implement the Project, as follows:

At a minimum, the Project Management Plan shall include:

- i. A schedule (P6 or similar format) and a schedule narrative to demonstrate how the Offeror intends to complete the Project in a timely manner and meet the Project Milestone Dates reference in **Section 1.6.** and shall show: (i) key design milestones and bid packages; (ii) release dates for key subcontractors; (iii) Project phasing; and (iv) a cash flow analysis. The schedule should demonstrate that the Offeror understands the Project, the times constraints associated with DC Council Approval, the DC permitting and entitlement process, the challenges with Project move-in and close-out and has a workable method to deliver the Project.
- ii. Design approach highlighting items including but not limited to site analysis and constraints, general design ideas on the new building’s aesthetic within the existing neighborhood context, meeting DPR programming needs in the new building and within the proposed Project Budget and a discussion of early questions and/or decisions the Department will need to make to assure project success.
- iii. Provide a site specific construction management plan that includes risks and challenges to the Project, as well as the Offeror’s approach to the common issues at any project site, delivery routes, laydown areas, permitting, utility coordination, safety plan and QA/QC plan.
- iv. How the builder will work with the designer to assure that any and all concepts, plans, sketches, renderings presented to the Department, DPR are “to Budget”.
- v. Community engagement strategy by discussing how they plan to balance the community demands while achieving the Project Budget and schedule. The community engagement strategy should also include a discussion of the Design-Builder approach during the construction phase of the Project.

3.4.6 Price (20 points)

Offerors will be required to submit with their Proposals the following fee components: (i) a Design Fee; (ii) a Design-Build Fee; and (iii) Lump Sum General Conditions Cost. The Design-Build Fee will be a fixed fee and should cover the cost of the Design-Builder’s overhead and profit; the Lump Sum General Conditions Cost shall be the extent of what the Contractor is entitled to recover for the cost of General Conditions; and the Design Fee should include an upset limit and a schedule of values showing the cost of the various phases of the design. Each Offeror will be required to complete and submit with their Proposal a copy of the pricing sheet set forth as **Attachment C**, 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.

3.4.7 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.

3.5. 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 |
| 2 | MINIMALLY ACCEPTABLE | Marginally meets minimum requirements; minor deficiencies which may be correctable. |
| 3 | ACCEPTABLE | Meets requirements with minimal deficiencies. |
| 4 | GOOD | Meets requirements and exceeds some requirements; no deficiencies. |
| 5 | EXCELLENT | Exceeds most, if not all requirements; no deficiencies |

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 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 Department of Small and Local Business Development 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 the Department of Small and Local Business Development if additional information is required on certification procedures and requirements.

4.2 Subcontracting Plan

An Offeror responding to this RFP that is obligated to subcontract shall be required to submit with its Proposal, any subcontracting plan required by law. Offeror's responding to this RFP shall be deemed nonresponsive and shall be rejected if the Offeror fails to submit a subcontracting plan that is required by law. If the Agreement is in excess of \$250,000, at least 35% of the dollar volume of the Agreement shall be subcontracted in accordance with **Attachment I**.

4.2.1 Mandatory Subcontracting Plan and Requirements.

The Contractor shall comply with the terms of the mandatory subcontracting requirements as follows:

4.2.1.1. 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).

4.2.1.2. If there are insufficient SBEs to completely fulfill the requirement of Section 4.2.1.1 above, 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.

4.2.1.3. A prime contractor that is certified by DSLBD as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of subsections 4.2.1.1 and 4.2.1.2 above.

4.2.1.4. Except as otherwise provided in D.C. Official Code § 2-218.46, a prime contractor that is a CBE and has been granted a 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.

4.2.1.5. If the prime contractor 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, the CBE member of the certified joint venture 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. If the CBE member of the certified joint venture prime contractor performs less than 50% of the contracting effort, the certified joint venture shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

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

4.2.1.7. 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 50% of the on-site work with its own organization and resources if the contract is \$1 million or less.

4.2.2 Subcontracting Plan

The Subcontracting Plan shall be submitted as part of the proposal and may only be amended after award with the prior written approval of the CO and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the plan after award shall inure to the benefit of the District.

Each 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 Contractor will pay each subcontractor.

4.2.3 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 CO, City Administrator (“CA”), District of Columbia Auditor and the Director of DSLBD.

4.2.4 Subcontracting Plan Compliance Reporting

4.2.4.1 If the Contractor has a subcontracting plan required by law for this contract, the Prime 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 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.

4.2.4.2 If the fully executed subcontract is not provided with the quarterly report, the 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 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.

4.2.6 DSLBD Notices

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

4.2.7 Enforcement and Penalties for Breach of Subcontracting Plan

4.2.7.1 The 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.

4.2.7.2 the 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.

4.2.7.3 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 of the Standard Contract Provisions for Construction Contracts (**Attachment H1**) and Standard Contracts Provision for Architectural and Engineering Contracts (**Attachment H2**).

4.2.7.4 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.

4.2.8 51% District Residents New Hires Requirements and First Source Employment Agreement

4.2.8.1 For contracts for services in the amount of \$300,000 or more, the Design-Builder 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").

4.2.8.2 The Design-Builder shall enter into and maintain during the term of the Contract, a First Source Employment Agreement (**Attachment J**) with the District of Columbia Department of Employment Service's (DOES), in which the Design-Builder 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.

4.2.8.3 If applicable, the Design-Builder 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.

4.2.8.4 The Design-Builder 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.

4.2.8.5 The Design-Builder agrees that at least 51% of the new employees hired to perform the Contract shall be District residents. The Design-Builder shall ensure that at least fifty-one percent (51%) of the Design-Builder 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 Design-Builder, 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.

4.2.8.6 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.

4.2.8.7 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.

4.2.8.8 If the Design-Builder 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 Design-Builder fails to meet its hiring requirements.

4.2.8.9 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.

4.2.8.10 The Design-Builder 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.

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

4.2.8.12 Construction projects or contracts covered by this Section 4.2.8 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 4.2.9 Economic Inclusion Reporting Requirements

Section 4.2.9.1 Upon execution of the Agreement, the Design-Builder 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 4.2.9.2 The Design-Builder 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 Design-Builder 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 4.2.9.3 The Design-Builder shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

Section 4.2.9.4 The Design-Builder shall be responsible for: (i) including the provisions of Section 4.2.2 in all subcontracts; (ii) collecting the information required in Section 4.2.2 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in the reports required to be submitted by the Design-Builder pursuant to Section 4.2.2.

4.3 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. If applicable, 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.

4.4 SBE Subcontractor information

The full SBE subcontracting plan is not required to be submitted by the Design-Builder for pre-construction services; however, a full SBE subcontracting plan (35% of the contract amount including total design and build costs) is required to be submitted before entering into a guaranteed maximum price or contract authorizing construction. The Design-Builder shall submit the full SBE subcontracting plan to include:

- (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 Design-Builder to each subcontractor; and
- (e) Meet the subcontracting requirements as further described in **Section 4.2.1** of this RFP.

Section 4.5 Way To Work Amendment Act of 2006

4.5.1. Except as described in **Section 4.5.9** below, the Design-Builder 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 Design-Builder shall pay its employees and subcontractors who perform services under the Contract no less than the current living wage.

4.5.3 The Design-Builder 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 Design-Builder will find the current living wage rate on its website at www.does.dc.gov.

4.5.5 The Design-Builder shall provide a copy of the Fact Sheet attached within **Attachment K** to each employee and subcontractor who performs services under the Contract. The Design-Builder shall also post the Notice attached within **Attachment K** in a conspicuous place in its place of business. The Design-Builder 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 Design-Builder 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.

Section 4.6 Equal Employment Opportunity and Hiring of District Residents

In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985, "on compliance with Equal Opportunity Requirements in District government contracts," A contract award cannot be made to any contractor who has not satisfied the Equal Employment Requirements. The Contractor shall comply with applicable laws, regulations and special requirements of the contract regarding equal employment opportunity and affirmative action programs. The forms for completion of the Equal Employment Opportunity Information Report are incorporated as **Attachment R**.

PART 5 - PROPOSAL ORGANIZATION AND PROPOSAL SUBMISSION

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:

The proposal should be titled: **“Proposal for Design-Build for Upshur Recreation Center Modernization – DCAM-23-CS-RFP-0029”**.

5.2 Submission of Proposals

Proposals shall be submitted to the solicitation portal via the following link:

<https://octo.quickbase.com/db/bq7rujdk2?a=dbpage&pageID=2%E2%80%9D>

In submitting the proposal on the portal, Offerors must select the name of the Contract Specialist as indicated in Section 1.7 of this RFP.

5.3 Date and Time for Receiving Proposals

Proposals shall be received no later than **2:00 PM EST on November 15, 2023**. The Offerors assume the sole responsibility for the timely submission of their proposal.

5.4 Proposal Size, Organization, and Offeror Qualifications

The Department is interested in a qualitative approach to the 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 Design-Builder and each of its subconsultants.

- a) Name(s), address(es), and role(s) of each firm (including all sub-consultants)
- 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

Past Performance, Relevant Experience & Capabilities should contain the information requested in **Section 3.4.1** and **Section 3.4.3** of the RFP. In addition, the Offeror shall provide the following:

- 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 builder'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 amount 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. Include the following phases for each Key Personnel: Concept Design, Schematic Design, Design Development, Construction, Closeout.
 - (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 workload starting at the NTP date stated in Section 1.5 through the Final Completion date stated in Section 1.5
- 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 3.4.5** of the RFP.

5.5 Price Proposal

The Price proposal shall be organized as follows:

- a) **Offer Letter.** Each Offeror shall submit an Offer Letter Form substantially in the form of **Attachment C**. Material deviations, in the opinion of the Department, from the Offer Letter Form shall be sufficient to render the Proposal non-responsive.
- b) **Bidder-Offeror Certification Form.** Each Offeror shall complete and submit with its Price Proposal the Bidder-Offeror Certification Form attached hereto as **Attachment D**. An Offeror who submits an incomplete or improperly or inaccurately completed Bidder-Offeror Certification Form may be deemed non-responsive.
- c) **Tax Affidavit.** Each Offeror must submit a tax affidavit substantially in the form of **Attachment E**. In order to be eligible for this procurement, Offerors must be in full compliance with their tax obligations to the District of Columbia Government.
- d) **Bid/Proposal 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 G**.
- e) **SBE Subcontracting Plan.** Each Offeror shall submit a SBE subcontracting plan substantially in the form of **Attachment I**.
- f) **First Source Agreement and Employment Plan.** Each Offeror shall submit a first source agreement and employment plan substantially in the form of **Attachment J**.

- g) **Conflict of Interest Disclosure Form.** Each Offeror shall submit a conflict of interest disclosure statement substantially in the form of **Attachment P**.
- h) **EEO Policy Form.** Each Offeror shall submit an EEO policy form substantially in the form of **Attachment R**.
- i) **Certification to Furnish Performance & Payment Bonds.** Each Offeror shall submit a certification to furnish a performance & payment bonds substantially in the form of **Attachment S**.
- j) **Clean Hands Certificate:** Provide a copy of Offeror's firm's Clean Hands Certificate that indicates compliance from the Office of Tax and Revenue self-service portal at mytax.dc.gov. The new process generates the certificates instantaneously which can be printed or downloaded immediately.
- k) **Licenses:** A copy of each District of Columbia license, registration, or certification that the Offeror is required by law to obtain. If the Offeror is a corporation or partnership and does not provide a copy of its license, registration, or certification to transact business in the District of Columbia, the Offeror shall certify its intent to obtain the necessary license, registration, or certification prior to contract award or its exemption from such requirements.

PART 6 - PROCEDURES & PROTESTS

6.0 Contact Person

Offerors should contact the Department's POC as stated in **Section 1.7** for information about this RFP or for any written questions or inquiries regarding the RFP.

6.1 Pre-proposal Conference

A pre-proposal conference and site visit will be held on **October 24, 2023, at 10:00 A.M.** Further information is on page 1 (cover page) of this RFP.

6.2 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.

Questions about this RFP shall be submitted to the portal no later than **October 30, 2023, at 4:00 PM EST** using the following link:

<https://octo.quickbase.com/db/bq7rujdk2?a=dbpage&pageID=2%E2%80%9D>.

The Department will provide responses to potential Offerors to all questions received. **Questions will not be accepted after this date.**

In submitting the questions about the solicitation on the portal, Offerors must select the name of the Contract Specialist as indicated in Section 1.7 of this RFP.

6.3 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).

6.4 Contract Award

This procurement is being conducted in accordance with D.C. Code § 2-354.03 and 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.

6.5 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.

6.6 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.

6.7 Late Proposals: Modifications

- a) Any Proposal or BAFO received as mentioned in **Section 5.2** after the time specified in **Section 5.3** shall not be considered.
- b) Any modification of a Proposal, including a modification resulting from the CPO's requests for BAFOs, 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 that 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.

6.8 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.

6.9 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 Proposal 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 BAFO.
- j) To reject Proposals that are deemed non-responsive.

6.10 Limitation of Authority

Only a Contracting Officer with prior written authority from the CPO 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 Contracting Officers.

6.11 Non-Responsive Proposals

6.11.1 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 D**.

6.11.2 Exceptions. The Department may consider a proposal non-responsive if the Offeror identifies any changes or exceptions to the Standard Contract Provisions.

6.11.3 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.

6.11.4 Bid Bond. The Department shall consider a Proposal non-responsive if the Offeror fails to submit a bid bond or cashier's check in lieu of a bid bond with its Proposal.

PART 7 – DESIGN-BUILD AGREEMENT

7.0 Contract Documents

The Design-Build Agreement or the Form of Contract, will be issued via Addendum to the RFP as **Attachment M**. The Standard Contract Provisions are attached hereto as **Attachments H1 and H2**. Offerors should carefully review the Agreement and Standard Contract Provisions when submitting their Proposals. To the extent there are any ambiguities or inconsistencies between this RFP, the Standard Contract Provisions and Design-Build Agreement shall have precedence. Offerors are advised that they are required to submit their Proposals premised upon agreeing to the terms of the Standard Contract Provisions and entering into a Letter Contract, if applicable, and subsequently, the Design-Build Agreement.

PART 8 - INSURANCE REQUIREMENTS

8.0 GENERAL 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 submit a Certificate of Insurance to the Contracting Officer (CO) giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO.

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

(without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an Additional Insured) for all claims against the additional insured arising out of the performance of this Statement of Work by the Contractor or its subcontractors, or anyone for whom the Contractor or its subcontractors may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

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

B. INSURANCE REQUIREMENTS

1. Commercial General Liability Insurance (“CGL”) - The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. (“ISO”) form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor and under all subcontracts, covering claims for bodily injury, including without limitation sickness, disease or death and mental anguish of any persons, broad form property damage, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$1,000,000 each occurrence, a \$2,000,000 general aggregate.

The Commercial General Liability shall be further endorsed to:

- a) To the fullest extent permitted by law, provide additional insured coverage using ISO form CG 2015 0413 (or it’s equivalent) to The Government of the District of Columbia
 - b) Coverage available to the additional insureds shall apply on a primary and non-contributing basis as respects any other insurance, deductibles, or self-insurance available to the additional insureds
 - c) A waiver of subrogation in favor of The Government of the District of Columbia
 - d) Any Annual Aggregate shall apply on a per location or per project basis (where applicable)
 - e) Defense costs shall be in addition to and not erode the limits of liability
2. Automobile Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the CO in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Contractor in connection with work under this agreement, with a

minimum combined single limit of \$1,000,000 for bodily injury or death and property damage, including loss of use thereof. Such policy or policies of automobile liability insurance shall be written on an "occurrence" (as opposed to a "claims made") basis.

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

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

The Commercial Auto Liability policy shall be further endorsed to:

- a. To the fullest extent permitted by law, provide additional insured coverage to The Government of the District of Columbia
- b. Coverage available to the additional insureds shall apply on a primary and non-contributing basis as respects any other insurance, deductibles, or self-insurance available to the additional insureds
- c. A waiver of subrogation in favor of The Government of the District of Columbia
- d. Defense costs shall be in addition to and not erode the limits of liability
- e. If applicable, include Form CA 99 48 03 06 Pollution Liability - Broadened Coverage for Covered Autos - Business Auto, Motor Carrier and Truckers (or it's equivalent)

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

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

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

- a) Include a Waiver of Subrogation in favor of The Government of the District of Columbia.
- b) Where applicable, include United States Longshore and Harbor Workers Compensation Act (USL&H)
- c) Where applicable, include Jones Act Coverage for seamen or crew members on an "if any" basis.

4. Network Security/Privacy (Cyber) Liability Insurance covering acts, errors, omissions, breach of contract, and violation of any consumer protection laws arising out of

Contractor's operations or services with a limit of \$2,000,000 per claim and in the aggregate. Such coverage shall include but not be limited to, third party and first party coverage for loss or disclosure of any data, including personally identifiable information and payment card information, network security failure, violation of any consumer protection laws, unauthorized access and/or use or other intrusions, infringement of any intellectual property rights (except patent), unintentional breach of contract, negligence or breach of duty to use reasonable care, breach of any duty of confidentiality, invasion of privacy, or violations of any other legal protections for personal information, defamation, libel, slander, commercial disparagement, negligent transmission of computer virus, or use of computer networks in connection with denial of service attacks. Such coverage shall include regulatory defense and fines/penalties in any jurisdiction anywhere in the world. Such coverage shall include contractual privacy coverage for data breach response and crisis management costs that would be incurred by Contractor on behalf of The Government of the District of Columbia in the event of a data breach including legal and forensic expenses, notification costs, credit monitoring costs, and costs to operate a call center. Contractor shall maintain coverage in force during the term of this Agreement and for an extended reporting period of not less than two (2) years after.

5. Professional Liability Insurance (Errors & Omissions) - The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of \$1,000,000 per claim or per occurrence for each wrongful act and \$2,000,000 annual aggregate. The Contractor warrants that any applicable retroactive date precedes the date the Contractor first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services. Limits may not be shared with other lines of coverage.
6. Commercial Umbrella or Excess Liability - The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits of \$10,000,000 per occurrence and \$10,000,000 in the annual aggregate, following the form and in excess of all liability policies. All liability coverages must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by The Government of the District of Columbia and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.
7. Crime Insurance (3rd Party Indemnity) - The Contractor shall provide a Crime policy including 3rd party fidelity to cover the dishonest acts of Contractors, its employees and/or volunteers which result in a loss to the District. The Government of the District of Columbia shall be included as loss payee. The policy shall provide a limit of \$10,000 per occurrence.

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

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

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

9. Employment Practices Liability - The Contractor shall provide evidence satisfactory to the CO with respect to the operations performed to cover the defense of claims arising from employment related wrongful acts including but not limited to: Discrimination, Sexual Harassment, Wrongful Termination, Workplace Torts, "Bullying" in "any location" and "by any means," including the Internet, whether between employees of contractor or against third parties. Employment Practices Liability coverage must specifically state Third Party Liability coverage is included. Contractor will indemnify and defend The Government of the District of Columbia should it be named co-defendant or be subject to or party of any claim. Coverage shall also extend to Temporary Help Firms and Independent Contractors hired by Contractor. The policy shall provide limits of not less than \$1,000,000 for each wrongful act and \$2,000,000 annual aggregate for each wrongful act.
10. Installation-Floater Insurance - For projects not involving structural alterations, the contractor shall provide an installation floater policy with a limit equal to the Property values being installed as part of the project. The policy shall cover property while located

at the project site, at temporary locations, or in transit; deductibles will be the sole responsibility of the contractor.

11. Sexual/Physical Abuse & Molestation - The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate of affirmative abuse and molestation liability coverage. Coverage should include physical abuse, such as sexual or other bodily harm and non-physical abuse, such as verbal, emotional or mental abuse; any actual, threatened or alleged act; errors, omission or misconduct. This insurance requirement will be considered met if the general liability insurance includes an affirmative sexual abuse and molestation endorsement for the required amounts or through a separate stand alone sexual abuse and molestation policy with confirmation there are no exclusions for abuse or assault & battery under the General Liability. So called “silent” coverage or “shared” limits under a commercial general liability or professional liability policy will not be acceptable. Limits may not be shared with other lines of coverage. The applicable policy may need to be submitted to the ORM for compliance review.

Construction Projects Controlled by the District

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

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

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

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

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

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

C. SUBCONTRACTOR INSURANCE REQUIREMENTS

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

D. PRIMARY AND NONCONTRIBUTORY INSURANCE

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

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

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

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

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

I. NOTIFICATION. The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of cancellation, non-renewal, or material changes to the extent such cancellation or material changes results in Contractor no long complying with the above requirements. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. The Contractor

will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract. The Government of the District of Columbia may reasonably change the above insurance coverage requirements during the Term by giving Contractor at least 30 days' notice of the change. Contractor must comply, at your expense, and deliver to the CO evidence of compliance before the change becomes effective.

- J. CERTIFICATES OF INSURANCE. The Contractor must send to CO, at least 10 days after execution of this Agreement, certificates of insurance evidencing the required insurance coverage and endorsements required herein. Contractor must also provide us with evidence of renewal before the expiration date of each insurance policy. Contractor is responsible for providing us with 30 days advanced written notice if the certificate of insurance by the insurer has been canceled, reduced in coverage, or otherwise altered. . Certificates of insurance must reference the corresponding contract number. Evidence of insurance shall be submitted to:

The Government of the District of Columbia

And mailed to the attention of:

Obaidullah Ranjbar

Department of General Services

3924 Minnesota Ave NE, 5th Floor.

Washington, DC 20019

202-359-3362

Obaidullah.ranjbar@dc.gov

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

- K. DISCLOSURE OF INFORMATION. The Contractor agrees that The Government of the District of Columbia may disclose the name and contact information of its insurers to any third party which presents a claim against The Government of the District of Columbia for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.
- L. CARRIER RATINGS. All Contractor's and its subcontractors' insurance required in connection with this contract shall be written by insurance companies with an A.M. Best

Insurance Guide rating of at least A- VII or better (or the equivalent by any other rating agency) and licensed in the District of Columbia.

M. WARRANTIES. When applicable, the Contractor should be named as an additional insured on the applicable manufacturer's/distributor's Commercial General Liability policy using Insurance Services Office, Inc. ("ISO") form CG 20 15 04 13 (or another occurrence-based form with coverage at least as broad). CO should collect, review for accuracy, and maintain all warranties for goods and services.

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 G**. 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. 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 O** and return, notarized, with the Offeror's Proposal.

9.1 Contractor's Payment and Performance Bond

The Design-Builder will be required to post a payment and performance bond having a penal value equal to the Agreement amount at the time the Agreement is executed. The Design-Builder will be required to post updated payment and performance bond in the form of Attachment T to reflect the GMP Amendment 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 P**).

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 |
| CPO | Chief Procurement Officer |
| CA | City Administrator |
| CFA | Commission of Fine Arts |
| COTR | Contracting Officer's Technical Representative |
| DPR | Department of Parks and Recreation |
| CBE | Certified Business Enterprise |
| SBE | Small Business Enterprises |
| DSLBD | Department of Small and Local Business Development |
| DOEE | Department of Energy and Environment |
| DOB | Department of Buildings |
| DOH | Department of Health |
| BIM | Building Information Modeling |

PART 11 - ATTACHMENTS

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF GENERAL SERVICES



ATTACHMENT A

Concept Design, Schematic Design, Design Development milestone Requirements

(Refer to the Section 2 of the RFP)

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF GENERAL SERVICES



ATTACHMENT B

Reserved

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF GENERAL SERVICES



ATTACHMENT C

Form of Offer Letter

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

[Offeror's Letterhead]

[Insert Date]

District of Columbia Department of General Services
3924 Minnesota Avenue NE, 5th Floor
Washington, DC 20019

Attention: Mr. Obaidullah Ranjbar
Contracting Officer

Reference: Request for Proposals – DCAM-23-CS-RFP-0029
Design-Build Services for Upshur Recreation Center Modernization

Dear Mr. Ranjbar:

On behalf of [INSERT NAME OF Offeror] (the "Offeror"), I am pleased to submit this Proposal in response to the Department of General Services' (the "Department" or "DGS") Request for Proposals ("RFP") – DCAM-23-CS-RFP-0029 to provide Design-Build Services for Upshur Recreation Center Modernization. The Offeror has reviewed the RFP and the attachments thereto, any addenda thereto, and the proposed Form of Contract (collectively, the "Proposal Documents") and has conducted such due diligence and analysis as the Offeror, in its sole judgment, has deemed necessary in order to submit its Proposal in response to the RFP.

The Offeror's Proposal including the Design Fee (as defined in paragraph A), the Design-Build Fee (as defined in paragraph B), and the Lump Sum General Conditions Cost (as defined in paragraph C) are based on the Proposal Documents as issued and assume no material alteration of the terms of the Proposal Documents (collectively, the Proposal, the Design Fee, Design-Build Fee, and the Lump Sum General Conditions Cost are referred to as the "Offeror's Proposal").

The Offeror's Proposal is as follows:

| | |
|-------------------------------------|----------|
| A. Design Fee: | \$ _____ |
| B. Design-Build Fee: | \$ _____ |
| C. Lump Sum General Conditions Cost | \$ _____ |

The Offeror acknowledges and understands that Design-Build Fee and Lump Sum General Conditions Cost are firm, fixed prices and other than as permitted in the Form of Contract will not be subject to further adjustment.

D. In addition, the Offeror hereby represents that, based on its current rating with its surety, the indicated cost of a payment and performance bond is [INSERT PERCENTAGE].

The Offeror's Proposal is based on and subject to the following conditions:

1. The Offeror agrees to hold its proposal open for a period of at least one hundred and twenty (120) days after the date of the proposal.

2. Assuming the Offeror is selected by the Department and subject only to the changes requested in paragraph 5, the Offeror agrees to enter into a contract with the Department on the terms and conditions described in the Proposal Documents within ten (10) days of the notice of the award. In the event the Offeror fails to do so, the Department shall have the right to levy upon the Offeror's bid bond.

3. Both the Offeror and the undersigned represent and warrant that the undersigned has the full legal authority to submit this Form of Offer Letter and bind the Offeror to the terms of the Offeror's Proposal. The Offeror further represents and warrants that no further action or approval must be obtained by the Offeror in order to authorize the terms of the Offeror's Proposal. In addition to any other remedies that the Department may have at law or in equity, the Department shall have the right to levy upon Offeror's Bid Bond in the event of a breach of this paragraph 3.

4. The Offeror and its principal team members hereby represent and warrant that they have not: (i) colluded with any other group or person that is submitting a proposal in response to the RFP in order to fix or set prices; (ii) acted in such a manner so as to discourage any other group or person from submitting a proposal in response to the RFP; or (iii) otherwise engaged in conduct that would violate applicable anti-trust law.

5. The Offeror's Proposal is subject to the following requested changes to the Form of Contract: **INSERT REQUESTED CHANGES. OFFERORS ARE ADVISED THAT THE CHANGES SO IDENTIFIED SHOULD BE SPECIFIC SO AS TO PERMIT THE DEPARTMENT TO EVALUATE THE IMPACT OF THE REQUESTED CHANGES IN ITS REVIEW PROCESS. GENERIC STATEMENTS, SUCH AS "A MUTUALLY ACCEPTABLE CONTRACT" ARE NOT ACCEPTABLE. OFFERORS ARE FURTHER ADVISED THAT THE DEPARTMENT WILL CONSIDER THE REQUESTED CHANGES AS PART OF THE EVALUATION PROCESS.**

6. The Offeror hereby certifies that neither it nor any of its team members have entered into any agreement (written or oral) that would prohibit any contractor, subcontractor or sub-consultant that is certified by the District of Columbia Office of Department of Small and Local Business Enterprises as a Local, Small, Resident Owned or Disadvantaged Business Enterprise (collectively, "LSDBE Certified Companies") from participating in the work if another company is awarded the contract.

7. This Form of Offer Letter and the Offeror's Proposal are being submitted on behalf of [INSERT FULL LEGAL NAME, TYPE OF ORGANIZATION, AND STATE OF FORMATION FOR THE OFFEROR].

Sincerely,

By: _____
Name: _____
Title: _____

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF GENERAL SERVICES



ATTACHMENT E

Tax Affidavit

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

BIDDER/OFFEROR CERTIFICATION FORM

| | | | |
|---|-------|--|--|
| COMPLETION | | | |
| The person(s) completing this form must be knowledgeable about the Bidder's/Offeror's business and operations. | | | |
| RESPONSES | | | |
| Every question must be answered. Each response must provide all relevant information that can be obtained within the limits of the law. Individuals and sole proprietors may use a Social Security number but are encouraged to obtain and use a federal Employer Identification Number (EIN). Provide any explanation at the end of the section or attach additional sheets with numbered responses. Include the Bidder's/Offeror's name at the top of each attached page. | | | |
| GENERAL INSTRUCTIONS | | | |
| This form contains five (5) sections. Section I concerns the bidder's/offeror's responsibility; Section II includes additional required certifications; Section III relates to the Buy American Act (if applicable); Section IV relates to the Walsh-Healey Act; and Section V requires the bidder's/offeror's signature. Please note, a determination that a prospective contract is found to be "not responsible" is final and not appealable. | | | |
| SECTION I. BIDDER/OFFEROR RESPONSIBILITY CERTIFICATION | | | |
| <i>Instructions for Section I: Section I contains eight (8) parts. Part 1 requests information concerning the Bidder's/Offeror's business entity. Part 2 inquires about current or former owners, partners, directors, officers or principals. Part 3 relates to the responsibility of the Bidder's/Offeror's business. Part 4 concerns the Bidder's/Offeror's business certificates and licenses. Part 5 inquires about legal proceedings. Part 6 relates to the Bidder's/Offeror's financial and organizational status. Part 7 requires the Bidder/Offeror to agree to update the information provided. Part 8 relates to disclosures under the District of Columbia Freedom of Information Act (FOIA).</i> | | | |
| PART 1: BIDDER/OFFEROR INFORMATION | | | |
| Legal Business Entity Name: | | Solicitation #: | |
| Address of the Principal Place of Business (street, city, state, zip code) | | Telephone # and ext.: | Fax #: |
| Email Address: | | Website: | |
| Additional Legal Business Entity Identities: If applicable, list any other DBA, Trade Name, Former Name, Other Identity and EIN used in the last five (5) years and the status (active or inactive). | | | |
| Type: | Name: | EIN: | Status: |
| | | | |
| | | | |
| 1.1 Business Type (Please check the appropriate box and provide additional information if necessary.): | | | |
| <input type="checkbox"/> Corporation (including PC) | | Date of Incorporation: | |
| <input type="checkbox"/> Joint Venture | | Date of Organization: | |
| <input type="checkbox"/> Limited Liability Company (LLC or PLLC) | | Date of Organization: | |
| <input type="checkbox"/> Nonprofit Organization | | Date of Organization: | |
| <input type="checkbox"/> Partnership (including LLP, LP or General) | | Date of Registration or Establishment: | |
| <input type="checkbox"/> Sole Proprietor | | How many years in business?: | |
| <input type="checkbox"/> Other | | Date established?: | |
| If "Other," please explain: | | | |
| 1.2 Was the bidder's/offeror's business formed or incorporated in the District of Columbia? | | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If "No" to Subpart 1.2, provide the jurisdiction where the bidder's/offeror's business was formed or incorporated. Attach a Certificate or Letter of Good Standing from the applicable jurisdiction and a certified Application for Authority from the District, or provide an explanation if the documents are not available. | | | |
| State _____ | | Country _____ | |
| 1.3 Please provide a copy of each District of Columbia license, registration or certification that the Bidder/Offeror is required by law to obtain (other than those provided in Subpart 1.2). If the Bidder/Offeror is not providing a copy of its license, registration or certification to transact business in the District of Columbia, it shall either: | | | |
| (a) Certify its intent to obtain the necessary license, registration or certification prior to contract award; or | | | |
| (b) Explain its exemption from the requirement. | | | |

| | |
|--|--|
| 1.4 If your company, its principals, shareholders, directors, or employees own an interest or have a position in another entity in the same or similar line of business as the Bidder/Offeror, please describe the affiliation in detail. | |
| 1.5 If any officer, director, shareholder or anyone holding a financial interest in the Bidder/Offeror has a relationship with an employee of the Department or any District agency for whom the Department is procuring goods or services, please describe the nature of the relationship in detail. | |
| PART 2: INDIVIDUAL RESPONSIBILITY | |
| <i>Additional Instructions for Section I, Parts 2 through 8: Provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).</i> | |
| Within the past five (5) years, has any current or former owner, partner, director, officer, principal or any person in a position involved in the administration of funds, or currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the bidder/offeror with any government entity: | |
| 2.1 Been sanctioned or proposed for sanction relative to any business or professional permit or license? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 2.2 Been under suspension, debarment, voluntary exclusion or determined ineligible under any federal, District or state statutes? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 2.3 Been proposed for suspension or debarment? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 2.4 Been the subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation for any business-related conduct? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 2.5 Been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime, or subject to a judgment or a plea bargain for: | |
| (a) Any business-related activity; or | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| (b) Any crime the underlying conduct of which was related to truthfulness? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 2.6 Been suspended, cancelled, terminated or found non-responsible on any government contract, or had a surety called upon to complete an awarded contract? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Please provide an explanation for each "Yes" in Part 2 above. | |
| 2.7 In the past ten (10) years has the Bidder/Offeror had a contract terminated, in whole or in part, for any reason? If so, describe each such termination in detail. | |
| 2.8 In the past ten (10) years has the Bidder/Offeror ever been assessed liquidated damages, costs to re-procure, costs to complete, or any other monetary damages under a contract? If so, describe each such assessment in detail. | |
| PART 3: BUSINESS RESPONSIBILITY | |
| Within the past five (5) years, has the Bidder/Offeror: | |
| 3.1 Been under suspension, debarment, voluntary exclusion or determined ineligible under any federal, District or state statutes? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 3.2 Been proposed for suspension or debarment? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 3.3 Been the subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation for any business-related conduct? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 3.4 Been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime, or subject to a judgment or plea bargain for: | |
| (a) Any business-related activity; or | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| (b) Any crime the underlying conduct of which was related to truthfulness? | |
| 3.5 Been disqualified or proposed for disqualification on any government permit or license? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 3.6 Been denied a contract award (in whole or in part, for any reason) or had a bid or proposal rejected based upon a non-responsibility finding by a government entity? If so, describe each such occurrence in detail. | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 3.7 Had a low bid or proposal rejected on a government contract for failing to make good faith efforts on any Certified Business Enterprise goal or statutory affirmative action requirements on a previously held contract? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 3.8 Been suspended, cancelled, terminated or found non-responsible on any government contract, or had a surety called upon to complete an awarded contract? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Please provide an explanation for each "Yes" in Part 3. | |
| PART 4: CERTIFICATES AND LICENSES | |
| Within the past five (5) years, has the Bidder/Offeror: | |
| 4.1 Had a denial, decertification, revocation or forfeiture of District of Columbia certification of any Certified Business Enterprise or federal certification of Disadvantaged Business Enterprise status for other than a change of ownership? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

| | |
|--|--|
| Please provide an explanation for "Yes" in Subpart 4.1. | |
| 4.2 Please provide a copy of the bidder's/offeror's District of Columbia Office of Tax and Revenue Tax Certification Affidavit. | |
| PART 5: LEGAL PROCEEDINGS | |
| Within the past five (5) years, has the Bidder/Offeror: | |
| 5.1 Had any liens or judgments (not including UCC filings) filed against it which remain undischarged? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If "Yes" to Subpart 5.1, provide an explanation of the issue(s), relevant dates, the Lien Holder or Claimant's name, the amount of the lien(s) and the current status of the issue(s). | |
| 5.2 Had a government entity find a willful violation of District of Columbia compensation or prevailing wage laws, the Service Contract Act or the Davis-Bacon Act? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 5.3 Received any OSHA citation and Notification of Penalty containing a violation classified as serious or willful? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 5.4 Engaged in any litigation with any government entity? If so, please identify and/or describe all threatened and pending litigation and/or claims, including but not limited to matters pending before any Boards of Contracts Appeals. | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Please provide an explanation for each "Yes" in Part 5. | |
| PART 6: FINANCIAL AND ORGANIZATIONAL INFORMATION | |
| 6.1 Within the past five (5) years, has the Bidder/Offeror received any formal unsatisfactory performance assessment(s) from any government entity on any contract? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If "Yes" to Subpart 6.1, provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). | |
| 6.2 Within the past five (5) years, has the bidder/offeror had any liquidated damages assessed by a government entity over \$25,000? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If "Yes" to Subpart 6.2, provide an explanation of the issue(s), relevant dates, the government entity involved, the amount assessed and the current status of the issue(s). | |
| 6.3 Within the last seven (7) years, has the Bidder/Offeror initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If "Yes" to Subpart 6.3, provide the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as "initiated," "pending" or "closed". | |
| 6.4 During the past three (3) years, has the Bidder/Offeror failed to file a tax return or pay taxes required by federal, state, District of Columbia or local laws? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If "Yes" to Subpart 6.4, provide the taxing jurisdiction, the type of tax, the liability year(s), the tax liability amount the bidder/offeror failed to file/pay and the current status of the tax liability. | |
| 6.5 During the past three (3) years, has the Bidder/Offeror failed to file a District of Columbia unemployment insurance return or failed to pay District of Columbia unemployment insurance? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If "Yes" to Subpart 6.5, provide the years the Bidder/Offeror failed to file the return or pay the insurance, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s). | |
| 6.6 During the past three (3) years, has the Bidder/Offeror failed to comply with any payment agreement with the Internal Revenue Service, the District of Columbia Office of Tax and Revenue and the Department of Employment Services? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If "Yes" to Subpart 6.6, provide the years the Bidder/Offeror failed to comply with the payment agreement, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s). | |
| 6.7 Indicate whether the Bidder/Offeror owes any outstanding debt to any state, federal or District of Columbia government. | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If "Yes" to Subpart 6.7, provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). | |
| 6.8 During the past three (3) years, has the Bidder/Offeror been audited by any government entity? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| (a) If "Yes" to Subpart 6.8, did any audit of the Bidder/Offeror identify any significant deficiencies in internal controls, fraud or illegal acts; significant violations of provisions of contract or grant agreements; significant abuse; or any material disallowance? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

(b) If "Yes" to Subpart 6.8(a), provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).

PART 7: CONTRACTOR PROCUREMENT ACTIVITY WITHIN THE DEPARTMENT

7.1 What is your organization's Design Capacity (total labor hours) to conduct or pursue business with the Department of General Services (DGS) in the current fiscal year? Design capacity is calculated by multiplying the total number of company employees dedicated to a particular line of business by no more than 12 hours per day. Person's completing this form may be required to provide supporting documentation to substantiate allocable labor hours presented.

(a) Construction: _____ labor hours

(b) Non-Construction: _____ labor hours

7.2 In the table below, please list:

(1) The active contracts your organization currently holds with the Department of General Services, please include the contract number(s) as a part of your response; and

(2) The number of labor hours your organization has allocated to each active contract within the current fiscal year. (Note, if more entries are required, please list an attached addendum to this document).

| | Contract Number | Labor Hours Allocated |
|--|-----------------|-----------------------|
| | | |
| | | |
| | | |
| | | |
| | | |

PART 8: RESPONSE UPDATE REQUIREMENT

8.1 In accordance with the requirement of Section 302(c) of the Procurement Practices Reform Act of 2010 (D.C. Official Code § 2-353.02), the Bidder/Offeror shall

- (a) Within sixty (60) days of a material change to a response; and
- (b) Prior to the exercise of an option year contract.

PART 9: FREEDOM OF INFORMATION ACT (FOIA)

9.1 Indicate whether the Bidder/Offeror asserts that any information provided in response to a question in Section I is exempt from disclosure under the District of Columbia Freedom of Information Act (FOIA), effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code §§ 2-531, et seq.). Include the question number(s) and explain the basis for the claim. (The District will determine whether such information is, in fact, exempt from FOIA at the time of request for disclosure under FOIA.)

Yes No

SECTION II. ADDITIONAL REQUIRED BIDDER/OFFEROR CERTIFICATIONS

Instructions for Section II: Section II contains four (4) parts. Part 1 requests information concerning District of Columbia employees. Part 2 applies to the Bidder/Offeror's pricing. Part 3 relates to equal employment opportunity requirements. Part 4 relates to First Source requirements.

PART 1. DISTRICT EMPLOYEES NOT TO BENEFIT

1.1 The bidder/offeror certifies that no officer or employee of the District of Columbia will benefit from this contract. List the name(s) of any officer or employee of the District of Columbia that may benefit from this contract in section 1.2 below.

1.2 The following officer or employee of the District of Columbia may benefit from this contract.

(a) _____

(b) _____

PART 2: INDEPENDENT PRICE DETERMINATION REQUIREMENTS

The Bidder/Offeror certifies that:

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

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

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

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

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

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

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

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

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

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

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

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

2.4 The Bidder/Offeror certifies that:

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

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

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

PART 3: EQUAL OPPORTUNITY AND HUMAN RIGHTS OBLIGATIONS

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

PART 4: FIRST SOURCE OBLIGATIONS

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

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

PART 5: EMPLOYMENT ELIGIBILITY OBLIGATIONS

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

PART 6: LANGUAGE ACCESS OBLIGATIONS

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

PART 7: CONFLICTS OF INTEREST

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

PART 8: SUBCONTRACTING OBLIGATIONS

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

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

SECTION III. DOMESTIC PREFERENCE CERTIFICATIONS

Instructions for Section III: Section III contains one (1) part which should only be completed if goods are being provided that are subject to the requirements of the Buy American Act.

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

1.1 In accordance with 41 USC 8301 *et. seq.* and implementing regulations, the bidder/offeror certifies that each end product, except the end products listed below, is a domestic end product.

Yes No

| | |
|--|--|
| | EXCLUDED END PRODUCTS |
| | COUNTRY OF ORIGIN |
| PART 2: FHWA BUY AMERICA ACT COMPLIANCE (Applies to FHWA-funded construction contracts) | |
| 2.1 In accordance with 23 CFR 635.410(b), the bidder/offeror certifies that only steel or iron materials manufactured in the United States will be used for permanent incorporation on the project. | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| PART 3: BUY AMERICAN ACT COMPLIANCE (Applies to locally-funded construction contracts) | |
| 3.1 In accordance with 41 USC 8301 <i>et. seq.</i> and implementing regulations, the bidder/offeror certifies that only construction materials manufactured in the United States will be used on the project. | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| SECTION IV. WALSH-HEALEY ACT | |
| <i>Instructions for Section IV: Walsh-Healey Act.</i> | |
| If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. §§ 35-45) (the "Act", as used in this section), the following terms and conditions apply: | |
| (a) All representations and stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR 50-201.3) are incorporated by reference. These representations and stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect. | |
| (b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2) (41 U.S.C. §40). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (29 U.S.C. §214). | |
| SECTION V. CERTIFICATION | |
| <i>Instruction for Section V: This section must be completed by all bidder/offerors.</i> | |
| I, [_____], as the person authorized to sign these certifications, hereby certify that the information provided in this form is true and accurate. In accordance with the requirements of section 302(c) of the Procurement Practices Reform Act of 2010 (D.C. Official Code § 2-353.02(c)), I shall update any response provided in this form within 60 days of a material change to a response and prior to the exercise of an option period. | |
| Name [Print and sign]: | Telephone #: |
| Title: | Email Address: |
| Date: | Contract No: |
| <i>The District of Columbia is authorized to verify the above information with appropriate government authorities. Penalty for making false statements is a fine of not more than \$1,000.00, imprisonment for not more than 180 days, or both, as prescribed in D.C. Official Code § 22-2405. Penalty for false swearing is a fine of not more than \$2,500.00, imprisonment for not more than three (3) years, or both, as prescribed in D.C. Official Code § 22-2404.</i> | |

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Chief Financial Officer
Office of Tax and Revenue



TAX CERTIFICATION AFFIDAVIT

THIS AFFIDAVIT IS TO BE COMPLETED ONLY BY THOSE WHO ARE REGISTERED TO CONDUCT BUSINESS IN THE DISTRICT OF COLUMBIA.

Date

**Authorized Agent
Name of Organization/Entity
Business Address (include zip code)
Business Phone Number**

**Authorized Agent
Principal Officer Name and Title
Square and Lot Information
Federal Identification Number
Contract Number
Unemployment Insurance Account No.**

I hereby authorize the District of Columbia, Office of the Chief Financial Officer, Office of Tax and Revenue to release my tax information to an authorized representative of the District of Columbia agency with which I am seeking to enter into a contractual relationship. I understand that the information released will be limited to whether or not I am in compliance with the District of Columbia tax laws and regulations solely for the purpose of determining my eligibility to enter into a contractual relationship with a District of Columbia agency. I further authorize that this consent be valid for one year from the date of this authorization.

I hereby certify that I am in compliance with the applicable tax filing and payment requirements of the District of Columbia. The Office of Tax and Revenue is hereby authorized to verify the above information with the appropriate government authorities.

Signature of Authorizing Agent

Title

The penalty for making false statement is a fine not to exceed \$5,000.00, imprisonment for not more than 180 days, or both, as prescribed by D.C. Official Code §47-4106.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF GENERAL SERVICES



ATTACHMENT F

Davis-Bacon Wage Rates

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

"General Decision Number: DC20230002 09/01/2023

Superseded General Decision Number: DC20220002

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 \$16.20 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 2023. |
| <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 \$12.15 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 2023. |

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 <http://www.dol.gov/whd/govcontracts>.

| Modification Number | Publication Date |
|---------------------|------------------|
| 0 | 01/06/2023 |
| 1 | 01/13/2023 |

| | |
|---|------------|
| 2 | 04/07/2023 |
| 3 | 05/05/2023 |
| 4 | 06/02/2023 |
| 5 | 06/30/2023 |
| 6 | 07/21/2023 |
| 7 | 07/28/2023 |
| 8 | 08/04/2023 |
| 9 | 09/01/2023 |

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 04/30/2023

| | Rates | Fringes |
|-----------------|----------|---------|
| BRICKLAYER..... | \$ 36.50 | 13.47 |

CARP0197-011 05/01/2023

| | Rates | Fringes |
|---|----------|---------|
| CARPENTER, Includes Drywall Hanging, Form Work, and Soft Floor Laying-Carpet..... | \$ 32.21 | 13.87 |

CARP0219-001 05/01/2023

| | Rates | Fringes |
|-----------------|----------|---------|
| MILLWRIGHT..... | \$ 37.65 | 14.54 |

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 09/07/2022

| | Rates | Fringes |
|---|----------|---------|
| ELECTRICAL INSTALLER (Sound & Communication Systems)..... | \$ 33.95 | 11.39 |

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

WORK EXCLUDED: The installation of computer systems in industrial applications such as assembly lines, robotics and computer controller manufacturing systems. The installation of conduit and/or raceways shall be installed by Inside Wiremen. On sites where there is no Inside Wireman employed, the Teledata Technician may install raceway or conduit not greater than 10 feet. Fire alarm work is excluded on all new construction sites or wherever the fire alarm system is installed in conduit. All HVAC control work.

ELEV0010-001 01/01/2023

| | Rates | Fringes |
|------------------------|----------|------------|
| ELEVATOR MECHANIC..... | \$ 52.49 | 37.335+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 06/01/2023

| | Rates | Fringes |
|--|----------|---------|
| IRONWORKER, STRUCTURAL AND ORNAMENTAL..... | \$ 36.10 | 25.19 |

 IRON0005-012 05/01/2023

| | Rates | Fringes |
|------------------------------|----------|---------|
| IRONWORKER, REINFORCING..... | \$ 30.70 | 23.33 |

 LAB00011-009 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 04/30/2023

| | Rates | Fringes |
|-------------------------|----------|---------|
| MARBLE/STONE MASON..... | \$ 43.16 | 20.28 |

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 04/30/2023

| | Rates | Fringes |
|-----------------------------|----------|---------|
| TERRAZZO WORKER/SETTER..... | \$ 33.41 | 12.67 |

MARB0003-007 04/30/2023

| | Rates | Fringes |
|------------------------|----------|---------|
| TERRAZZO FINISHER..... | \$ 27.68 | 11.63 |

MARB0003-008 04/30/2023

| | Rates | Fringes |
|------------------|----------|---------|
| TILE SETTER..... | \$ 33.41 | 12.67 |

MARB0003-009 04/30/2023

| | Rates | Fringes |
|--------------------|----------|---------|
| TILE FINISHER..... | \$ 27.68 | 11.63 |

PAIN0051-014 06/01/2023

| | Rates | Fringes |
|--|----------|---------|
| GLAZIER | | |
| Glazing Contracts \$2 million and under..... | \$ 30.52 | 13.85 |
| Glazing Contracts over \$2 million..... | \$ 34.76 | 13.85 |

PAIN0051-015 06/01/2022

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

PLAS0891-005 07/01/2021

| | Rates | Fringes |
|---|----------|---------|
| PLASTERER (Including Fireproofing)..... | \$ 30.53 | 7.93 |

PLAS0891-006 02/01/2020

| | Rates | Fringes |
|-----------------------------------|----------|---------|
| CEMENT MASON/CONCRETE FINISHER... | \$ 28.82 | 11.68 |

* PLUM0005-010 08/01/2023

| | Rates | Fringes |
|--------------|----------|---------|
| PLUMBER..... | \$ 49.00 | 23.46+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 08/01/2023

| | Rates | Fringes |
|---|----------|---------|
| PIPEFITTER, Includes HVAC Pipe Installation..... | \$ 50.27 | 23.32+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 04/01/2023

| | Rates | Fringes |
|--|----------|---------|
| SPRINKLER FITTER (Fire Sprinklers)..... | \$ 40.46 | 25.22 |

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 (\$16.20) or 13658 (\$12.15). Please see the Note at the top of the wage determination for more information.

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

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

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

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing

the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

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

Survey Rate Identifiers

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

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

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

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

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

in 2.) and 3.) should be followed.

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

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

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

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

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

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

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

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

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END OF GENERAL DECISIO"

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF GENERAL SERVICES



ATTACHMENT G

Bid Bond Form

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

GOVERNMENT OF THE DISTRICT OF COLUMBIA

| | | | | |
|--|--|----------------------------|--------------------------------------|------------------------|
| OFFER BOND (See Instructions on 2 nd page) | Date Bond Executed: (Must Not be Later Than Offer Opening Date) | | | |
| PRINCIPAL (Legal Name and Address) | TYPE OF ORGANIZATION ("X") | | | |
| | <input type="checkbox"/> INDIVIDUAL | | <input type="checkbox"/> PARTNERSHIP | |
| | <input type="checkbox"/> JOINT VENTURE | | <input type="checkbox"/> CORPORATION | |
| | STATE OF INCORPORATION | | | |
| SURETY(IES) (Name(s) and Address(es)) | AMOUNT NOT TO EXCEED | | | 5% OF OFFER |
| | <small>MILLION(S)</small> | <small>THOUSAND(S)</small> | <small>HUNDRED(S)</small> | |
| | OFFER IDENTIFICATION | | | |
| | OFFER OPENING DATE | | INVITATION NO. | |
| | KNOW ALL MEN BY THESE PRESENTS, that we, the Principal and Surety(ies) hereto are firmly bound to the District of Columbia Government, a municipal corporation, hereinafter called "the District", in the above penal sum for the payment of which we bind ourselves, our heirs, executors, and successors, jointly and severally; Provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly" and "severally" only for the purpose of allowing a joint action against any or all of us, and for all other purposes each Surety bonds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum. | | | |
| THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the offer identified above. NOW THEREFORE, if the Principal shall not withdraw said offer within the period specified therein after the receipt of the same, or, no period be specified, within ninety (90) calendar days after said receipt, and shall within the period specified therefore, or, if no period be specified, within ten (10) calendar days after being called upon to do so, furnish Performance & Payment Bonds with good and sufficient surety, as may be required, for the faithful performance and proper fulfillment of the Contract, and for the protection of all persons supplying labor and material in the prosecution of the work provided for in such Contract or, in the event of withdrawal of said offer, within the period specified, or the failure to furnish such bond within the time specified, if the Principal shall pay the District the difference between the amount specified in said offer and the amount for which the District may procure the required work and/or supplies, if the latter amount be in excess of the former, then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue. Each Surety executing this bond hereby agrees that its obligation shall not be impaired by extension(s) of time for acceptance of the offer that the Principal may grant to the District, notice of which extension(s) to Surety (ies) being hereby waived: Provided that such waiver of notice shall apply only with respect to extensions aggregating not more than sixty (60) calendar days in addition to the period originally allowed for acceptance of the offer. | | | | |
| IN WITNESS WHEREOF, the Principal and Surety (ies) have executed this offer bond and have affixed their seals on the date set forth above. | | | | |
| PRINCIPAL | | | | |
| 1. SIGNATURE | 1. ATTEST | | Corporate Seal | |
| Seal | | | | |
| Name & Title (typed) | Name & Title (typed) | | | |
| 2. SIGNATURE | 2. ATTEST | | Corporate Seal | |
| Seal | | | | |
| Name & Title (typed) | Name & Title (typed) | | | |

CERTIFICATE AS TO CORPORATION

I, _____, certify that I am _____,
 Secretary of the Corporation, named as Principal herein, that _____, who signed this bond, on
 behalf of the Principal, was then of said Corporation; that I know his signature, and his signature thereto is genuine; that said bond
 was duly signed and sealed for and in behalf of said Corporation by authority of its governing body, and is within the scope of its
 corporate powers.

 Secretary of Corporation

SURETY(IES)

| | | | |
|--------------------------------------|-----------------------------------|----------------------------|---------------------------|
| 1. Name & Address (typed) | State of Inc. | Liability Limit | Corporate Seal |
| Signature of Attorney-in-Fact | Attest (Signature) | | |
| Name & Address (typed) | Name & Address (typed) | | |
| 1. Name & Address (typed) | State of Inc. | Liability Limit | Corporate Seal |
| Signature of Attorney-in-Fact | Attest (Signature) | | |
| Name & Address (typed) | Name & Address (typed) | | |

INSTRUCTIONS

1. This form shall be used whenever a offer guaranty is required in connection with construction, alteration and repair work.
2. Corporations name should appear exactly as it does on Corporate Seal and inserted in the space designated "Principal" on the face of this form. If practicable, bond should be signed by the President or Vice President; if signed by other official, evidence of authority must be furnished. Such evidence should be in the form of an Extract or Minutes of a Meeting of the Board of Directors, or Extract of Bylaws, certified by the Corporate Secretary, or Assistant Secretary and Corporate Seal affixed thereto. CERTIFICATE AS TO CORPORATION must be executed by Corporate Secretary or Assistant Secretary.
3. Corporations executing the bond as sureties must be among those appearing on the U. S. Treasury Department's List of approved sureties and must be acting within the limitations set forth therein, and shall be licensed by the Insurance Administration, Department of Consumer and Regulatory Affairs, to do business in the District of Columbia. The surety shall attach hereto an adequate Power-Of-Attorney for each representative signing the bond.
4. Corporations executing the bond shall affix their Corporate Seals. Individuals shall sign full first name, middle initial and last name opposite the word "seal", two witnesses must be supplied, and their addresses, under the word "attest". If executed in Maine or New Hampshire, an adhesive seal shall be affixed.
5. Names of all partners must be set out in body of bond form, with the recital that they are partners composing a firm, naming it, and all members of the firm shall execute the bond as individuals. Each signature must be witnessed by two persons and addresses supplied.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF GENERAL SERVICES



ATTACHMENT H1

Standard Contract Provisions for

Construction Contracts

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

District of Columbia Department of General Services Standard Contract Provisions

GENERAL PROVISIONS (Construction Contract)

ARTICLE 1. DEFINITIONS

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

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

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

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

1. The Contracting Officer shall be promptly notified in writing of any error, discrepancy or omission, apparent or otherwise.
2. Applicable Federal, State, and Municipal Code requirements have priority over: the Contract form, General Provisions, Change Orders, Addenda, Contract drawings, Special Provisions and Specifications.
3. The Contract form, Standard Contract Provisions, General Provisions and Labor Provisions have priority over: Change Orders, Addenda, Contract drawings, Special Provisions and Specifications.
4. Change Orders have priority over: Addenda, Contract drawings and Specifications.
5. Addenda have priority over: Contract drawings, Special Provisions and Specifications. A later dated Addendum has priority over earlier dated Addenda.
6. Special Provisions have priority over: Contract drawings and other specifications.

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

ARTICLE 3. CHANGES

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

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

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

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

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

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

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

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

1. **Labor**—Payment will be made for direct labor cost plus indirect labor cost such as insurance, taxes, fringe benefits and welfare provided such costs are considered reasonable. Indirect costs shall be itemized and verified by receipted invoices. If verification is not possible, up to 18 percent of direct labor costs may be allowed. In addition, up to 20 percent of direct plus indirect labor costs may be allowed for overhead and profit.
2. **Bond**—Payment for additional bond cost will be made per bond rate schedule submitted to the Office of Contracting and Procurement with the executed Contract.
3. **Materials**—Payment for cost of required materials will be F.O.B. destination (the job site) with an allowance for overhead and profit.
4. **Rented Equipment**—Payment for required equipment rented from an outside company that is neither an affiliate of, nor a subsidiary of, the Contractor will be based on receipted invoices which shall not exceed rates given in the current edition of the Rental Rate Blue Book for Construction Equipment published by Data Quest. If actual rental rates exceed manual rates, written justification shall be furnished to the Contracting Officer for consideration. No additional allowance will be made for overhead and profit. The Contractor shall submit written certification to the Contracting Officer that any required rented equipment is neither owned by nor rented from the Contractor or an affiliate of or subsidiary of the Contractor.
5. **Contractor's Equipment**— Payment for required equipment owned by the Contractor or an affiliate of the Contractor will be based solely on an hourly rate derived by dividing the current appropriate monthly rate by 176 hours. No payment will be made under any circumstances for repair costs, freight and transportation charges, fuel, lubricants, insurance, any other costs and expenses, or overhead and profit. Payment for such equipment made idle by delays attributable to the Government will be based on one-half the derived hourly rate under this subsection.
6. **Miscellaneous**—No additional allowance will be made for general superintendence, use of small tools and other costs for which no specific allowance is herein provided.

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

ARTICLE 4. EQUITABLE ADJUSTMENT OF CONTRACT TERMS

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

A. DIFFERING SITE CONDITIONS:

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

B. SUSPENSION OF WORK ORDERED BY THE CONTRACTING OFFICER:

1. If the performance of all or any portion of the work is suspended or delayed by the Contracting Officer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the Contractor shall submit to the Contracting Officer in writing a request for equitable adjustment within seven (7) calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.
2. Upon receipt, the Contracting Officer will evaluate the Contractor's request. If the Contracting Officer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control or and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Contracting Officer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Contracting Officer will notify the Contract of his/her determination whether or not an adjustment of the contract is warranted.
3. No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed; a failure to submit a request for adjustment in the time

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

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

C. SIGNIFICANT CHANGES IN THE CHARACTER OF WORK:

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

ARTICLE 5. TERMINATION

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 6. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

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

8. Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.
9. Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.
10. The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the cost, or any item of reimbursable cost, under this Article.
11. "Plant clearance period" means, for each particular property classification (such as raw materials, purchased parts and work in progress) at any one plant or location, a period beginning with the effective date of the termination for convenience and ending 90 days after receipt by the Contracting Officer of acceptable inventory schedules covering all items of that particular property classification in the termination inventory at that plant or location, or ending on such later date as may be agreed to by the Contracting Officer and the Contractor. Final phase of a plant clearance period means that part of a plant clearance period which occurs after the receipt of acceptable inventory schedules covering all items of the particular property classification at the plant or location.

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

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

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

- E.** In the event of the failure of the Contractor and the Contracting Officer to agree as provided in D above upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Article, the Contracting Officer shall, subject to any review required by the Government's procedures in effect as of the date of execution of the Contract, determine, on the basis of information available to him, the amount, if any, due the Contractor by reason of the termination and shall pay to the Contractor the amounts determined by the Contracting Officer, as follows, but without duplication of any amounts agreed upon in accordance with D above:
1. With respect to all Contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:
 - a. The cost of such work;
 - b. The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in B 5. above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under the Contract, which amounts shall be included in the cost on account of which payment is made under E1.a. above; and
 - c. A sum, as profit on E.1.a. above, determined by the Contracting Officer to be fair and reasonable; provided however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subparagraph and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and provided further that profit shall be allowed only on preparations made and work done by the Contractor for the terminated portion of the Contract but may not be allowed on the Contractor's settlement expenses. Anticipatory profits and consequential damages will not be allowed. Any reasonable method may be used to arrive at a fair profit, separately or as part of the whole settlement.
 2. The reasonable cost of the preservation and protection of property incurred pursuant to B.9; and any other reasonable cost incidental to termination of work under the Contract including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under the Contract.
- F.** The total sum to be paid to me Contractor under E.1. above shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further

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

- G.** The Contractor shall have the right of appeal, under Article 7 herein, from any determination made by the Contracting Officer under C. or E. above, except that, if the Contractor has failed to submit his claim within the time provided in C above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under C. or E. above, the Government shall pay to the Contractor the following:
1. If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or
 2. If an appeal had been taken, the amount finally determined on such appeal.
- H.** In arriving at the amount due the Contractor under this Article there shall be deducted:
1. all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of the Contract;
 2. any claim which the Government may have against the Contractor in connection with the Contract; and
 3. the agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by the Contractor or sold, pursuant to the provisions of this Article and not otherwise recovered by or credited to the Government.
- I.** If the termination hereunder be partial, prior to the settlement of the terminated portion of the Contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made at such price or prices; however, nothing contained herein shall limit the right of the Government and the Contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the continued portion of the Contract when said Contract does not contain an established Contract price for such continued portion.
- J.** The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of the Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Article, such excess Shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum for the period from the date such excess is received by the Contractor to the date on which such excess is repaid to the Government; provided however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

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

ARTICLE 7. DISPUTES

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

B. Claims by a Contractor against the Government.

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

(a) All claims by a Contractor against the Government arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision.

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

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

(d) (1) If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the Government for an amount equal to the unsupported part of the claim in addition to all costs to the Government attributable to the cost of reviewing that part of the Contractor's claim.

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

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

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

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

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

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

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

(c) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and

(d) The Contractor's request for relief or other action by the Contracting Officer.

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

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

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

C. Claims by the Government against a Contractor

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

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

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

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

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

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

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

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

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

The Contracting Officer at his/her discretion shall cause to be withheld retention in an amount sufficient to protect the interest of the Government. Unless otherwise agreed, the amount shall not exceed ten percent (10%) of the partial payment. However, if the Contracting Officer, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, he may authorize any of the remaining progress payments to be made in full or may retain from such remaining partial payments less than 10 percent thereof. Also, whenever work is substantially complete, the Contracting Officer, if he considers the amount retained to be in excess of the amount adequate for the protection of the Government, at his discretion, may release to the Contractor all or a portion of such excess amount. Furthermore, on completion and acceptance of each separate building, public work, or other division of the Contract, on which the price is stated separately in the Contract, payment may be made therefore without retention of a percentage, less authorized deductions.

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

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

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

ARTICLE 10. MATERIAL AND WORKMANSHIP

- A. GENERAL**—Unless otherwise specifically provided in the Contract, all equipment, material and articles incorporated in the work covered by the Contract shall be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in the Contract, reference to any equipment, material, article or patented process, by trade name, make or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition., and the Contractor may use any equipment, material, article or process which, in the judgment of the Contracting Officer, is equivalent to that named unless otherwise specified. The Contractor shall furnish to the Contracting Officer for his approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature and rating of the mechanical and other equipment which the Contractor contemplates incorporating in the work. Machinery and equipment shall be in proper condition. When required by the Contract or when called for by the Contracting Officer, the Contractor shall furnish to the Contracting Officer for approval full information concerning the material or articles which he contemplates incorporating in the work. When so directed, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles installed or used without required approval shall be at the risk of subsequent rejection and subject to satisfactory replacement at Contractor's expense.
- B. SURPLUS MATERIALS USE**—Whenever specified in the Contract or authorized by the Contracting Officer that materials become the property of the Contractor, which by reference or otherwise shall include disposal of materials, it is understood that the Contractor accepts such materials "as is" with no further expense or liability to the Government. If such material specified in the Contract will have a potential or real interest of value, the Contractor shall make allowance in the Contract to show such value.
- C. GOVERNMENT MATERIAL**—No materials furnished by the Government shall be applied to any other use, public or private, than that for which they are issued to the Contractor. The full amount of the cost to the Government of all materials furnished by the Government to the Contractor and for which no charge is made, which are not accounted for by the Contractor to the satisfaction of the Contracting Officer, will be charged against the Contractor and his sureties and may be deducted from any monies due the Contractor, and this charge shall be in addition to and not in lieu of any other liabilities of the Contractor whether civil or criminal. Materials furnished by the Government for which a charge is made at a rate mentioned in the specifications will be delivered to the Contractor upon proper requisitions therefore and will be charged to his account.
- D. Plant** —The Contractor shall at all times employ sufficient tools and equipment for prosecuting the various classes of work to full completion in the manner and time required. The Contractor shall at all times perform work in sufficient light and shall provide proper illumination, including

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

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

- E. CAPABILITY OF WORKERS-** All work under the Contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require the Contractor to remove from the work any such employees as the Contracting Officer deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed by the Contracting Officer to be contrary to the public interest. Such request will be in writing:
- F. CONFORMITY OF WORK AND MATERIALS**—All work performed and materials and products furnished shall be in conformity, within indicated tolerances, with lines, grades, cross sections, details, dimensions, material and construction requirements shown or intended by the drawings and specifications.

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

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

ARTICLE 11. INSPECTION AND ACCEPTANCE—Except as otherwise provided in the Contract, inspection and test by the Government of material and workmanship required by the Contract shall be made at reasonable times and at the site of the work, unless the Contracting Officer determines that such inspection or test of material which is to be incorporated in the work shall be made at the place of production, manufacture or shipment of such material. To the extent specified by the Contracting Officer at the time of determining to make off-site inspection or test, such inspection or test shall be conclusive as to whether the material involved conforms to Contract requirements. Such off-site inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Government after acceptance of the completed work under the terms of the last paragraph of this Article, except as herein above provided.

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

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

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

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

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

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

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

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

ARTICLE 14. INDEMNIFICATION—

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

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

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

ARTICLE 16. CONDITIONS AFFECTING THE WORK

- A. **GENERAL**—The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work and the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the work as specified without additional expense to the Government. The Government assumes no responsibility for any understanding or representation concerning conditions made by any of its officers or agents prior to the execution of the Contract, unless such understanding or representation by the Government is expressly stated in the Contract.
- B. **WORK AND STORAGE SPACE**—Available work and storage space designated by the Government shall be developed as required by the Contract or restored at completion of the project by the Contractor to a condition equivalent to that existing prior to construction. No payment will be made for furnishing or restoration of any work and storage space. If no area is designated or the area designated is not sufficient for the Contractor's operations, he shall obtain necessary space elsewhere at no expense or liability to the Government.
- C. **WORK ON SUNDAYS, LEGAL HOLIDAYS AND AT NIGHT**—No work shall be done at any time on Sundays or legal holidays or on any other day before 7 a.m. or after 7 p.m., except with the written permission of the Contracting Officer and pursuant to the requirements of the Police Requirements of the Government.
- D. **EXISTING FEATURES**—Subsurface and topographic information including borings data, utilities data and other physical data contained in the Contract or otherwise available, are not intended as representations or warranties but are furnished as available information. The Government assumes no expense or liability for the accuracy of, or interpretations made from, existing features. The Contractor shall be responsible for reasonable consideration of existing features above and below ground which may affect the project.
- E. **UTILITIES AND VAULTS**—The Contractor shall take necessary measures to prevent interruption of service or damage to existing utilities within or adjacent to the project. It shall be the Contractor's responsibility to determine exact locations of all utilities in the field.

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

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

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

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

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

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

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

- G. PRIVATE WORK**—Except as specifically authorized by the Contracting Officer, the Contractor shall not perform any private work abutting Government projects with any labor, materials, tools, equipment, supplies or supervision scheduled for the Contract until all work under the Contract has been completed. Contract materials used for any unauthorized purpose shall be subtracted from Contract amount.

- H. GOVERNMENT NOISE CONTROL ACT OF 1977**—The contractor shall be in strict compliance with [D.C. Law 2-53, Government of Columbia Noise Control Act of 1977 and all provisions thereof. Effective March 16, 1978. 24 D.C.Register 5293.] (Or relevant local law)

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

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

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

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

ARTICLE 20. COVENANT AGAINST CONTINGENT FEES—The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to terminate the Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

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

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

ARTICLE 22. GRATUITIES AND GOVERNMENT EMPLOYEES NOT TO BENEFIT

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

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

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

ARTICLE 24. BUY AMERICAN.

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

- A. AGREEMENT**—In accordance with the Buy American Act (41 USC 10a-10d), and Executive Order 10582, December 17, 1954 (3 CFR, 1954-58 Comp., p. 230), as amended by Executive Order 11051, September 27, 1962 (3 CFR, 1059—63 Comp., p. 635), the Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, material men and suppliers in the performance of the Contract, except for non-domestic material listed in the Contract.
- B. DOMESTIC CONSTRUCTION MATERIAL**—“Construction material” means any article, material or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a “domestic construction material” if it has been mined or produced in the United States. A manufactured construction material is a “domestic construction material” if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. “Component” means any article, material, or supply directly incorporated in a construction material. -
- C. DOMESTIC COMPONENT**—A component shall be considered to have been “mined, produced, or manufactured in the United States” regardless of its source, in fact, if the article, material or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.
- D. FOREIGN MATERIAL** – When steel materials are used in a project a minimal use of foreign steel is permitted. The cost of such materials cannot exceed one-tenth of one percent of the total project cost, or \$2,500,000, whichever is greater.

ARTICLE 25. TAXES

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

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

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

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

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

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

1. That performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the contractor, or
2. For which an equitable adjustment is provided or excluded under any other provision of the Contract.

No claim under this Article shall be allowed:

1. For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and

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

ARTICLE 27. SAFETY PROGRAM

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

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

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

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

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

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

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

- B. CONTRACTOR'S PROGRAM SUBMISSION**—Prior to commencement of the work, the Contractor shall:
1. Submit in writing to the Contracting Officer for his approval his program for complying with this Article for accident prevention.
 2. Meet with the Contracting Officer's Safety Representative after submission of the above program to develop a mutual understanding relative to the administration of the overall safety program.

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

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

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

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

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

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

ARTICLE 32. NON-DISCRIMINATION IN EMPLOYMENT PROVISIONS.

- A.** The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. The affirmative action shall include, but not be limited to, the following:
 - 1. Employment, upgrading, or transfer;
 - 2. Recruitment or recruitment advertising;
 - 3. Demotion, layoff, or termination;

4. Rates of pay, or other forms of compensation; and
 5. Selection for training and apprenticeship.
- B.** Unless otherwise permitted by law and directed by the Department, the Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Department setting forth the provisions of this Section concerning non-discrimination and affirmative action.
- C.** The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in this Section.
- D.** The Contractor agrees to send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Department, advising each labor union or workers' representative of the Contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E.** The Contractor agrees to permit access by the Department to all books, records and accounts pertaining to its employment practices for purposes of investigation to ascertain compliance with this Section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.
- F.** The Contractor shall include in every subcontract the equal opportunity clauses of this Section so that such provisions shall be binding upon each Subcontractor or vendor.
- G.** The Contractor shall take such action with respect to any Subcontractor as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for non-compliance.

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

The Department expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed under the Contract. The Contractor may not assign to any former Department or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Subcontractor or vendor.

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

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

ARTICLE 36. REMEDIES CUMULATIVE. Unless specifically provided to the contrary in the Contract, all remedies set forth in the Contract are cumulative and not exclusive of any other remedy the Government may have, including, without limitation, at law or in equity. The Government's rights and

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

ARTICLE 37. ENTIRE AGREEMENT; MODIFICATION. The Contract supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to the Contract shall be effective against the Department unless made in writing signed by both the Department and the Contractor, unless otherwise expressly provided to the contrary in the Contract. Nothing herein shall be construed to limit the Department's right to issue unilateral modifications to the contract.

ARTICLE 38. SEVERABILITY. In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Contract, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Contract a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable; each part of this Contract is intended to be severable.

ARTICLE 39. FORCE MAJEURE---If the Contractor, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Contract, the Contractor may be excused from whatever performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations under this Contract by reason of Force Majeure, within 72 hours of the occurrence or event, the Contractor must provide the Contracting Officer written notice of its inability to perform as well as a description of the force majeure and its effect on Contract performance. The Contracting Officer will have the right to cause the inspection of the work site to determine the validity of the Contractor's assertion of its inability to perform. If the Contracting Officer agrees that the Contractor is wholly or partly unable to perform its obligations under the Contract a decision will be issued indicating the extent to which the Contractor is excused from its performance obligations. In no event will the Contractor be entitled to money damages from the Government due to force majeure.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF GENERAL SERVICES



ATTACHMENT H2

Standard Contract Provisions Architectural and

Engineering Services Contracts

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

District of Columbia District of General Services

Released October 2018

Standard Contract Provisions

**General Provisions
(Architectural & Engineering Services Contract)**

ARTICLE 1. DEFINITIONS

- A.** “Architect-Engineer” means the individual, individuals, and or firm identified as the “Architect-Engineer” in the preamble of Contract executed by and between the District and the Architect-Engineer for the Project.
- B.** “Change Order” means a document signed by the District and the Architect-Engineer to authorize an addition, deletion or revision in the services, the Architect-Engineer’s cost of, or the time required for, the performance of any part of the services under the Contract, issued on or after the Effective Date of the Contract.
- C.** “Contract” means the written contract for professional services between the District and the Architect-Engineer, including all exhibits, Standard Contract Provisions, and any duly executed amendments.
- D.** “Contracting Officer” 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.
- E.** “District” means the District of Columbia, Department of General Services, (the “Department” or “DGS”), a party to the Contract.
- F.** “Project” means the District’s project identified in the Contract, of which Architect-Engineer's services under the Contract as a party.
- G.** “Scope of Services” means any and all work done in any and all phases of the Project, pursuant to and as set forth by the Department in the Contract.
- H.** “Day or Days” All references to day or days in these Standard Contract Provisions will be counted based on calendar days not business days.

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 Services.
- B.** The Architect-Engineer’s period of performance shall commence on the effective date as agreed and as specified in the Scope of Services or in each task order issued by the Contracting Officer and ends on the date all required services are satisfactorily completed in accordance with the terms of the Contract and Project close-out documents and all deliverables are delivered to the District.
- C.** All services shall be prosecuted under the direction of a principal officer or responsible representative of the Architect-Engineer, approved by the Contracting Officer. The design of architectural, civil, structural, mechanical, plumbing, electrical, or other engineering features of the Project shall be accomplished in accordance with the terms of the Contract and reviewed and certified in accordance with applicable District of Columbia regulations 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 ensure the efficient prosecution of the services 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 company personnel, pertaining to the services performed under the Contract.
- F. The standard of care. The Architect-Engineer, its consultants and subcontractors shall perform the services consistent with the professional skill and care ordinarily provided by members of the same profession currently practicing under similar or same circumstances in the same or similar locality of the Project. The standard of care shall not be altered by the application, interpretation, or construction of this or any other provision of these Standard Contract Provisions or the Contract.

ARTICLE 3. PROGRESS SCHEDULES AND REPORTS

- A. **Generally.** In addition to the requirements set forth in the Scope of Services and 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 Project, including, but not limited to, a baseline schedule and schedule updates with narrative demonstrating the critical path of the services 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, the services 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 Services, 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, in the Architect-Engineer's best projection, 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 its designs, drawings, specification and other services.
- B. Scope of Services.** The Architect-Engineer shall accomplish the design services required pursuant to the Scope of Services or under each task order. The services, as set forth in the Contract, shall include but are 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 Services or task order, the Architect-Engineer 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 Services or task order is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in the scope, quality or type of materials, or both, 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 or as set forth in the Scope of Services, 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 that has trade activities and stages of construction being performed shall visit the site at the agreed-to 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 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 observed during such visits 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 District'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, in its opinion as an Architect-Engineer, 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 the 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 or the approved shop drawings or other submittals. The Architect-Engineer may also recommend that the District reject any work that the Architect-Engineer 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 the Architect-Engineer, any other professional design consultant, or any contractor, supplier or other participant from any professional or legal responsibility for performance. Reviews, comments and approvals by the Department 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, the Architect-Engineer 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, received from such agency.
- 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, Contractor or Design-Builder, as applicable, 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, in acceptable form, to 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 the Contract shall be construed to operate as a waiver or any rights under the Contract or of any cause of action arising out of the performance of the Contract, 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 the Contract.
- H. Remedies Inclusive.** The rights and remedies of the District and the Architect-Engineer 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 if applicable, received from the District in accordance with the terms of the Architect-Engineer's subcontract with such persons or companies and these Standard Contract Provisions. 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 in accordance with the Quick Payment Act, D.C. Official Code §2-221.01 *et seq.* 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 Architect-Engineer's services 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 and other Architect-Engineer deliverables first produced solely for the District in the performance of the 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 provided by the Architect-Engineer, the Architect-Engineer shall be responsible for the professional quality, technical accuracy and the coordination of all 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 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. Interest shall be paid by the District in accordance with the Quick Payment Act, D.C. Official Code §2-221.01 *et seq.*
- L. Payments to Subcontractors.** The Architect-Engineer shall make a payment to each of its Consultants and Subcontractors, 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 less a retainage of not more than five percent (5%) if provided for in the applicable subcontract, 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 within the general scope of the Contract 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, or both, 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, by written order designated or indicated to be a change order, make any changes 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 services;
3. In the District furnished facilities, equipment, materials or services; or
4. Directing acceleration in the performance of the services.

Nothing provided in this Article shall excuse the Architect-Engineer from proceeding with the prosecution of the services 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 services under the 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 thirty (30) days before the Architect-Engineer gives written notice as therein required unless this thirty (30) day period 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, the Architect-Engineer must, within thirty (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 the services, as changed, are 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 adjustment of the Architect-Engineer's compensation and time for performance.
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) *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.
 - c) *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.

- d) *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.
- e) *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.

G. Significant Changes in Character of Services.

1. The Contracting Officer reserves the right to make, in writing, at any time during the performance of services, such changes in quantities and such alterations in the services as are necessary to satisfactorily complete the Project. Such changes in quantities and alterations shall not invalidate the Contract, and the Architect-Engineer agrees to perform the services as altered.
2. If the alterations or changes in quantities significantly change the character of the services 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 services. 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 services to be performed under the Contract, the altered services 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 services 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 services performed.
5. 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 services so changed.

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, or both, 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 nature of the services) and the Architect-Engineer believes that additional compensation or contract time, or both, 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 ten (10) 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 or time required for the performance of the Contract, or both, 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 Architect-Engineer or its consultants 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 Architect-Engineer 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.

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, or any task order issued thereunder by the Contracting Officer, 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 complete the Services within the time specified in the Contract or any modification (including task orders);
2. Fails to make sufficient progress on contract performance so as to endanger performance

of the Contract (including any task order) within the time specified or in the manner specified in the Contract;

3. Fails or refuses to go forward with the services in accordance with the direction of the Contracting Officer;
4. Expresses through word or conduct an intention not to complete the services in accordance with the directions of the Contracting Officer;
5. Fails to perform any of the other provisions of the Contract (or any task order);
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 the Contracting Officer. In order to contest a termination for default, the Architect-Engineer 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 ninety (90) days from the date of the Contracting Officer's final decision.

C. Delays. If the Architect-Engineer refuses or fails to prosecute the services, or any separable part thereof, with such diligence as will provide for its completion within the time specified in the Contract, or any extension thereof, or fails to complete said services within the specified time, the District may, by written notice to the Architect-Engineer, terminate its right to proceed with the services or such part of the services involving the delay. In such event, the District may take over the services and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the services such materials as may have been paid for by the District. Whether or not the Architect-Engineer's right to proceed with the services are terminated, the Architect-Engineer shall be liable for any liability to the District resulting from the Architect-Engineer's refusal or failure to complete the services 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 services are 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 services 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 consultants or subcontractors 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 services when, in his/her judgment, the findings of fact justify such an extension, and his/her 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. Opportunity to Cure. Notwithstanding the foregoing sections A and C, the Contract will not terminate as a result of the failure to perform if the Architect-Engineer begins, immediately upon receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure with no more than ten (10) days of receipt thereof. The Contracting Officer in its sole discretion, but is not obligated to, may extend the period to cure if the Department finds a legitimate reason for the extension.

E. Termination for Convenience of the District Government

1. The performance of services under the Contract, or any task order issued thereunder by the Contracting Officer, 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 services under the Contract (or task order) 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 (or task order) 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 services under the Contract (or task order) as is not terminated.
 - c) Terminate all orders and subcontracts to the extent that they relate to the performance of the services 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/she 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 completed, or partially completed plans, drawings, information and other property which, if the Contract (or task order) had been completed, would have been required to be furnished to the District.
 - g) Complete performance of such part of the services as shall not have been terminated by the Notice of Termination.
 - h) 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 that is in the possession of the Architect-Engineer and in which the District has or may acquire an interest.
 - i) 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.
3. After receipt of a Notice of Termination, the Architect-Engineer shall submit to the Contracting Officer its 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 ninety (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 ninety (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 ninety (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/she may receive and act upon any such termination claim at any time after such ninety (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 ninety (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/her, 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 services pursuant to this Article, which amount or amounts may include a reasonable allowance for profit on services completed; 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 any services 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 services 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 services 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/her, 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 services;
 - ii) The cost of settling and paying claims arising out of the termination of services 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 services performed by the Architect-Engineer for the terminated portion of the Contract (or task order) 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 services 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 the 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 services 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
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 its claim within the time provided in Section 3 above and has failed to request extension of such time, the Architect-Engineer 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 (or task order);
 - 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 (or task order), 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 (or task order) 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 in accordance with the Quick Payment Act, D.C. Official Code §2-221.01 *et seq.*
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 (3) 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 its books, records, documents and other evidence bearing on the costs and expenses of the Architect-Engineer under the Contract and relating to the services 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 services, deficient services, rejected services, or services 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 the 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 the 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 the 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 its 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 six (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 the 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 its 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 (3) 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 its 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 the 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 the 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 the Contract where 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 and 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 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, 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/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in the 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 the Contract. The Architect-Engineer shall not confer on any public employee having official responsibility for the Contract 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 the 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 the Contract.

ARTICLE 14. DISMISSALS AND 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 the 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 its employees and in the prosecution of the work under the 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/her 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 services 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 the 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 the 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 exercise the professional skill and care required by Section 2.F of these Standard Contract Provisions in observing and complying 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 applicable to the services.
- B. Equal Opportunity: Non-Discrimination in Employment.** During the performance of the 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 one-tenth of one percent of the total project cost, or \$2,500,000, whichever is greater.
- D. Service Contract Act.** The Architect-Engineer agrees that the work performed under this Contract shall be subject to the Service Contract Act (41 U.S.C. 351 *et seq.*). 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 Service Contract 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 District of Columbia and its officials, officers, agents, and employees, the Department and its consultants, representatives, agents, servants and employees harmless against any and all claims or liability, 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, arising from or based on the violation of any such law, code, regulation, codes or industry standards, order or decree in performance of the Contract services whether by the Architect-Engineer, an employee or agent of the Architect-Engineer, any person, firm or corporation employee engaged by the Architect-Engineer or contractually associated with the Architect-Engineer in the performance of or in connection with the Services contemplated or performed under the Contract.. If the Architect-Engineer breaches the terms of this Contract, 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, 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 services, 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 consultant or 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 defend, indemnify and hold harmless the Department, its representatives, consultants, officers, agents, servants and employees, from and against 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 consultant or 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 or arising out of the Contract services, 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 ASSOCIATES AND CONSULTANTS

- A. Prior Consent Required.** Except as otherwise provided in this Section 18 (A), 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 the subcontractor for the services rendered and materials provided by the 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 confidentiality, maintenance and preservation of records, and audit by government representatives, under the Contract; and
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 services, 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 the 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 or the Architect-Engineer 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 or the Architect-Engineer 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 or the Architect-Engineer, as applicable, 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 the 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 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 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 the 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 of the District 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 the 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. 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 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 District and the Architect-Engineer, by and through persons authorized to execute the Contract on their respective behalf, and constitutes the legal, valid and binding obligation of the District and the Architect-Engineer, enforceable against the District and 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, consultants and subcontractors, in connection with the Services 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. 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 (i) debarred, suspended or excluded, (ii) a party to a voluntary exclusion agreement, or (iii) otherwise enjoined from submitting bids or proposals on contracts for the type of 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 District.

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF GENERAL SERVICES



ATTACHMENT I

SBE Subcontracting Plan

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]



SBE Subcontracting Plan FAQs & Checklist

This Checklist and FAQs are being provided to assist you in completing the SBE Subcontracting Plan. You must submit the Subcontracting Plan for all construction and non-construction contracts for government-assisted projects and for any application for a Class A Operator, Class B Operator, or Management Service Provider (MSP) license to be issued by the Office of Lottery & Gaming (OLG). You must adhere to all District laws regarding the requirements of Subcontracting Plans, the instructions on the SBE Subcontracting Plan (below), and any instructions provided by the procuring agency or OLG.

FREQUENTLY ASKED QUESTIONS

- **Who is required to complete an SBE Subcontracting Plan?**
 - All beneficiaries of construction or non-construction contracts for government-assisted projects in excess of \$250,000 must submit an SBE Subcontracting Plan unless the subcontracting requirement is otherwise fully waived by the Director of the Department of Small & Local Business Development. A partial waiver still requires an SBE Subcontracting Plan.
- **I am a CBE Prime Contractor doing 100% of the work under my contract, am I required to complete the SBE Subcontracting Plan?**
 - If a CBE Prime is selected as a beneficiary of a construction or non-construction contract and will perform 100% of the work, subcontracting is not required. If 100% of the work is performed by the CBE Prime, it shall attest to completing 100% of the work. However, if a CBE Prime subcontracts any portion of the work, 35% of the total amount subcontracted must be with an SBE. For example, if a CBE Prime receives a contract for \$1,000,000 and will perform only \$900,000 of the contract, 35% of the remaining \$100,000 (*i.e.*, \$35,000) must be subcontracted to qualified SBEs. The SBE Subcontracting Plan, based on this example, should be completed.
- **Will DSLBD credit 100% of a CBE's subcontract towards my subcontracting goal?**
 - DSLBD will only provide credit towards your subcontracting goal for work whereby a SBE provides a commercially useful function. For example, if a Prime contractor awards a \$100,000 contract to an SBE subcontractor to procure software licenses at \$95,000, and the remaining \$5,000 is paid to the SBE for obtaining those software licenses, only the \$5,000 will be credited towards the subcontracting goal. Any pass-thru costs or other work where the SBE is not providing a commercially useful function--with its own organization and resources--will not be credited.
- **Does my SBE Subcontracting Plan have to cover all options periods of the contract or solely the current performance period?**
 - The SBE Subcontracting Plan should only include information for the current period of performance. Thus, the SBE Subcontracting Plan should not represent anticipated option periods. A new subcontracting plan must be submitted and executed before the start of each period of performance.
- **The base period of my contract was awarded during the COVID-19 Public Health Emergency (*i.e.*, March 11, 2020, through November 5, 2021). What is my subcontracting requirement for my performance periods that fall outside of those dates?**
 - If the base period of your contract was awarded during the public health emergency, you are required to maintain a 50% subcontracting requirement for all options and extensions associated with that contract unless otherwise reduced or waived by the Director of DSLBD.
- **I do not believe I can meet the required 35% or 50% subcontracting requirement. What must I do to waive this requirement?**
 - If you believe you cannot achieve the required subcontracting requirements, you should communicate this concern to the contracting officer or other procuring staff before signing your contract. Only the Director of DSLBD can waive the subcontracting requirements, and DSLBD does not retroactively approve waivers. For instance, if a contract is executed before a final determination has been rendered by DSLBD's Director, you will be required to achieve the subcontracting requirement, or the contract may be voided, pursuant to District law.
 - The contracting officer is required to submit a waiver request to DSLBD for the contract **for each period of performance**. Beneficiaries are not permitted to submit a waiver request. DSLBD does not approve waivers retroactively; therefore, contracting officers and beneficiaries should ensure that the waiver is approved prior to executing the contract. Otherwise, the contract is **voidable** pursuant to District law.



➤ **Can I utilize any CBE to meet my subcontracting requirements or does it have to be an SBE specifically?**

If there are insufficient qualified SBEs to completely fulfill the subcontracting requirement, then the requirement may be satisfied by subcontracting a CBE; provided, that all reasonable efforts shall be made to ensure that qualified SBEs are significant participants in the overall subcontracting work.



SBE SUBCONTRACTING PLAN

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

SUBMISSION OF CBE PLAN:

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

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

CERTIFICATION INFORMATION: Certification as a Local Business Enterprise (**LBE**) is a prerequisite to be certified in any additional business enterprise category within the CBE Program. The Small Business Enterprise (**SBE**) is a category of the Certification. However, not all CBEs have a Small Business Enterprise (SBE) category. If the subcontracting plan is with a CBE without the SBE category, the contract may not receive credit towards the subcontracting goal for work provided by the CBE if there were qualified SBEs that could have been utilized to completely fulfill the subcontracting requirement.

The certification number must include the **Local Business Enterprise (LBE)** and **Small Business Enterprise (SBE) categories**. i.e., Certification Number:LSXXXXXXXXXX2026.

SUBCONTRACTING CREDIT PURSUANT D.C. LAW 24-39:

Pursuant to the Coronavirus Support Temporary Amendment Act of 2021 and the Public Emergency Extension and Eviction and Utility Moratorium Phasing Emergency Amendment Act of 2021, contracts awarded during the Public Health Emergency shall receive credit as follows:

- (1) For every dollar expended by a beneficiary with a resident-owned business, the beneficiary shall receive a credit for \$1.10 against the CBE minimum expenditure.
- (2) For every dollar expended by a beneficiary with a disadvantaged business enterprise, the beneficiary shall receive a credit for \$1.25 against the CBE minimum expenditure.
- (3) For every dollar expended by a beneficiary that uses a company designated as both a disadvantaged business enterprise and as a resident-owned business, the beneficiary shall receive a maximum credit for \$1.30 against the CBE minimum expenditure.

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



SECTION 1. BENEFICIARY AND SOLICITATION/CONTRACT/SPORTS WAGERING APPLICANT INFORMATION

| Section 1A. BENEFICIARY INFORMATION | | |
|---|------------------------------|----------------------|
| Company: _____ | Contact #: _____ | Email address: _____ |
| Street Address: _____ | City/ State/ Zip Code: _____ | |
| Company's point of contact for agency contract, private project, or Sports Wagering Licensee: | | |
| Point of Contact: _____ | Title: _____ | |
| Contact #: _____ | Email address: _____ | |
| Street Address: _____ | | |

| Section 1B. SOLICITATION/CONTRACT/SPORTS WAGERING APPLICANT INFORMATION | |
|--|--|
| Solicitation /Contract/ApplicantNo.: _____ | Solicitation Due Date: _____ |
| Agency: _____ | Total Dollar Amount of Contract: _____ |
| | Total Value of ALL CBE Subcontracts: _____ (Include all lower tiers) |
| Please select all the applicable subcontracting requirements for this solicitation: | I affirm that the value of all my CBE Subcontracts meets or exceeds the subcontracting requirement required under this solicitation or contract. Further, I understand that DSLBD will only provide credit towards my SBE Subcontracting Requirement for work whereby a CBE provided a commercially useful function with its own organization and resources. |
| <input type="checkbox"/> 35% Subcontracting Requirement | <input type="checkbox"/> I AGREE |
| <input type="checkbox"/> 50% Subcontracting Requirement | <input type="checkbox"/> I DISAGREE |
| <input type="checkbox"/> DSLBD approved an adjusted subcontracting requirement: ➤ Adjusted Subcontracting Requirement: _____% | |

| Section 1C. CBE BENEFICIARY (ONLY COMPLETE IF THE BENEFICIARY IS A CERTIFIED BUSINESS ENTERPRISE) |
|---|
| If the Beneficiary is a Certified Business Enterprise, select all that apply and provide the following information: |
| <input type="checkbox"/> I am a CBE that WILL perform 100% of the contracting effort with my own organization and resources and will not subcontract any portion of the contract. Therefore, I am NOT required to submit an SBE Subcontracting Plan that demonstrates subcontracting. |
| <input type="checkbox"/> I am a CBE that WILL NOT perform 100% of the contracting effort with my own organization and resources and will subcontract a portion of the contract. Therefore, I understand I am required to submit an SBE Subcontracting Plan (located in Section on 2) that demonstrates that the required subcontracting amount, as indicated above, will go to qualified CBEs. |
| Please include the percentage of the contract the CBE Prime will perform under the contract or project. |
| ➤ The CBE Prime will self-perform _____% of the contract's total dollar volume of the contract or project. |
| Please provide the current CBE Certification Number of the CBE Prime. |
| ➤ CBE Certification No. _____ |



BENEFICIARY ATTESTATION

I declare, certify, verify, attest, and state under penalty of perjury that the information provided above is true and correct to the best of my knowledge and belief. Pursuant to D.C. Official Code § 22-2402, I understand that a person convicted of perjury shall be fined not more than \$5,000 or imprisoned for not more than 10 years, or both. I understand that any false or fraudulent statement that I provide or assert may be grounds for revocation of my CBE registration pursuant to D.C. Official Code § 2-218.63. Further, a Prime Contractor, Developer, CBE, Certified Joint Venture, or Sports Wagering Licensee that fails to comply with the requirements of the Small and Certified Business Enterprise Development and Assistance Amendment Act of 2005, as amended, (D.C. Law 20-108) (the "Act"), shall be subject to penalties as outlined in the Act.

PRINT NAME: _____

SIGNATURE: _____

JOB TITLE: _____

DATE: _____

Section 2. SBE/CBE SUBCONTRACTORS (FOR EACH TIER):

| CBE Subcontractor Company Name | Address | Certification No. | Price to be paid to the CBE Subcontractor | Description of subcontract scope of work to be performed that shall be for a commercially useful function by the CBE | |
|--|---------|-------------------|---|--|---|
| _____ | _____ | _____ | _____ | _____ | |
| SBE/CBE Point of Contact: | | | CBE Subcontractor Self-Performance Indicator: | | |
| Name: _____ Title: _____ Telephone Number: _____ Email Address: _____ | | | <input type="checkbox"/> This CBE will perform the ENTIRE subcontract with its own organization and resources. <input type="checkbox"/> This CBE will subcontract a portion of the subcontract and will perform _____% of the subcontract's total dollar volume. NOTE: If the CBE will not self-perform 100% of the subcontract, it must list each lower-tier CBE subcontractor below. | | |
| LOWER TIER CBE Subcontractor Name | Address | Certification No. | Price to be paid to the CBE Subcontractor | Description of subcontract scope of work to be performed that shall be for a commercially useful function by the CBE | Tier (e.g., 1 st , 2 nd , 3 rd , 4 th , etc.) |
| _____ | _____ | _____ | \$ _____ | _____ | _____ |
| _____ | _____ | _____ | \$ _____ | _____ | _____ |
| _____ | _____ | _____ | \$ _____ | _____ | _____ |
| _____ | _____ | _____ | \$ _____ | _____ | _____ |
| _____ | _____ | _____ | \$ _____ | _____ | _____ |



| CBE Subcontractor Company Name | Address | Certification No. | Price to be paid to the CBE Subcontractor | Description of subcontract scope of work to be performed that shall be for a commercially useful function by the CBE |
|--------------------------------|---------|-------------------|---|--|
| _____ | _____ | _____ | _____ | _____ |

| | | | | |
|--|--|--|---|--|
| SBE/CBE Point of Contact: | | | CBE Subcontractor Self-Performance Indicator: | |
| Name: _____ Title: _____ Telephone Number: _____ Email Address: _____ | | | <input type="checkbox"/> This CBE will perform the ENTIRE subcontract with its own organization and resources. <input type="checkbox"/> This CBE will subcontract a portion of the subcontract and will perform _____% of the subcontract's total dollar volume. NOTE: If the CBE will not self-perform 100% of the subcontract, it must list each lower-tier CBE subcontractor below. | |

| LOWER TIER CBE Subcontractor Name | Address | Certification No. | Price to be paid to the CBE Subcontractor | Description of subcontract scope of work to be performed that shall be for a commercially useful function by the CBE | Tier (e.g., 1 st , 2 nd , 3 rd , 4 th , etc.) |
|-----------------------------------|---------|-------------------|---|--|---|
| _____ | _____ | _____ | \$ _____ | _____ | _____ |
| _____ | _____ | _____ | \$ _____ | _____ | _____ |
| _____ | _____ | _____ | \$ _____ | _____ | _____ |
| _____ | _____ | _____ | \$ _____ | _____ | _____ |
| _____ | _____ | _____ | \$ _____ | _____ | _____ |

| CBE Subcontractor Company Name | Address | Certification No. | Price to be paid to the CBE Subcontractor | Description of subcontract scope of work to be performed that shall be for a commercially useful function by the CBE |
|--------------------------------|---------|-------------------|---|--|
| _____ | _____ | _____ | _____ | _____ |

| | | | | |
|--|--|--|---|--|
| SBE/CBE Point of Contact: | | | CBE Subcontractor Self-Performance Indicator: | |
| Name: _____ Title: _____ Telephone Number: _____ Email Address: _____ | | | <input type="checkbox"/> This CBE will perform the ENTIRE subcontract with its own organization and resources. <input type="checkbox"/> This CBE will subcontract a portion of the subcontract and will perform _____% of the subcontract's total dollar volume. NOTE: If the CBE will not self-perform 100% of the subcontract, it must list each lower-tier CBE subcontractor below. | |

| LOWER TIER CBE Subcontractor Name | Address | Certification No. | Price to be paid to the CBE Subcontractor | Description of subcontract scope of work to be performed that shall be for a commercially useful function by the CBE | Tier (e.g., 1 st , 2 nd , 3 rd , 4 th , etc.) |
|-----------------------------------|---------|-------------------|---|--|---|
| _____ | _____ | _____ | \$ _____ | _____ | _____ |



| | | | | function by the CBE | |
|--|--|--|----|---------------------|--|
| | | | \$ | | |
| | | | \$ | | |
| | | | \$ | | |
| | | | \$ | | |
| | | | \$ | | |

| CBE Subcontractor Company Name | Address | Certification No. | Price to be paid to the CBE Subcontractor | Description of subcontract scope of work to be performed that shall be for a commercially useful function by the CBE |
|--------------------------------|---------|-------------------|---|--|
| | | | | |

| SBE/CBE Point of Contact: | CBE Subcontractor Self-Performance Indicator: |
|--|---|
| Name: _____ Title: _____ Telephone Number: _____ Email Address: _____ | <input type="checkbox"/> This CBE will perform the ENTIRE subcontract with its own organization and resources. <input type="checkbox"/> This CBE will subcontract a portion of the subcontract and will perform _____% of the subcontract's total dollar volume. NOTE: If the CBE will not self-perform 100% of the subcontract, it must list each lower-tier CBE subcontractor below. |

| LOWER TIER CBE Subcontractor Name | Address | Certification No. | Price to be paid to the CBE Subcontractor | Description of subcontract scope of work to be performed that shall be for a commercially useful function by the CBE | Tier (e.g., 1 st , 2 nd , 3 rd , 4 th , etc.) |
|-----------------------------------|---------|-------------------|---|--|---|
| | | | \$ | | |
| | | | \$ | | |
| | | | \$ | | |
| | | | \$ | | |
| | | | \$ | | |



AGENCY CONTRACT AWARD

Agency: _____
 Prime Contractor: _____
 Contract Number: _____
 Date SBE Subcontracting Plan Accepted: _____
 Date agency contract signed: _____

Anticipated Start Date of Contract: _____
 Anticipated End Date of Contract: _____

Total Dollar Amount of Contract: \$ _____

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

35% of the Total Contract Amount: \$ _____

50% of Total Dollar Amount of Contract: \$ _____
 (pursuant to D.C. Law 24-39)

Total Amount of All SBE/CBE Subcontracts: \$ _____
 (include every tier)

(√ if applies)

Base Period Contract – Option/Extension Period: _____

Multi-year Contract
 First Year (Period) of Contract: _____
 Current Year (Period) of Contract: _____

Design-Build – Date of Guaranteed Contract: _____

Check if prime contractor is a CBE and will perform the ENTIRE government-assisted project (agency contract) with its own organization and resources and NOT subcontract any portion of the services or goods.

PRIVATE PROJECT SUBSIDY AWARD

Agency Providing Subsidy: _____
 District Subsidy: _____
 Developer: _____
 Amount of District Subsidy: _____
 Date District Subsidy Provided/ contract signed: _____

Anticipated Start Date of Project: _____
 Anticipated End Date of Project: _____

Project Name: _____
 Project Address: _____

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

35% of the Total Development Project Budget: \$ _____

50% of Total Dollar Amount of Contract: \$ _____
 (pursuant to D.C. Law 24-39)

Total Amount of All SBE/CBE Subcontracts: \$ _____
 (include every lower tier)

Check if developer is a CBE and will perform the ENTIRE government-assisted project (private project) with its own organization and resources and NOT subcontract any portion of services or goods.

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

The below Agency Contracting Officer or Agency Project Manager affirms the following (√ to affirm):

If the Beneficiary is a CBE, DSLBD was contacted to confirm Beneficiary's CBE certification.

The fully executed Contract (Base or Option or Extension or Multi-Year) or subsidy document, between the Beneficiary and Agency, was emailed to DSLBD at Compliance.Enforcement@dc.gov within five (5) days of signing:

FOR AGENCY CONTRACT the SBE Subcontracting Plan, submitted by Beneficiary, was emailed to DSLBD at Compliance.Enforcement@dc.gov within five (5) days of signing the contract between the Beneficiary and Agency.

 Name of Agency Contracting Officer or Agency Project Manager

 Title of Agency Contracting Officer or Agency Project Manager

 Signature

 Date

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF GENERAL SERVICES



ATTACHMENT J

First Source Agreement and

Employment Plan

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]



**GOVERNMENT OF THE DISTRICT OF COLUMBIA
FIRST SOURCE EMPLOYMENT AGREEMENT FOR
CONSTRUCTION PROJECTS ONLY**



GOVERNMENT-ASSISTED PROJECT/CONTRACT INFORMATION

CONTRACT/SOLICITATION NUMBER: _____
 DISTRICT CONTRACTING AGENCY: _____
 CONTRACTING OFFICER: _____
 TELEPHONE NUMBER: _____
 TOTAL CONTRACT AMOUNT: _____

THIS SECTION TO BE COMPLETED BY THE BENEFICIARY ONLY:

TOTAL GOVERNMENT ASSISTED FUNDED AMOUNT: _____ DATE _____
 CONTRACT GRANT LOAN TAX ABATEMENT OR EXEMPTION LAND TRANSFER
 LAND DISPOSITION AND DEVELOPMENT AGREEMENT TAX INCREMENT FINANCING
 ANY ADDITIONAL LEGISLATION, IF YES _____

D.C. CODE#

GENERAL CONTRACTOR WILL MEET THE HIRING OR HOURS WORKED PERCENTAGES REQUIREMENTS FOR ENTIRE PROJECT OR PER EACH SUBCONTRACTOR

PROJECT NAME: _____
 PROJECT ADDRESS: _____
 CITY: _____ STATE: _____ ZIP CODE: _____
 PROJECT START DATE: _____ PROJECT END DATE: _____
 EMPLOYER START DATE: _____ EMPLOYER END DATE: _____

EMPLOYER INFORMATION

EMPLOYER NAME: _____
 EMPLOYER ADDRESS: _____
 CITY: _____ STATE: _____ ZIP CODE: _____
 TELEPHONE NUMBER: _____ FEDERAL IDENTIFICATION NO.: _____
 CONTACT PERSON: _____
 TITLE: _____
 E-MAIL: _____ TELEPHONE NUMBER: _____
 CERTIFIED BUSINESS ENTERPRISES CERTIFICATION NUMBER: _____
 D.C. APPRENTICESHIP COUNCIL REGISTRATION NUMBER: _____
 ARE YOU A SUBCONTRACTOR YES NO IF YES, NAME OF PRIME CONTRACTOR: _____

This First Source Employment Agreement (Agreement), in accordance with Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011 (D.C. Official Code §§ 2-219.01 – 2.219.05), and relevant provisions of the Apprenticeship Requirements Amendment Act of 2004 (D.C. Official Code § 2-219.03 and § 32-1431) is a required agreement between the District of Columbia Department of Employment Services (DOES) and EMPLOYER.

EMPLOYER, which includes the Beneficiary and all contractors and subcontractors, is working on a contract or project that has received:

- D.C. Government assistance valued between \$300,000 and \$5 million dollars, required to make a good faith effort to ensure that 51% of all new hires are District residents. (D.C. Official Code § 2-219(e)(1)(A))
- D.C. Government assistance valued at \$5 million or more, required to have the following percentage of hours worked in each classification by DC residents; 20% of journey worker hours; 60% of apprentice hours; 51% of skilled laborer hours; 70% of common laborer hours for all jobs created by the Project. (D.C. Official Code §2-219.03 (1A)(A))

DOES is the first source for recruitment, referral, and placement of new hires or employees for all jobs created by the Government Assisted Project or Contract (Project).

The Parties agree to the terms and conditions of the Agreement as follows:

I. DEFINITIONS

The following definitions shall govern the terms used in this Agreement.

- A. **Apprentice** means a worker who is employed to learn an apprenticeable occupation under the terms and conditions of approved apprenticeship standards.
- B. **Beneficiary** means:
 - 1. The signatory to a contract executed by the Mayor which involves any District of Columbia government funds, or funds which, in accordance with a federal grant or otherwise, the District government administers and which details the number and description of all jobs created by a government-assisted Project for which the beneficiary is required to use the First Source Register;
 - 2. A recipient of a District government economic development action including contracts, grants, loans, tax abatements, land transfers for redevelopment, or tax increment financing that results in a financial benefit of \$300,000 or more from an agency, commission, instrumentality, or other entity of the District government, including a financial or banking institution which serves as the repository for \$1 million or more of District of Columbia funds.
- C. **Contracting Agency** means any District of Columbia agency that awarded a government assisted Project totaling \$300,000 or more.
- D. **Direct labor costs** means all costs, including wages and benefits, associated with the hiring and employment of personnel assigned to a process in which payroll expenses are traced to the units of output and are included in the cost of goods sold.
- E. **EMPLOYER** means any entity awarded a government assisted Project totaling \$300,000 or more, including all individual contractor and subcontractor entities at any tier who work on the Project.
- F. **First Source Employer Portal** is a website consisting of a connected group of static and dynamic web pages with the ability for Employers to enter data using the internet. The website is accessible by a Uniform Resource Locator (URL) and is maintained by DOES. The website provides reporting information to First Source EMPLOYERS.
- G. **First Source Register** means the DOES Automated Applicant Files, which consists of the names of DC residents registered with DOES.
- H. **Good faith effort** means an EMPLOYER has exhausted all reasonable means to comply with any affirmative action, hiring, or contractual goal(s) pursuant to the First Source law and Agreement.
- I. **Government-assisted project or contract (Project)** means any construction or non-construction Project that receives funds or resources, valued at \$300,000 or more, from the District of Columbia, or funds or resources which, in accordance with a federal grant or otherwise, the District of Columbia government administers, including contracts, grants, loans, tax abatements or exemptions, land transfers, land disposition and development agreements, tax increment financing, or any combination of the aforementioned.

- J. **Hard to employ** means a District of Columbia resident who is confirmed by DOES as:
1. An ex-offender who has been released from prison within the last 10 years;
 2. A participant of the Temporary Assistance for Needy Families program;
 3. A participant of the Supplemental Nutrition Assistance Program;
 4. Living with a permanent disability verified by the Social Security Administration or District vocational rehabilitation program;
 5. Unemployed for 6 months or more in the last 12-month period;
 6. Homeless;
 7. A participant or graduate of the Transitional Employment Program established by [§ 32-1331](#); or
 8. An individual who qualified for inclusion in the Work Opportunity Tax Credit Program as certified by the Department of Employment Services.
- K. **Indirect labor costs** means all costs, including wages and benefits, that are part of operating expenses and are associated with the hiring and employment of personnel assigned to tasks other than producing products.
- L. **Jobs** means any union and non-union managerial, non-managerial, professional, nonprofessional, technical or nontechnical position including: clerical and sales occupations, service occupations, processing occupations, machine trade occupations, bench work occupations, structural work occupations, agricultural, fishery, forestry, and related occupations, and any other occupations as the Department of Employment Services may identify in the Dictionary of Occupational Titles, United States Department of Labor.
- M. **New Hire:** Individual(s) newly hired by the EMPLOYER to perform work on a government assisted Project.
- N. **Transfer:** Existing EMPLOYER employee who has been moved from one Project to another Project.
- O. **Journeyman** means a worker who has attained a level of skill, abilities and competencies recognized within an industry as having mastered the skills and competencies required for the occupation.
- P. **Revised Employment Plan** means a document prepared and submitted by the EMPLOYER that includes the following:
1. A projection of the total number of hours to be worked on the Project by trade;
 2. A projection of the total number of journey worker hours, by trade, to be worked on the Project and the total number of journey worker hours, by trade, to be worked by DC residents;
 3. A projection of the total number of apprentice hours, by trade, to be worked on the Project and the total number of apprentice hours, by trade, to be worked by DC residents;
 4. A projection of the total number of skilled laborer hours, by trade, to be worked on the Project and the total number of skilled laborer hours, by trade, to be worked by DC residents;
 5. A projection of the total number of common laborer hours to be worked on the

- Project and the total number of common laborer hours to be worked by DC residents;
6. A timetable outlining the total hours worked by trade over the life of the Project and an associated hiring schedule;
 7. Descriptions of the skill requirements by job title or position, including industry-recognized certifications required for the different positions;
 8. A strategy to fill the hours required to be worked by DC residents pursuant to this paragraph, including a component on communicating these requirements to contractors and subcontractors and a component on potential community outreach partnerships with the University of the District of Columbia, the University of the District of Columbia Community College, the Department of Employment Services, Jointly Funded Apprenticeship Programs, the District of Columbia Workforce Intermediary, or other government-approved, community-based job training providers;
 9. A remediation strategy to ameliorate any problems associated with meeting these hiring requirements, including any problems encountered with contractors and subcontractors;
 10. The designation of a senior official from the EMPLOYER(S) or general contractor who will be responsible for implementing the hiring and reporting requirements;
 11. Descriptions of the health and retirement benefits that will be provided to DC residents working on the Project;
 12. A strategy to ensure that District residents who work on the Project 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 DC residents from one Project to the next;
 13. A strategy to hire graduates of District of Columbia Public Schools, District of Columbia public charter schools, and community-based job training providers, and hard-to-employ residents; and
 14. A disclosure of past compliance with the Workforce Act and the Davis-Bacon Act, where applicable, and the bidder or offeror's general DC resident hiring practices on projects or contracts completed within the last 2 years.
- Q. **Tier Subcontractor** means any subcontractor selected by the primary contractor to perform portion(s) or all work related to the trade or occupation area(s) on a Project subject to this First Source Agreement.
- R. **Washington Metropolitan Statistical Area** means the District of Columbia; Virginia Cities of Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas, and Manassas Park; the Virginia Counties of Arlington, Clarke, Fairfax, Fauquier, Loudon, Prince William, Spotsylvania, Stafford, and Warren; the Maryland Counties of Calvert, Charles, Frederick, Montgomery and Prince Georges; and the West Virginia County of Jefferson.
- S. **Workforce Intermediary Pilot Program** means the intermediary between employers and training providers to provide employers with qualified DC resident job applicants. See DC Official Code § 2-219.04b.

II. GENERAL TERMS

- A. Subject to the terms and conditions set forth herein, DOES will receive the Agreement from the Contracting Agency no less than 7 calendar days in advance of the Project start date. No work associated with the relevant Project can begin until the Agreement has been accepted by DOES.
- B. The Beneficiary and/or EMPLOYER shall require all Project contractors and subcontractors, under a Project receiving government assistance or benefits valued at \$300,000 or more, to enter into an Agreement with DOES.
- C. Agreement will take effect once beneficiary/Employer awarded contract and start work on the government assisted Project and no work can begin prior to execution of the Agreement and will be fully effective through the duration, any extension or modifications of the Project and until such time as construction is complete and a certificate of occupancy is issued.
- D. If an EMPLOYER began work prior to the execution of a First Source Employment Agreement, the EMPLOYER shall cease work on the Project and sign a First Source Employment Agreement to be bound by the applicable First Source Employment Agreement requirements, retroactively, from the start of work throughout the duration of the contract.
- E. DOES will provide recruitment, referral, and placement services to the EMPLOYER, subject to the limitations in this Agreement.
- F. DOES and the EMPLOYER agree that, for purposes of this Agreement, new hires and jobs created for the Project (both union and nonunion) include all of EMPLOYER'S job openings and vacancies in the Washington Metropolitan Statistical Area created for the Project as a result of internal promotions, terminations, and expansions of the EMPLOYER'S workforce, as a result of this Project.
- G. This Agreement includes apprentices as defined in D.C. Official Code §§ 32-1401- 1431.

DOES will make every effort to work within the terms of all collective bargaining agreements to which the EMPLOYER is a party. The EMPLOYER will provide DOES with written documentation that the EMPLOYER has provided the representative of any collective bargaining unit involved with this Project a copy of this Agreement and has requested comments or objections. If the representative has any comments or objections, the EMPLOYER will promptly provide them to DOES.

The EMPLOYER who contracts with the District of Columbia government to perform construction, renovation work, or information technology work with a single contract, or cumulative contracts, of at least \$500,000, within a 12-month period will be required to register an apprenticeship program with the District of Columbia Apprenticeship Council as required by DC Code 32-1431.

- H. If, during the term of this Agreement, the EMPLOYER should transfer possession of all or a portion of its business concerns affected by this Agreement to any other party by lease, sale, assignment, merger, or otherwise this First Source Agreement shall remain in full force and effect and transferee shall remain subject to all provisions herein. In addition, the EMPLOYER as a condition of transfer shall:
 - 1. Notify the party taking possession of the existence of this EMPLOYER'S First Source Employment Agreement.
 - 2. Notify DOES within 7 business days of the transfer. This notice will include the

name of the party taking possession and the name and telephone of that party's representative.

- I. The EMPLOYER and DOES may mutually agree to modify this Agreement. Any modification shall be in writing, signed by the EMPLOYER and DOES and attached to the original Agreement.
- J. To the extent that this Agreement is in conflict with any federal labor laws or governmental regulations, the federal laws or regulations shall prevail.

III. TRAINING

- A. DOES and the EMPLOYER may agree to develop skills training and on-the-job training programs as approved by DOES; the training specifications and cost for such training will be mutually agreed upon by the EMPLOYER and DOES and will be set forth in a separate Training Agreement.

IV. RECRUITMENT

- A. The EMPLOYER shall complete the attached Revised Employment Plan that will include the information outlined in Section I.P.
- B. The EMPLOYER shall register and post all job vacancies with the Job Bank Services of DOES at www.dcnetworks.org a minimum of 10 days. Should you need assistance posting job vacancies, please contact Job Bank Services at (202) 698-6001.
- C. The EMPLOYER shall notify DOES of all new jobs created for the Project within at least 7 business days (Monday - Friday) of the EMPLOYERS' identification/creation of the new jobs. The Notice of New Job Creation shall include the number of employees needed by job title, qualifications and specific skills required to perform the job, hiring date, rate of pay, hours of work, duration of employment, and a description of the work to be performed. This must be done before using any other referral source.
- D. Job openings to be filled by internal promotion from the EMPLOYER'S current workforce shall be reported to DOES for placement and referral, if the job is newly created. EMPLOYER shall provide DOES a Notice of New Job Creation that details such promotions in accordance with Section IV.C.
- E. The EMPLOYER will submit to DOES, prior to commencing work on the Project, a list of Current Employees that includes the name, social security number, and residency status of all current employees, including apprentices, trainees, and laid-off workers who will be employed on the Project. All EMPLOYER information reviewed or gathered, including social security numbers, as a result of DOES' monitoring and enforcement activities will be held confidential in accordance with all District and federal confidentiality and privacy laws and used only for the purposes that it was reviewed or gathered.

V. REFERRAL

- A. DOES will screen applicants through carefully planned recruitment and training events and provide the EMPLOYER with a list of qualified applicants according to the number of employees needed by job title, qualifications and specific skills required to perform the job, hiring date, rate of pay, hours of work, duration of employment, and a description of the work to be performed as supplied by the EMPLOYER in its Notice of New Job Creation set forth above in Section IV.C.

- B. DOES will notify the EMPLOYER of the number of applicants DOES will refer, prior to the anticipated hiring dates.

VI. PLACEMENT

- A. EMPLOYER shall in good faith, use reasonable efforts to select its new hires or employees from among the qualified applicants referred by DOES. All hiring decisions are made by the EMPLOYER.
- B. In the event that DOES is unable to refer qualified applicants meeting the EMPLOYER'S established qualifications, within 7 business days (Monday - Friday) from the date of notification from the EMPLOYER, the EMPLOYER will be free to directly fill remaining positions for which no qualified applicants have been referred. However, the EMPLOYER shall still be required to meet the First Source hiring requirements or hours worked percentages for all jobs created by the Project.
- C. After the EMPLOYER has selected its employees, DOES is not responsible for the employees' actions and the EMPLOYER hereby releases DOES, and the Government of the District of Columbia, the District of Columbia Municipal Corporation, and the officers and employees of the District of Columbia from any liability for employees' actions.

VII. REPORTING REQUIREMENTS

- A. EMPLOYER with a single contract valued at \$300,000 or more on a Project that received government assistance totaling between \$300,000 and \$5,000,000, a provision that at least 51% of the new employees hired to work on the Project shall be District residents.
- B. EMPLOYER shall register in the First Source Online Registration and Reporting System for electronic submission of all monthly Contract Compliance data, weekly certified payrolls and any other documents required by DOES for reporting and monitoring.
- C. EMPLOYER shall submit to the Department of Employment Services each month following the start of the Project a hiring compliance report for the Project that includes the:
 - 1. Number of new job openings created/available;
 - 2. Number of new job openings listed with DOES, or any other District Agency;
 - 3. Number of DC residents hired for new jobs;
 - 4. Number of employees transferred to the Project;
 - 5. Number of DC residents transferred to the Project;
 - 6. Direct or indirect labor cost associated with the project;
 - 7. Each employee's name, job title, social security number, hire date, residence, and referral source; and
 - 8. Workforce statistics throughout the entire project tenure.
- D. EMPLOYER with a single contract valued at \$300,000 or more on a Project that received government assistance totaling \$5 million or more shall meet the following hours worked percentages for **all** jobs created by the Project:
 - 1. At least 20% of journey worker hours by trade shall be performed by DC residents;
 - 2. At least 60% of apprentice hours by trade shall be performed by DC residents;
 - 3. At least 51% of the skilled laborer hours by trade shall be performed by DC residents; and
 - 4. At least 70% of common laborer hours shall be performed by DC residents.

- E. EMPLOYERS shall provide the following cumulative statistics, that will be used to create the monthly report, by uploading certified payrolls or payroll data into the LCPtracker reporting system:
1. Number of journey worker hours worked by DC residents by trade;
 2. Number of hours worked by all journey workers by trade;
 3. Number of apprentice hours worked by DC residents by trade;
 4. Number of hours worked by all apprentices by trade;
 5. Number of skilled laborer worker hours worked by DC residents by trade;
 6. Number of hours worked by all skilled laborers by trade;
 7. Number of common laborer hours worked by DC residents by trade; and
 8. Number of hours worked by all common laborers by trade.
- F. EMPLOYER may “double count” hours for the “hard to employ” up to 15% of total hours worked by DC Residents; however, a collective bargaining agreement shall not be a basis for waiver of this requirement.
- G. For construction Projects that are not subject to Davis-Bacon law in which certified payroll records do not exist, EMPLOYER shall submit monthly documents of workers employed on the Project to DOES, including DC residents and all employment classifications of hours worked.
- H. EMPLOYER may also be required to provide verification of hours worked or hiring percentages of DC residents, such as internal payroll records for construction Projects that are not subject to Davis-Bacon.
- I. Monthly, EMPLOYER shall submit weekly certified payrolls from all subcontractors at any tier working on the Project to the Contracting Agency. EMPLOYER is also required to make payroll records available to DOES as a part of compliance monitoring, upon request at job sites.

VIII. FINAL REPORT AND GOOD FAITH EFFORTS

- A. With the submission of the final request for payment from the Contracting Agency, the Beneficiary and/or EMPLOYER shall:
1. Report to DOES its compliance with the hiring or hours worked percentage requirements for all jobs created by the Project, and report the hours that DC residents worked for each trade classifications in each area of the Project; or
 2. Submit to DOES a request for a waiver of the hiring or hours worked percentage requirements for all jobs created by the Project that will include the following documentation:
 - a. Documentation supporting EMPLOYER’S good faith effort to comply;
 - b. Referrals provided by DOES and other referral sources; and
 - c. Advertisement of job openings listed with DOES and other referral sources.
- B. DOES may waive or partially waive the hiring or hours worked percentage requirements for jobs created by the Project, and/or the required hours of DC residents for each trade classifications, if DOES finds that the Beneficiary or EMPLOYER, including its contractors or subcontractors:
1. DOES certified that Beneficiary or Employer demonstrated a good faith effort to comply, as set forth in Section VIII.C.; or

2. Is located outside the Washington Metropolitan Statistical Area, and none of the contract work is performed inside the Washington Metropolitan Statistical Area;
 3. The beneficiary published each job opening or part-time work needed for 7 calendar days in a District newspaper of city-wide circulation; and
 4. The DOES certified that there are insufficient eligible applicants from the First Source Register that possess the skills required by the positions, or the eligible applicants are not available for part-time work or do not have a means to travel to the onsite jobs; or
 5. Beneficiary/Employer entered into a special workforce development training or placement arrangement with DOES or with the District of Columbia Workforce Intermediary.
- C. DOES shall consider documentation of the following when making a determination of a good-faith effort to comply:
1. DOES has certified that there are insufficient number of District residents in the labor market possessing the skills required by the EMPLOYER for the positions created as a result of the Project.
 2. Whether the EMPLOYER posted the jobs on the DOES job website for a minimum of 10 calendar days;
 3. Whether the EMPLOYER advertised each job opening in a District newspaper with city-wide circulation for a minimum of 7 calendar days;
 4. Whether the EMPLOYER advertised each job opening in special interest publications and on special interest media for a minimum of 7 calendar days;
 5. Whether the EMPLOYER hosted informational/recruiting or hiring fairs;
 6. Whether the EMPLOYER contacted churches, unions, and/or additional Workforce Development Organizations;
 7. Whether the EMPLOYER interviewed employable candidates;
 8. Whether the EMPLOYER created or participated in a workforce development program approved by DOES;
 9. Whether the EMPLOYER created or participated in a workforce development program approved by the District of Columbia Workforce Intermediary;
 10. Whether the EMPLOYER substantially complied with the relevant monthly reporting requirements set forth in this section;
 11. Whether the EMPLOYER has submitted and substantially complied with its most recent employment plan that has been approved by DOES; and
 12. Any additional documented efforts.

IX. MONITORING

- A. DOES is the District agency authorized to monitor and enforce the requirements of the Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011 (D.C. Official Code §§ 2 219.01 – 2.219.05), and relevant provisions of the Apprenticeship Requirements Amendment Act of 2004 (D.C. Official Code § 2-219.03 and § 32-1431). As a part of monitoring and enforcement, DOES may require and EMPLOYER shall grant access to Project sites, employees, and documents.
- B. EMPLOYER'S noncompliance with the provisions of this Agreement may result in the imposition of penalties.
- C. All EMPLOYER information reviewed or gathered, including social security numbers, as a result of DOES' monitoring and enforcement activities will be held confidential in accordance with all District and federal confidentiality and privacy laws and used only for the purposes that it was reviewed or gathered.
- D. DOES shall monitor all Projects as authorized by law. DOES will:
 - 1. Review all contract controls to determine if the Beneficiary or EMPLOYER, including any Contractors or Subcontractors, are subject to the Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011.
 - 2. Notify stakeholders and company officials and establish meetings to provide technical assistance involving the First Source Process.
 - 3. Make regular construction site visits to determine if the Prime or Subcontractors' workforce is in concurrence with the submitted Agreement and Monthly Compliance Reports.
 - 4. Inspect and copy certified payroll, personnel records and any other records or information necessary to ensure the required workforce utilization is in compliance with the First Source Law.
 - 5. Conduct desk reviews of *Monthly Compliance Reports*.
 - 6. Educate EMPLOYERS about additional services offered by DOES, such as On-the-Job training programs and tax incentives for EMPLOYERS who hire from certain categories.
 - 7. Monitor and complete statistical reports that identify the overall project, contractor, and subcontractors' hiring or hours worked percentages.
 - 8. Provide formal notification of non-compliance with the required hiring or hours worked percentages, or any alleged breach of the First Source Law to all contracting agencies, and stakeholders. ***(Please note: EMPLOYERS are granted 30 days to correct any alleged deficiencies stated in the notification.)***

X. PENALTIES

- A. Willful Breach of the Agreement by the EMPLOYER, failure to submit the contract compliance reports, deliberate submission of falsified data may result in DOES imposing a fine of 5% of the total amount of the direct and indirect labor costs of the Project, in addition to other penalties provided by law. Failure to meet the required hiring requirements or failure to receive good faith waiver may result in the Department of Employment Services

imposing a penalty equal to 1/8 of 1% of the total amount of the direct and indirect labor costs of the Project for each percentage by which the beneficiary fails to meet the hiring requirements.

- B. EMPLOYERS who have been found in violation 2 times or more over a 10 year period may be debarred and/or deemed ineligible for consideration for Projects for a period of 5 years.
- C. Within 90 days of a Determination of a Penalty, the Beneficiary or Employer may appeal the violations or fines by filing a complaint with the Contract Appeals Board in accordance with D.C. Code §2-360.03 and §2-360.04.

I hereby certify that I have the authority to bind the EMPLOYER to this Agreement from the start of work on the Project, throughout the duration of the Project, and agree to all terms and conditions herein.

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
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> |
|--|-------|--|
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**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 | | | | | |

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**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

- I. Provide a timetable outlining the total hours worked by trade over the life of the project or contract and an associated hiring schedule.

- II. Provide descriptions of the skill requirements by job title or position, including industry-recognized certifications required for the different positions.

- III. Provide a strategy to fill the hours required to be worked by District residents, including a component on communicating these requirements to contractors and subcontractors and a component on potential community outreach partnerships with the University of the District of Columbia, the University of the District of Columbia Community College, the Department of Employment Services, Jointly Funded Apprenticeship Programs, the District of Columbia Workforce Intermediary, or other government-approved, community-based job training providers.

| | |
|---------------------------------------|-------------------------|
| This page to be completed by Employer | <hr/> Employer Initials |
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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



ATTACHMENT K

2023 Living Wage Act

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DR. UNIQUE MORRIS-HUGHES
DIRECTOR

LIVING WAGE ACT FACT SHEET

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

Effective January 1, 2023 until June 30, 2023, the living wage rate is \$16.50 per hour.

Effective July 1, 2023, the District's Minimum Wage and Living Wage will increase to \$17.00 per hour.

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

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

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

1. Contracts or other agreements that are subject to higher wage level determinations required by federal law (i.e., if a contract is subject to the Service Contract Act and certain wage rates are lower than the District's current living wage, the contractor must pay the higher of the two rates);
2. Existing and future collective bargaining agreements, provided that the future collective bargaining agreement results in the employee being paid no less than the current living wage;
3. Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;
4. Contracts for services needed immediately to prevent or respond to a disaster or imminent threat to public health or safety declared by the Mayor;
5. Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services, provided that the trainees do not replace employees subject to the Living Wage Act;

6. An employee, under 22 years of age, employed during a school vacation period, or enrolled as full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than 25 hours per week; provided that students not replace employees subject to the Living Wage Act;
7. Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District of Columbia;
8. Employees of nonprofit organizations that employ not more than 50 individuals and qualify for taxation exemption pursuant to Section 501 (c) (3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68 A Stat. 163; 26. U.S.C. §501(c)(3));
9. Medicaid provider agreements for direct care services to Medicaid recipients, **provided, that** the direct care service is not provided through a home care agency, a community residence facility, or a group home for persons with intellectual disabilities as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983; D.C. Official Code § 44-501; and
10. Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

Enforcement

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

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

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

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF GENERAL SERVICES



ATTACHMENT L

Past Performance Evaluation Form

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

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



Solicitation Number: DCAM-23-CS-RFP-0037

**DESIGN-BUILD SERVICES
FOR
NEW FORT DAVIS COMMUNITY CENTER BUILDING**

Offeror Name: _____

| Performance Element | Excellent* | Good | Acceptable | Poor | Unacceptable** |
|------------------------------|-------------------|-------------|-------------------|-------------|-----------------------|
| Quality of Services/ Work | | | | | |
| Timeliness of Performance | | | | | |
| Cost Control | | | | | |
| Business Relations | | | | | |
| Customer Satisfaction | | | | | |

1. Name of Evaluating Organization: _____
2. Name & Title of Evaluator: _____
3. Telephone Number of Evaluator: _____
4. E-mail address of Evaluator: _____
5. Signature of Evaluator: _____ Date: _____
6. Describe type of service received: _____
7. Contract Number _____ Contract Amount _____
8. Contract Period of Performance _____

*Remarks on Excellent Performance: Provide data supporting this observation.
(Continue on separate sheet if needed)

** Remarks on Unacceptable Performance: Provide data supporting this observation.
(Continue on separate sheet if needed)

Please submit completed evaluation to farzana.balooch@dc.gov

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



RATING GUIDELINES

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF GENERAL SERVICES



ATTACHMENT M

Form of Contract - Design-Build

Agreement

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

**DESIGN-BUILD AGREEMENT FOR UPSHUR RECREATION
CENTER MODERNIZATION**

BY AND BETWEEN

THE DEPARTMENT OF GENERAL SERVICES

AND

[DESIGN-BUILDER]

CONTRACT NUMBER: DCAM-23-CS-RFP-0029

PROJECT INFORMATION

A. PROJECT SUMMARY

| | | |
|------|---|--|
| 1. | Project Name: | Design-Build Services for Upshur Recreation Center Modernization |
| 2. | Project Address: | 4300 Arkansas Avenue NW, Washington, DC 20011 |
| 3. | Agreement Type: | Design-Build with Guaranteed Maximum Price |
| 4. | Client Agency: | Department of Parks and Recreation ("DPR") |
| 5. | Design-Builder: | |
| 6. | Agreement Amounts: | |
| i. | Initial NTE: | \$950,000.00 |
| ii. | Project Budget: | \$19,000,000.00 |
| 7. | Design-Builder Compensation: | |
| i. | Design Fee: | |
| ii. | Design-Build Fee: | |
| iii. | Base Design-Build Fee (60% of Design-Build Fee): | |

| | | |
|-------|---|---|
| iv. | At-Risk Portion (40% of Design-Build Fee): | |
| v. | Preconstruction Fee (15% of the Base Design-Build Fee): | |
| vi. | Lump Sum General Conditions Cost: | |
| vii. | Contingency: | To be determined at GMP |
| viii. | Allowances: | To be determined at GMP |
| 8. | Liquidated Damages (Delay in Substantial Completion): | \$2,500.00 plus \$250.00/day |
| 9. | Disincentive Fee for Failure to Timely Submit Deliverables | \$2,500.00 plus \$250.00/day |
| 10 | Key Personnel Replacement Fee: | \$25,000.00 |
| 11. | GMP Amendment to be Executed By: | [TBD] |
| 12. | Substantial Completion Date: | |
| 13. | Final Completion Date: | |
| 14. | Administrative Term Expiration Date: | |
| 15. | Letter Contract: | |
| i. | Period of Performance | [Date of Letter Contract through Execution of Contract] |
| ii. | NTE Amount: | [TBD] |
| 16. | GMP Basis Documents Design Progression | Permit Set of Construction Documents |

DESIGN-BUILD AGREEMENT

DESIGN-BUILD SERVICES FOR UPSHUR RECREATION CENTER

MODERNIZATION

DCAM-23-CS-RFP-0029

THIS AGREEMENT (“Agreement” or “Contract”) is made by and between the **DISTRICT OF COLUMBIA GOVERNMENT** (the “District”), acting by and through its **DEPARTMENT OF GENERAL SERVICES** (the “Department” or “DGS”) and [**DESIGN-BUILDER**], duly organized under the laws of [State/District of Columbia], and with a place of business at [Design-Builder address] (the “Design-Builder” or “Contractor”, and collectively with the Department, the “Parties”).

RECITALS

WHEREAS, the Department issued a Request for Proposals dated [Insert Date] (the “RFP”) to engage a Design-Builder for Upshur Recreation Center Modernization at 4300 Arkansas Avenue NW, Washington, DC 20011 (the “Project”);

WHEREAS, the Department expects that the Project be completed no later than [insert date] (“Substantial Completion Date”);

WHEREAS, the Design-Builder submitted a proposal entitled “Proposal for Design-Build Services for Upshur Recreation Center Modernization, DCAM-23-CS-RFP-0029”, dated [DATE OF PROPOSAL] to provide Design-Build services for the Project;

WHEREAS, the Department has retained the Design-Builder to provide Design-Build services for the Project; and, the Project is to include utility investigation, design, preconstruction services, demolition services, and construction services;

WHEREAS, the Design-Builder will provide the architectural, engineering, construction and related services necessary to complete the Project, subject to the terms and conditions set forth in this Agreement;

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

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

WHEREAS, the Department and the Design-Builder entered into a letter contract dated [DATE OF DGS EXECUTION OF LETTER CONTRACT] (the “Letter Contract”) pursuant to which the Design-Builder was authorized to proceed with certain design and preconstruction services in furtherance of the Project.

NOW, THEREFORE, the Department and Design-Builder, 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 (“NTP”) to the Administrative Term Expiration Date set forth in the Project Information Section above. In addition, within this time, the Design-Builder shall execute and submit a Final Release of Liens and Claims in a form and format required by a Contracting Officer (“CO”), 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 (“CFO”) 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” shall mean this entire, integrated agreement between the Department and the Design-Builder with respect to the Project, consisting of this document and the Exhibits thereto, including but not limited to the Standard Contract Provisions, the Construction Documents released for the Design-Builder’s use and any Change Orders, Contract Modifications 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 Design-Builder’s architect in accordance with the law, and issued by the Design-Builder 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 Design-Builder shall carry out the bulk of the construction and manage the completion of the design for the Project.

Section 1.6. Cost of General Conditions.

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

Section 1.7. Contract Documents.

The term “Contract Document” refers one or more component of the documents that comprise the Agreement between the Department and the Design-Builder, including any modifications or changes thereof, the Drawings and Specifications, any addenda issued thereto, and the RFP and its addenda.

Section 1.8. Design & Preconstruction Phase Services.

The services to be provided under Article 3 constituting the design & preconstruction phase services to be performed by the Design-Builder.

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 Design-Builder 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 Agreement by which the Design-Builder shall achieve Final Completion. The Final Completion Date may be modified only by 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 Design-Builder 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 Design-Build Fee and the Cost of the Work, that will be paid the Design-Builder to Fully Complete the Project as set forth in Article 5. The Guaranteed Maximum Price (“GMP”) may be modified only by Change Order, Contract Modification or Change Directive in accordance with the Agreement. The GMP shall be established in the GMP Amendment.

Section 1.14. Hazardous Material.

Any toxic substance or hazardous chemical defined or regulated pursuant to federal, state or local laws relating 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 bi-products.

Section 1.15. Notice to Proceed.

A written notice to proceed, signed by the Department, directing the Design-Builder 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 Design-Builder. Such schedule shall include a baseline schedule as updated periodically by the Design-Builder, approved by the Department and as finalized by the GMP Amendment. The Project Schedule shall not be changed except by a Contract Modification, Change Order or Change Directive issued by the Department’s CO. The Project Schedule shall be in a form and contain such detail as may be agreed upon by the Parties. A preliminary Project Schedule is attached as **Exhibit B**.

Section 1.17. Self-Performed Work.

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

Section 1.18. Services.

The services to be provided pursuant to the Agreement which shall include the Design & 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 Contract), as amended, are attached hereto as **Exhibit J1** and

incorporated herein. The District of Columbia Department of General Services Standard Contract Provisions, General Provisions (Architectural & Engineering Services Contract), as amended, are attached hereto as **Exhibit J2** and incorporated herein.

Section 1.21. Subcontractor.

Any person, natural or legal, to whom the Design-Builder 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 Design-Builder. “Subcontractors at all tiers” shall mean not only those Subcontractors in direct privity with the Design-Builder, 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 Design-Builder’s employees and to whom the Design-Builder delegates any part of its responsibilities under the Agreement, except that references to “trade Subcontractors” shall exclude design professionals.

Section 1.22. Substantial Completion.

Substantial Completion shall mean that all of the following have occurred: (1) the construction and installation work have been completed with only minor punch list items remaining to be completed; (2) a temporary certificate of occupancy and all other required permits or approvals have been obtained; (3) draft copies of all operating and maintenance manuals, training videotapes and warranties required by the Agreement have been delivered to the Department and the Client Agency; (4) 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 punch list items” are defined for this purpose as items that, in the aggregate, can be completed within thirty (30) days without interfering with the Department or Client Agency’s normal use of the Project.

Section 1.23. Substantial Completion Date.

The date established herein by which the Design-Builder shall achieve Substantial Completion. The Substantial Completion Date may be modified only by Change Order, Contract Modification or Change Directive in accordance with the Agreement.

Section 1.24. 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.

Section 1.25. Protection of Existing Elements.

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

Section 1.26. Site Cleanliness

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

Article 2 GENERAL PROVISIONS

Section 2.1. Letter Contract

The Parties acknowledge that certain of the investigation, design and preconstruction activities described in Article 3 of this Agreement were performed pursuant to the Letter Contract between the parties dated [_____]. 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. For avoidance of doubt, any services provided or work performed pursuant to the merged Letter Contract, and prior to the date that this Agreement is effective, shall be governed by the terms and condition 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 Letter Contract 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 (Construction Contracts) and Article 8 of the Standard Contract Provisions (Architectural & Engineering Services Contracts).

Section 2.3. Relationship of Parties.

The Design-Builder accepts the relationship of trust and confidence established with the Department by this Agreement, and covenants with the Department to furnish the Design-Builder’s reasonable skill and judgment and to cooperate with the Program Manager in furthering the interests of the Department. The Design-Builder 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, Design-Builder, Program Manager, and other persons or entities employed by the Department for the Project. In performing its duties under this Agreement, the Design-Builder shall at all times use the standard of care used by Design-Builders 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 Design-Builder’s actions or duties that term shall refer to the level of competence customarily possessed by those Design-Builders that construct projects similar to the Project in type, size and scope in large, urban areas.

Section 2.4. Confidentiality of Information

The Design-Builder 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 Design-Builder shall not be divulged of confidential information without the individual's and the Department's written consent and only in accordance with the District's or Federal laws, codes and regulations. The Design-Builder 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 Design-Builder and all Subcontractors shall allow the Department to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. The Design-Builder, Subcontractors and their respective employees working on this Project may be required to sign a confidentiality statement.

Section 2.5. Project Description.

The Design-Builder shall provide Design-Build Services required for Upshur Recreation Center Modernization, located at 4300 Arkansas Avenue NW, Washington, DC 20011 (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 the RFP Documents.

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

- a) To confirm the design and construction of the Project in accordance with the RFP Documents.
- b) To provide all design services and construction management services necessary to implement the goals of the Project including, but not limited to, the following: civil, architectural, electrical, structural, and mechanical design services as required for the Project; 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 provide the necessary design consultants, and documentation for all permitting, zoning, historic preservation, and US Commission of Fine Arts approvals; and
- f) To provide move coordination and logistics support for the Project if required to achieve the Project scope.

During the Construction Phase, the Design-Builder shall construct the Project. The Design-Builder shall be required to cause the Work to be completed in a manner consistent with the design documents and phasing plan approved by the Department and shall provide all labor, materials, insurance, bonds, and equipment necessary to fully complete the Project in accordance with the

drawings, specifications, Project Schedule, and Project Budget that are issued and approved for the Project by the Government. The Design-Builder shall be responsible for paying and obtaining all necessary permits and to pay all necessary fees for utility connections and the like.

Section 2.6. Program Manager.

The Department has engaged a Program Manager to provide certain program management functions. Such Program Manager shall, at all times, be acting solely for the benefit of the Department, not the Design-Builder. **The Design-Builder hereby acknowledges and agrees that only a duly authorized and designated CO shall have the authority to issue a Contract Modification, Change Order or Change Directive issued by the Department's CO or CO. As of the date that this Agreement is signed, the Department's duly authorizing COs are set forth in Exhibit I.**

Section 2.7. General Description of Design-Builder's Duties and Responsibilities.

The Design-Builder shall perform the Services in a professional workmanlike manner. The Design-Builder shall supply and furnish at the location where the Work is to be performed all design service, 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 Design-Builder. 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 Design-Builder at Design-Builder's sole expense.

The Design-Builder will be required to work with the Department and Project stakeholders through a collaborative design process to develop a Concept Design for the Project in accordance with the available budget. The Design-Builder will be required to engage in extensive design and preconstruction efforts to ensure that the design is developed 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 GMP and corresponding scope and schedule for the work; and to implement the requisite construction and other work necessary no later than the Substantial Completion Date. The Design-Builder will be required to provide a "turn-key" Project ready for its intended use and shall be responsible for all items of cost except for those items set forth in Section 9.7 of this Agreement.

Section 2.8. Warranties and Representations

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

2.8.2. If any disclosure, representation, warranty or certification the Design-Builder has made or makes pursuant to the RFP or the Agreement, including, without limitation, representations concerning the Design-Builder'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.

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

Section 2.9. Responsibility for Agents and Contractors.

At all times and during both the Design & Preconstruction and Construction Phases, the Design-Builder shall be responsible to the Department for any and all acts and omissions of the Design-Builder's agents, employees, Subcontractors including modular building supplier/manufacturer/installer, 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.

Article 3 DESIGN-BUILDER'S DESIGN & PRECONSTRUCTION SERVICES

Section 3.1. Preconstruction Services.

During the Design & Preconstruction Phase, the Design-Builder shall provide such design and preconstruction services as are necessary to properly advance the Project. Without limiting the generality of the foregoing, during the Preconstruction Phase, the Design-Builder shall: (i) work with its Architect and any design consultants to advance the design for the Project in consultation with Client Agency, the Department and its Program Manager; (ii) obtain bids from trade subcontractors to perform the work described in the Design Development 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 Design & Preconstruction Phase, the Design-Builder shall

schedule and attend regular meetings with the Department, the Program Manager and the Architect. A list of preconstruction deliverables is set forth in **Exhibit C**.

Section 3.1.1 Initial Deliverables

The Design-Builder's initial task will be to perform a feasibility study with a design narrative to a complete schematic design, and develop a phasing plan and budget for the Project. As part of this effort, the Design-Builder shall prepare and provide the following initial deliverables:

Section 3.1.1.1 Feasibility Study

- a. Charrette Sessions and Survey
 - i. The Design-Builder shall facilitate up to two (2) meetings with DGS, DPR and other Project stakeholders (for example, facilities representatives and community groups) to better understand the requirements of the Project. These meeting shall include charrette sessions that will allow for creative solutions to the needs of the District and community, as well as avoiding unworkable programming or design. At the end of the charrette sessions and informational meetings, The Design-Builder shall produce a report summarizing the meetings and its recommendations for the final Project based on those meetings. This shall be known as the Stakeholder Analysis.
 - ii. The Design-Builder shall facilitate up to one (1) community meeting. At this meeting The Design-Builder shall explain the Project, the reasons for the Study and solicit feedback from attendees on what program elements they would like to see in the new Center. The meeting shall be run by The Design-Builder to encourage maximum participation by the attendees and allow DGS and DPR to understand the community's priorities. It shall be expected that this will be a virtual meeting due to the ongoing District health emergency.
 1. Note that the meetings, sessions, and charrettes mentioned herein shall be separate from regular progress meetings with DGS.
- b. Zoning Analysis
 - i. The Design-Builder shall review the current zoning regulations in place in and around the Center, and how these regulations create risks and opportunities for the new Center. The Design-Builder shall perform an analysis on what zoning exceptions, if any, must be sought in order for the Project to be successful. Further, the analysis must take in to account the impacts of any zoning modifications on the amount of required parking at the site.
- c. Historical Analysis
 - i. The Design-Builder shall analyze the historical status of the existing building, and how this status creates risks and opportunities for the new Center.

- d. Geotechnical Survey
 - i. The Design-Builder shall undertake a geotechnical study using all industry best practices. The Design-Builder shall obtain soil borings of sufficient quantity to identify any conditions that may impact the design for any footings, foundations, utilities, sidewalks, below-grade facilities (including pools), parking lots, etc. The geotechnical survey will be published in full as an addendum to the Feasibility Study Report, and the Feasibility Study Report shall include notes on how the conditions identified in the report will impact the design of the new Center. The Design-Builder shall be responsible of obtaining all permits required to undertake the Geotechnical Survey.
- e. Environmental Site Assessment
 - i. The Design-Builder shall undertake a Phase I environmental site assessment. This shall include a comprehensive description of the existing environmental conditions at the site. Such an assessment must describe the natural geological, hydrological, and biological resources of the area including any endangered species; describe the man-made resources including site land use, transportation patterns, zoning, population density and demographics; and describe the human resources including the social factors, aesthetic features, historical, archeological, and architectural aspects of the environment.
- f. Further, as part of the Assessment, The Design-Builder must:
 - i. Identify and describe both primary and secondary environmental impacts, beneficial and adverse, anticipated from the proposed project on all natural, man-made, human, and economic resources during all aspects of the site preparation, construction and operation.
 - ii. Discuss the remedial, protective, and mitigation measures to be taken as part of the project in response to adverse environmental impacts. Mitigating measures refer to those methods used to ensure that the project is brought into compliance with all governing regulations including, but not limited to air, water quality, noise control, solid waste, radiation, and land use regulations.
 - iii. Describe in detail those impacts which cannot be reduced to acceptable levels, their implications, and the reasons why the action is being proposed notwithstanding their effect. Where abatement measures can reduce adverse impacts to acceptable levels, discuss the effectiveness, costs of the abatement measures, and the basis for considering the adequacy of the determination.
 - iv. The analysis of alternatives should be sufficiently detailed and rigorous to permit independent and comparative evaluation of the benefits, costs, and environmental risks of the Project and each reasonable alternative.
- g. Site Survey
 - i. The Design-Builder shall conduct all necessary surveys including, but not limited to, topographical, utilities, high water lines, floodplain delineation, wetlands delineation and any, and all, features necessary for DGS to implement a successful

project and as may be required by federal and local agencies for the receipt of building permits. The Design-Builder must identify the base flood elevation at the site to determine how it will impact the design for any footings, foundations, underground utilities, trenches and drainage.

ii. The Design-Builder shall conduct a boundary survey. The Design-Builder must determine the existence of and extent of any easements or encroachments. Contractor shall produce a scaled drawing that depicts the boundaries of the site. Data used must be prominently noted on the drawing.

iii. The Design-Builder shall conduct a utility survey to identify any and all above-ground or below ground utilities that are inside of or adjacent to the property (this shall include any utilities in the public right of way that borders the property). The Design-Builder shall produce a scaled drawing that depicts all utilities found on the survey. The Feasibility Study Report shall include notes on what utilities, if any, may need to be relocated or upgraded for the Project.

h. Programming Documents and Space Plans

i. The Design-Builder shall create programming documents that break-down the size and quantity of each room in the Center and add the figures to estimate the size of the future Center. It shall be assumed that multiple revisions to the programming documents will be required.

ii. The Design-Builder shall create space plans showing its recommendations for the layout of the Center. It should be assumed that multiple revisions to the space plans will be required.

i. Comprehensive Plans

i. The Design-Builder shall analyze how the suggested program for the Center aligns with the District's Comprehensive Plan, and any long-term DPR master plans.

j. Cost Estimate and Design/Construction Schedule

i. The Design-Builder shall create a detailed cost estimate for the approved Programming Documents and Space plans described in (f) above. The Design-Builder shall specifically analyze the cost impact, if any, of Net Zero certification for the new Center. The cost estimates shall take into account the following: (i) results of surveys and studies and their impact on the design and construction means and methods, (ii) escalation to the expected mid-point in construction, (iii) past similar projects completed by DGS and (iv) other historical cost information. The cost estimates shall be in CSI format or another format approved by DGS.

ii. The Design-Builder shall produce a Project schedule showing both design and construction activities. The schedule shall be submitted in P6 format.

k. Feasibility Study Report

i. The Design-Builder will be required to modernize the existing Upshur Recreation Center into an all-inclusive facility catering to people of all ages and abilities. Building amenities shall include but are not limited to:

1. Program to be based off the Feasibility Study.
 2. Pool/Pool House
 3. Fields/Playgrounds
 4. Recreation Center
 5. Basketball Courts
- ii. The Design-Builder, at the end of the Study, shall create a Feasibility Study Report. The Feasibility Study Report shall incorporate the findings from all the activities described above and shall include, at minimum, the following elements:
1. Description of the Project and site
 2. Site photographs
 3. Summary of stakeholder meetings and charrettes, including all reports
 4. Results from community survey
 5. Zoning Analysis
 6. Historical Analysis
 7. Geotechnical Report
 8. District comprehensive plan
 9. Environmental Site Assessment
 10. Site Survey, Boundary Survey and Utility Survey
 11. List of agencies, federal and local, with jurisdiction over the Project, including a list of all permits and approval required for the Project to commence, continue and be completed.
 12. Project risk log
 13. Drawings and plans, as mentioned in Section III.
 14. Meeting minutes
 15. Memorandums

The Design-Builder shall submit a draft report to DGS and DPR within the schedule referenced in Section VI. DGS and DPR shall be given up to twenty one (21) calendar days to review the draft report. After receiving comments, The Design-Builder shall make all requested revisions to the draft report to create a final report within ten (10) days of receiving comments from DGS.

Section 3.1.1.2 Baseline Schedule. Within twenty-one (21) days after the Preconstruction NTP is issued, the Design-Builder 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 Design-Builder 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 Design-Builder and any other affected parties to properly plan the Project. The Baseline Schedule shall

include but not be limited to the following key milestones:

- a) Building Systems Assessment Submission (within 14 days of NTP)
- b) Construction Management Plan Submission (within 14 days of NTP)
- c) Concept Design Submission (within 12 weeks of NTP)
- d) Concept Design Department review period (14 days)
- e) Early Start Agreement(s) Submission Date(s)
- f) Schematic Design Submission
- g) Schematic Design Department review period (14 days)
- h) Design Development Submission
- i) Design Development Department review period (21 days)
- j) GMP Submission Date
- k) Construction Document Submission
- l) Permit Submission(s)
- m) Anticipated Permit approval(s)
- n) Release dates for the key subcontractors and long-lead materials, include the following, if applicable:
 - a. Elevator(s)
 - b. Switchgear
 - c. Transformer
 - d. Generator
 - e. Security cameras
 - f. Door hardware
 - g. Playground equipment
 - h. Kitchen equipment
 - i. Furniture
 - j. Windows, storefront, and curtainwall
- o) Excavation completion
- p) Below-grade structure completion
- q) Above-grade structure completion
- r) O&M final submission (required 6 months before Substantial Completion)
- s) Temporary weather-tight completion
- t) Weather-tight completion
- u) Permanent power completion
- v) MEP systems operational
- w) Sitework completion
- x) Building trade inspections, include the following trades:
 - a. Elevator
 - b. Plumbing
 - c. Mechanical

- d. Electrical
- e. Fire Alarm
- f. Sprinkler
- y) Final building inspection
- z) DOB COO application review period (10 days)
- aa) Conditional or Final Certificate of Occupancy obtained
- bb) Staff Move-in (3 weeks before student move-in)
- cc) Student Move-in (3rd Monday in August)

The Baseline Schedule shall include durations and logic ties for those building systems that the Design-Builder is recommending for replacement. The Baseline Schedule must also be submitted in Primavera 6 native format and shall be updated by the Design-Builder, at a minimum, on a bi-weekly basis.

Section 3.1.1.3 Concept Design. The first phase of the Project will include the preparation of a concept design and program development. No later than twelve (12) weeks after the Preconstruction NTP is issued, the Design-Builder shall prepare and submit a proposed concept design for the Project. The concept design shall contain at least the level of detail contemplated in standard industry practice and shall contain such detail as is typically required for a concept design under standard industry practice. The Department shall have the right to disapprove the concept design submittal for any reason. Following review of the concept design submission by DPR and the Department, the Design-Builder shall make revisions to the concept design submission as necessary to incorporate comments, feedback and other direction provided by DPR and the Department. The Design-Builder's pricing shall assume that such revisions will be required, and such revisions shall not entitle the Design-Builder to additional compensation. The concept design services shall include but are not limited to the following:

- a) Conduct meetings with DGS representatives to confirm program and verify facility requirements.
- b) Conduct community focus meeting to develop programming and solicit input.
- c) Conduct life safety/building code analysis to verify compliance of design with all current applicable codes recently adopted and/or adopted by Washington, DC, including the latest District of Columbia Building Code, the latest District of Columbia Green Construction Code, the latest District of Columbia Energy Conservation Code, the latest District of Columbia Fire Code, the latest District of Columbia Mechanical Code, and the latest District of Columbia Plumbing Code.

- d) Participate in Value Engineering workshops, as required, with the DGS representatives.
- e) Prepare and submit Environmental Impact Screening Form (“EISF”).
- f) Survey existing site to confirm locations and types of hazardous materials to be abated or mitigated.
- g) Conduct a complete survey of the site as required to successfully complete renovation. At a minimum, the survey shall include existing condition of the site and documentation of existing condition. The Design-Builder shall be responsible for the collection, assessment, and verification of existing conditions.
- h) Confer with the Department’s IT representatives/consultants to verify technological requirements for the Project.
- i) Renovation and new construction should be designed to qualify for LEED Silver certification.

Section 3.1.1.4 Preliminary Budget Estimate. Concurrently with the delivery of the concept design, the Design-Builder 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 Preliminary Budget 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 Design-Build Fee, the cost of general conditions, and contingencies shall be broken out in separate line items. The primary purpose of the Preliminary Budget Estimate is to aid the Department and the Client Agency in understanding the costs associated with key elements of the Project to better prioritize and manage the use of the funding allocated to this Project. All estimates shall be broken out into three categories: renovation, new construction, and site work, where applicable.

Section 3.1.1.5 Baseline Budget and Program. The Department shall provide the Design-Builder with a baseline budget and program and comments on the concept design. Such approval shall be provided (or signed by) the Department’s Deputy Director for Capital Construction (the “Deputy Director”). In the event the Design-Builder does not receive such approval within fourteen (14) days after submitting the Preliminary Budget Estimate, it shall so advise the COTR, the Deputy Director and the contracting officer (“Contracting Officer” or “CO”) in writing of such failure and request direction. If the Design-Builder fails to provide such notice, the Design-Builder will be proceeding at its own risk and will be responsible for any redesign costs associated with budget revisions.

Section 3.1.1.6 Construction Management Plan. The Design-Builder 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.

Section 3.1.1.7 Additional Preconstruction Services. In addition to those items enumerated above, the Design-Builder 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 3.1.1.8 Disincentive Fee for Failure to Timely Submit Deliverables. The Design-Builder acknowledges that the Department is engaging the Design-Builder to provide an extensive level of preconstruction support services to minimize the potential for cost overruns, schedule delays or the need for extensive Value Engineering/re-design late in the Project and that the deliverables required under this **Section 2.2.1** are key to identify the value of such services. In the event the Design-Builder 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 Design-Builder shall be subject to a disincentive fee in an amount of Two Thousand Five Hundred Dollars (\$2,500) plus Two Hundred and Fifty Dollars (\$250) per day after receiving written notice from either the COTR or the Contracting Officer of failure to submit such deliverables.

Section 3.2 Design Management

Between the time the Preconstruction NTP is issued and the time the GMP is accepted by the Department, the Design-Builder shall use commercially reasonable best efforts to ensure that: (i) the design evolves in a manner that is consistent with the Department’s budget and programmatic requirements, as the same were defined and established by the Department at the end of the concept design; (ii) the design work is properly coordinated; and (iii) the required design deliverables are produced on or before the dates contemplated in the Project schedule. As part of this undertaking, the Design-Builder shall provide the following:

Section 3.2.1 Schematic Design. The Design-Builder shall prepare a Schematic Design that is a logical development of the approved Concept Design and is consistent with the Department’s schedule, budget which includes both soft and hard costs (i.e.

designed to budget of \$19,000,000) and programmatic requirements. The Schematic Design shall contain at least the level of detail contemplated in standard industry practice and shall contain such detail as is typically required for a Schematic Design under standard industry practice. The design submittal shall specifically identify any deviations from the approved Concept Design and shall explain the rationale, cost and time implications associated with such deviation. The Department shall have the right to disapprove the Schematic Design submittal for any reason. Following review of the Schematic Design submission by DPR and the Department, the Design-Builder shall make revisions to the Schematic Design submission as necessary to incorporate comments, feedback and other direction provided by DPR and the Department. The Design-Builder's pricing shall assume that such revisions will be required, and such revisions shall not entitle the Design-Builder to additional compensation.

In general, the Design-Builder shall be required to undertake the following tasks during this phase:

- a) Further develop conceptual plans and incorporate design changes.
- b) Conduct community meetings to solicit input and keep constituents informed throughout the development of the Project.
- c) Prepare necessary presentation materials (renderings and models) to communicate design intent and obtain approval of design direction.
- d) Continue development of phasing plan based on the approved CD, to accommodate the Project's needs.
- e) Submit an early estimate for the new construction with a magnitude of error of Not-to-Exceed +/- 10% of the Project hard cost budget.
- f) If it is necessary for Project early inquiry with Public Utility Companies PEPCO and Washington Gas as well as Verizon should be conducted.
- g) Conduct Department of Energy and Environment ("DOEE"), Department of Buildings ("DOB"), District Department of Transportation ("DDOT"), and DC Water Preliminary Design Review meetings.
- h) Renovation and new construction should be designed to qualify for LEED Silver certification.

Section 3.2.2 Schematic Budget Update. Concurrent with submission of the Schematic Design, the Design-Builder shall submit a budget update. The budget update shall be submitted in the same format as the Preliminary Budget Estimate and shall show variations from Preliminary Budget Estimate. To the extent the budget update shows an overrun from the approved budget, the Design-Builder shall submit Value Engineering suggestions that would return the Project to budget. Only the Department shall have the authority to increase the Project Budget, and absent such direction, the Design-Builder shall proceed on the

assumption that the budget remains as originally directed by the Department.

Section 3.2.3 Constructability/Sole Source/Long-Lead Time Memorandum.

Concurrently with the Schematic Design Budget Estimate, the Design-Builder 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.

Section 3.2.4 Design Development. The Design-Builder shall prepare a set of design development documents (“Design Development Documents”) that is a logical development of the approved Schematic Design, along with any oral or written feedback provided by the Department, and is consistent with the Department’s schedule, budget and programmatic requirements. The Design Development Documents shall contain at least the level of detail contemplated in standard industry practice and shall contain such detail as is typically required for a Schematic Design under standard industry practice. The design submittal shall specifically identify any deviations from the approved Schematic Design and shall explain the rationale and cost implications associated with such deviation. The Department shall have the right to disapprove the Design Development Documents submittal for any reason.

The specific services required during this phase are:

- a) Select and draft outline specifications for materials, systems, equipment.
- b) Develop detailed and dimensioned plans, wall sections, building section, and schedules.
- c) Complete code compliance analysis and drawing.
- d) Confirm space-by-space equipment layouts with representatives from DGS.
- e) Conduct follow up meetings with agencies as required.
- f) Coordinate furniture, fixtures, and equipment requirements (“FF&E”).
- g) Present the design to the Commission of Fine Arts (“CFA”), Historic Preservation Office (“HPO”), Office of Planning (“OP”), and other regulatory agencies as required.
- h) The Design-Builder is responsible for coordinating with sub-consultants for storm water management, and other specialized work, as necessary.
- i) Renovation and new construction should be designed to qualify for LEED Silver certification.

Section 3.2.5 Permits. The Design-Builder shall be responsible for preparing

and submitting all of the required permit applications that are necessary to complete the Project, including trade permits (“Permit Documents”). The Design-Builder shall develop a list of the required permits and shall track the progress of all such permits through the review process. The Design-Builder shall update the Department with the status of each permit that is required for the Project. The Design-Builder shall engage such permit expeditors as the Design-Builder deems necessary or appropriate in light of the Project’s schedule.

Section 3.2.6 Entitlements. The Design-Builder shall prepare such materials and make such presentations as are necessary to obtain the required land use and entitlement approvals. Approvals may be required from (i) the Office of Zoning, (ii) OP, and (iii) the CFA. Given the nature of the work, it is not envisioned that such approvals will require extensive hearings or submissions.

Section 3.2.7 Mid-Point Construction Document Review. Based on the approved Design Development Documents and any approved Value Engineering, the Design-Builder shall cause the Architect to prepare a set of Construction Documents. It is contemplated that the Construction Documents may be issued in several different sets (i.e. architectural, electrical, mechanical, structural, etc.). As each such set reaches a point where it is approximately Fifty percent (50%) complete, the Design-Builder shall prepare and submit a progress printing to the Department for its review and comment.

Section 3.2.8 Construction Document Review & Coordination.

The Design-Builder shall complete each of the Construction Documents packages in a manner that addresses the concerns raised by the Department during the review contemplated in Section 3.2.7 for such package. The Design-Builder shall issue one or more set of permit documents to the Department for its review and approval (“Permit Set”). The Permit Set shall represent the further progression of the approved DDs together with any value engineering strategies approved by the Department. The Permit Set shall be Construction Documents progressed to approximately 90% completion of those required in a traditional Design/Build delivery method. With regard to each such set, the Design-Builder shall highlight (or bubble) any aspect of the design that represents a material deviation from the approved Design Development Documents and shall address in a narrative format the impact, if any, such departure shall have on the Project’s aesthetics, functionality or performance. The Department shall have the right to disapprove the Construction Documents for any reason. If the Department disapproves the Construction Documents, the Design-Builder will not be entitled to any additional compensation. If, however, the Department disapproves a

Construction Document that is a logical extension of the approved Design Development Documents, the Design-Builder will be entitled to an adjustment to the GMP and/or the Agreement schedule unless such a package departs from the Scope of Work fairly reflected in the GMP Drawings and Specifications and in such event the Design-Builder shall be required to prepare a revised design that complies with the GMP drawings and specifications (“Drawings and Specifications”) and without any entitlement to an increase in the GMP or an adjustment of the Agreement schedule. In the event the Department does not approve a document within fourteen (14) days after issuance, such document shall be deemed approved unless the Department advises that such document is still under review. In the event the Department’s review takes longer than fourteen (14) days, such additional review shall be deemed a change event.

During the Permit Set phase, the Design-Builder shall complete the following tasks:

- a. Continue to prepare detailed and coordinated drawings and specifications.
- b. Prepare application and submit documents for building permits.
- c. Work with the Department’s third-party plan reviewer to review the documents for permit document submission.
- d. Upload all documents to the DOB’s permit document review website in accordance with their instructions.
- e. Prepare and submit early-release excavation, foundations, concrete and steel packages, if needed.
- f. Prepare and submit DC Water permit application packages (all permit types that may be required) and DOEE Storm Water Management and Green Area Ratio packages for review and approval.
- g. Prepare DDOT public space modifications package for submission to and approval by DDOT Public Space Committee, participate in Committee meetings as necessary.
- h. Prepare all traffic control plans required to obtain relevant DDOT permit approvals at all stages of the Project, as required.
- i. Renovation and new construction should be designed to qualify for LEED Silver certification.

In addition, the Design-Builder shall be required to (a) define, clarify, or complete the concepts and information contained in the Permit Set; (b) correct design errors or omissions, ambiguities, and inconsistencies in the Permit Set (whether found prior to or during the course of construction); and (c) correct any failure of the Architect to follow written instructions of the Department during any phase of design services or the construction of the Project provided they are compatible with industry standards.

Section 3.2.9 Code Review. The Design-Builder shall submit the Permit Set to the DOB in order to obtain the necessary building permits for the Project. The Design-Builder shall monitor the permit process and shall incorporate any changes or adjustments required by the Code Official. The Design-Builder shall also issue any such changes to the Department for its review and approval. In this submittal, the Architect shall highlight (or bubble) any aspect of the design that represents a material deviation from the permit set documents and shall address in a narrative format the impact, if any, such departure shall have on the Project's aesthetics, functionality or performance. Subsequent to obtaining the necessary building permits, the Design-Builder shall prepare one or more sets of "issued for construction documents" (the "IFC Set(s)").

Section 3.2.10 Design Changes. If it should become necessary to amend any of the approved IFC Set(s), the Design-Builder shall prepare an amendment to the drawings and shall submit such amendment to the Department for its review and approval. In this submittal, the Design-Builder shall highlight (or bubble) any aspect of the design that represents a material deviation from the permit set documents and shall address in a narrative format the impact, if any, such departure shall have on the Project's aesthetics, functionality or performance. In the event the Department does not approve such document within ten (10) business days after issuance, unless otherwise denied, such document shall be deemed approved, provided however that the Department has not advised that such document is still under review.

Section 3.2.11 Third Party Contractors. The Department will hire third party contractors for plan review and for testing and material inspections. The Design-Builder shall coordinate and work with the Project Manager and third-party plan reviewer during the building permit process.

Article 4 FORMATION OF GMP PROPOSAL

Section 4.1. General.

During the Design & Preconstruction Phase, the Design-Builder shall cause the Architect to prepare the GMP Basis Documents. Based upon the GMP Basis Documents, the Design-Builder shall propose a GMP (referred to as the “GMP Proposal”) which shall be submitted in accordance with this Article. The Design-Builder 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 Design-Builder’s GMP Proposal shall be intended to represent the Design-Builder’s offer for the Final Completion the Project. If the Design-Builder’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”). Such amendment shall be in the form of **Exhibit L** attached hereto.

As part of the GMP Amendment, the Design-Builder 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 Design-Builder 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 GMP.

Section 4.2. Review of GMP Basis Documents.

The Department has selected the Design-Builder, in large part, because of its special expertise in constructing similar projects. Before submitting its GMP, the Design-Builder 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 Architect 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 Design-Builder, 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 Design-Builder 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 Design-Builder shall keep the Program Manager informed as to the status of the Contingency and shall, at a minimum: (i) advise the Program Manager or any significant 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.

Section 4.4.1. Subcontractors and Suppliers; Bidding Procedures.

During the Design & Preconstruction Phase, the Design-Builder shall seek to develop Subcontractor interest in the Project. Within fifteen (15) days after the completion of the Schematic Design, the Design-Builder 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. In addition to the information normally required in such bids, the Design-Builder 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 must be submitted to both the COTR and the CO. 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.

Section 4.4.2. Bidding. Following the Department’s approval of the design development documents, the Design-Builder 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 (\$100,000.00). Trade packages shall not be parceled, split or divided to avoid the \$100,000.00 threshold. In addition to the information normally required in such bids, the Design-Builder 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 Design-Builder 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 Design-Builder's evaluations of all bids, and the basis for the Design-Builder'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 Design-Builder's adherence to all requirements set forth in the Agreement, including, without limitation, affirmative action requirements and subcontracting requirements.

Section 4.4.3. Bid Tab. As part of the negotiations leading up to the GMP, the Design-Builder 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 Design-Builder's award recommendation is based on scoping adjustments, the Design-Builder shall clearly identify the scoping adjustment and the need for such adjustments. Such bid tabulation shall include 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 Design-Builder represents and warrants that the bid tabs so submitted shall fairly represent the results of the Subcontractor bidding process and that the Design-Builder shall not misrepresent any such data to the Department or its Program Manager.

Section 4.5. Value Engineering.

Based on the trade bids received, the Design-Builder shall prepare a written report of suggested Value Engineering strategies necessary to reconcile the costs of constructing the Project Budget, if necessary. The Design-Builder 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 Design-Builder shall cause the Architect to implement and price any approved Value Engineering strategies.

Section 4.6. Basis of Guaranteed Maximum Price.

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

4.6.1 A list of drawings, specifications, addenda, general, supplementary, and other conditions on which the GMP is based.

4.6.2 A list of unit prices and allowance items and a statement of their basis.

4.6.3 Assumptions and clarifications made in preparing the GMP Proposal, noting in particular any exclusions. The assumptions and clarifications shall take precedence over the drawings and specifications. The Design-Builder 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 aesthetics, functionality or performance.

4.6.4 The proposed GMP, including a statement of the detailed cost estimate organized by trade categories, allowances, contingency, and other items and the fees that comprise the GMP.

4.6.5 An update to the Project's schedule to which the Design-Builder 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.

4.6.6 A subcontracting plan setting forth the names and estimated dollar volume of the work that will be performed by LSBDEs, as certified by the Department of Small and Local Business Development (DSLBD), upon which the GMP is based.

Section 4.7. Department Review of GMP Proposal.

The Design-Builder 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 Design-Builder, who shall make appropriate adjustments to the GMP Proposal, its basis or both.

Section 4.8. Department Acceptance of GMP Proposal.

The Department and the Design-Builder 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 to the Council for the District of Columbia. 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. In the event that the Department and the Design-Builder are unable to agree upon the GMP or the schedule for the Project, the Department shall have the right to terminate the Agreement and assume any trade subcontracts held by the Design-Builder. In such an event, the Design-Builder shall only be entitled to Fifty percent (50%) of the Preconstruction Fee.

Section 4.9. GMP Amendment.

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

Section 4.10. Assignment Upon Failure to Reach GMP.

In the event that the Department and the Design-Builder are unable to agree upon a GMP, the Department shall have the right to terminate this Agreement, and if requested by the Department, the Design-Builder shall assign any trade Subcontracts and its agreement with the Architect to the Department upon such terms and conditions and at the time requested by the Department. In such event, the Design-Builder shall only be entitled to earn fifty percent (50%) of the Preconstruction Fee.

Section 4.11. Certification.

As part of the GMP Proposal submitted in accordance with this Article, the Design-Builder agrees to specifically acknowledge and declare that the Contract Documents are sufficiently complete to have enabled the Design-Builder to determine the Cost of the Work therein in order to enter into the GMP Amendment and to enable the Design-Builder to agree to construct the Work outlined therein in accordance with applicable laws, statutes, building codes and regulations to the best of Design-Builder's knowledge, and otherwise to fulfill all its obligations hereunder. The Design-Builder 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 4.12 Early Release/Abatement & Demolition

Section 4.12.1 Abatement & Selective Demolition. Once the Schematic Design has been approved, the Department may release the Design-Builder to commence hazardous material abatement and interior demolition, or other early activities, as applicable. It is envisioned that this work may be released in advance of the GMP.

Section 4.12.2 Long Lead Materials. The Department will release funding for long-lead items once the Design Development Documents have been approved. If the Design-Builder 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.

Section 4.13 Unsafe Materials and Hazardous Materials

Section 4.13.1 The Design-Builder shall not bring, spill or release onto the site asbestos, PCBs, or any other Hazardous Material that is not customarily used in a facility of the type and similar to the Project, and shall bring to the Department's attention any specification of such Hazardous Materials in the design documents. If the Design-Builder 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.

Section 4.13.2 The Design-Builder shall abate and remove Hazardous Materials on or within the site as necessary to complete the Work contemplated by this Agreement. The Design-Builder shall comply with all laws, including, without limitation, the requirements of the EPA and all jurisdictional agencies as well as all laws relating to safety, health welfare, and protection of the environment, in removing, treating, encapsulating, passivating, and/or disposing of Hazardous Materials, including, but not limited to, removal, treatment, encapsulation, passivation, and/or disposal of the Hazardous Materials. If any notices to governmental authorities are required, the Design-Builder shall also give those notices at the appropriate times. The Design-Builder shall ensure abatement subcontractors and disposal sites are appropriately licensed and qualified.

Section 4.13.3 The Design-Builder shall be entitled to submit a Change Request in accordance with Article 4 of the Standard Contract Provisions in the event the Design-Builder encounters Hazardous Materials beyond those contemplated in the Contract Documents.

Section 4.13.4 The Design-Builder 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 Design-Builder shall, through its 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 Design-Builder 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 Design-Builder 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.

The construction phase services shall include, but are not necessarily limited to:

- a) Manage all aspects of the demolition and new construction of the Project.
- b) Manage weekly progress meetings. Progress meetings include site visits from design consultants with field reports reviewed on a monthly basis.
- c) Provide completed Quality Control checklists for implementation of the Project.
- d) Review and process shop drawing submissions, RFI's, etc.
- e) Prepare meeting notes and records of decisions/changes made.
- f) Conduct pre-closeout inspections.
- g) Review closeout documents for completeness, such as As-Built Drawings based on the Design-Builder's red line drawings and/or coordinated set developed during the subcontractor coordination process. As-Built Drawings should be transmitted to DGS in hard copy, PDF, CAD, and BIM formats.

Based on the approved Drawings and Specifications, the Design-Builder shall construct the Project. During the Construction Phase, the Design-Builder shall be required to cause the Work to be completed in a manner consistent with the design documents approved by the Department 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 Design-Builder shall be responsible for paying for and obtaining all necessary permits and to pay all necessary fees for utility connections and the like. The Work shall be accomplished in accordance with the following:

Section 5.1.1 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.

Section 5.2 Unrenovated Portions of the Structure.

In constructing the Project, the Design-Builder 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 Design-Builder's Work, the Design-Builder shall be back-charged the costs incurred by the Department in addressing the decreased functionality.

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 Design-Builder shall enter into a written agreement with each Subcontractor. The trade subcontractors will be under written contract with the Design-Builder. 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 Design-Builder 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 5.10, the Design-Builder shall provide to the Department a copy of all quotes or proposals submitted by potential subcontractors.

5.3.3 The Design-Builder 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 Design-Builder.

- 5.3.4** The Design-Builder 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 Design-Builder's evaluations of all bids, and the basis for the Design-Builder'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 Design-Builder'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 Design-Builder to obtain new or revised bids or proposals.
- 5.3.6** The Department may, in its sole discretion, direct the Design-Builder to accept a bid from a qualified bidder other than the bidder to whom the Design-Builder recommends award of a subcontract or supply agreement. If the Department chooses this option, it shall issue a Change Order to the Design-Builder 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 Design-Builder, but without any adjustment to the Design-Build 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 Design-Builder 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:
- 5.3.8.1** That, to the extent of the work or supply within the agreement's scope, the Subcontractor or supplier is bound to

the Design-Builder for the performance of all obligations which the Design-Builder owes the Department under the Agreement.

- 5.3.8.2** 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.
- 5.3.8.3** That the Department is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit.
- 5.3.8.4** That the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Design-Builder is terminated for default.
- 5.3.8.5** That the Subcontractor or supplier shall comply immediately with a written order from the Department to the Design-Builder to suspend or stop work.
- 5.3.8.6** That the Subcontractor or supplier shall maintain records of all Work it is requested or authorized to do on a time and material or cost-plus basis, or with respect to claims that it has asserted on a time and materials or cost-plus basis, during the Project and for a period of time specified in the General Conditions and requiring the Subcontractor or supplier to make those records available for review or audit by the Department during that time.
- 5.3.8.7** 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).
- 5.3.8.8** That, if the Department terminates the Agreement for convenience, the Design-Builder may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) days' written notice to the Subcontractor or supplier, and

that the Subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in Article 6 of the Standard Contract Provisions.

5.3.8.9 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 Design-Builder files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it.

5.3.8.10 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.

5.3.8.11 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.

5.3.8.12 A provision requiring that all Subcontractors at all tiers comply with the provisions of Article 13 (Economic Inclusion Goals); provided, however, that the Design-Builder 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 Design-Builder from using its best efforts to achieve the LSDBE subcontracting goal on an aggregate basis for the Project.

5.3.8.13 A provision which allows the Design-Builder to withhold payment from the Subcontractor if the Subcontractor does not meet the requirements of the Subcontract.

5.3.8.14 Lien and claim release and waiver provisions substantially identical to those in this Agreement.

- 5.3.9** 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 Design-Builder shall either pay the Subcontractor or supplier for its proportionate share of the amount paid to the Design-Builder 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 Design-Builder's intention to withhold all or part of the payment and state the reason for the withholding. All monies paid to the Design-Builder 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 Design Build 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 Design-Builder has failed to pay them in timely fashion shall not be reimbursable as part of the Cost of the Work.
- 5.3.10** The Design-Builder 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.
- 5.3.11** The Design-Builder shall not substitute or replace any Subcontractor or supplier approved by the Department without the Department's prior written consent.
- 5.3.12** 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.
- 5.3.13** 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 Design-Builder 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 Design-Builder by joint check.

5.3.14 The Design-Builder 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 O**, as follows:

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

Section 5.4 Weekly Progress Meetings & Schedule Updates.

The Design-Builder shall schedule and conduct, at a minimum, weekly progress meeting at which the Department, the Architect, the Project Manager, the Design-Builder and appropriate Subcontractors can discuss the status of the Work. The Design-Builder shall prepare and promptly distribute meeting minutes. In addition, the Design-Builder 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 Design-Builder'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 Design-Builder shall identify the causes of any potential delay and state what, in the Design-Builder's judgment, must be done to avoid or reduce that delay. The Design-Builder 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 Design-Builder may have an extension of time, or as a waiver of any of the Department's rights, but merely as the Design-Builder'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 Design-Builder shall provide written reports to the Department on the progress of the entire Work at least monthly from Preconstruction Notice to Proceed until Final Completion of the Project. Such written report shall include the following elements:

- 5.5.1 Construction Progress Update.** The Design-Builder 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. Each monthly update shall contain a narrative description of the Project progress and a critical path method schedule in Primavera format, including any plans to correct defective or deficient work or for time lost due to delays.
- 5.5.2 Cost Update.** The monthly update shall reflect, by GMP line item, the original line item amount, approved, pending, and projected Change Order amounts, the cost incurred to date, the projected cost to complete the Work of the line item, and any variance between the actually approved budgeted balance of the line item and the projected cost to complete. A clear distinction must be made between approved Change Orders and those merely requested or anticipated. The report shall explain all variances including “buyouts” or final actual costs including those below their respective GMP line item. In addition, the report must disclose any instances in which the Design-Builder has transferred amounts from one line item to another, or from the Contingency to any other line item. Neither submission of, nor the Department's failure to reject an update reflecting that the projected cost to complete the Project exceeding the GMP will operate to increase the GMP or waive the Department's right to enforce the GMP. If the report reflects budget overruns, it must also include a recovery plan.
- 5.5.3 Economic Inclusion Report.** The monthly report shall include a detailed summary of the Design-Builder'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 Design-Builder's overall performance with respect to the goals; (ii) a listing of subcontracts and agreements with material suppliers during the month and the percentage of those subcontracts and agreements with material suppliers awarded to LSDBEs; (iii) a listing of subcontracts during the month and the estimated percentage of the labor hours to be worked by District of Columbia residents pursuant to those subcontracts; and (iv) a description of the major subcontracting and supply opportunities that will be solicited during the next three (3) months and the actions being taken to meet the subcontracting goals.

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

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

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

The Design-Builder shall also maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, major equipment on the site, Work accomplished, problems encountered and other similar relevant data as the Department may reasonably require. The log shall be available to the Department, the Architect, 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 Design-Builder 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 Design-Builder shall identify variances between actual and estimated costs and report the variances to the Department, the Architect and the Program Manager at regular intervals.

Section 5.7 Key Personnel.

5.7.1 To carry out its duties, the Design-Builder shall provide at least the key personnel identified in Exhibit F to this Agreement (“Key Personnel”), who shall carry out the functions identified in Exhibit F. The Key Personnel shall include (i) the Project Manager; (ii) the Architects ; (iii) Principal in Charge; (iv) Lead Mechanical Engineer (v) Lead Envelope Consultant; (vi) Net Zero/LEED Consultant; and (vii) Poll Consultant. The Design-Builder’s obligation to provide adequate staffing is not limited to providing the Key Personnel but is determined by the needs of the Project. The Design-Builder shall not replace any of the Key Personnel without

5.7.2

- 5.7.3 the Department's prior written approval, which shall not be unreasonably withheld. 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 Design-Builder or any affiliate of the Design-Builder, then the Design-Builder shall promptly appoint a replacement acceptable to the Department. The Department shall be entitled to complete information on each such replacement, including a current resume of his or her qualifications and experience.
- 5.7.4 Certain members of the Design-Builder's Key Personnel shall be subject to a removal or replacement fee for their removal or reassignment by the Design-Builder. Those members of the Design-Builder's Key Personnel subject to such fee shall be identified in **Exhibit E** as subject to the fee provisions herein. In the event there is no delineation in **Exhibit E** of those members of the Design-Builder's Key Personnel subject to the fee provisions of this Agreement, then all of the Key Personnel shall be subject to the fee provisions of this Agreement.
- 5.7.5 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 Design-Builder in the event that a member of the Key Personnel has been removed or replaced by the Design-Builder without the prior written consent of the Department. In the event the Department exercises the right to remove, replace or to reduce the scope of services of the Design-Builder, the Department shall have the right to enforce the terms of this Agreement and to keep-in-place those members of the Design-Builder's team not removed or replaced and the remaining members shall complete the services required under this Agreement in conjunction with the new members of the Design-Builder's team approved by the Department.
- 5.7.6 Removal or Replacement of Key Personnel
- 5.7.7 Subject to the terms of this 5.7, in each instance where the Design-Builder removes or reassigns one of the key personnel listed in **Exhibit F** as being subject to the key personnel replacement fee, other than (a) for reasons where such personnel become unavailable due to death, disability or separation from the employment of the Design-Builder or any affiliate of the Design-Builder or any affiliate of the Design-Builder, or (b) with the prior written consent of the Department, then the Design-Builder shall pay to the Department the amount set forth in the Project

Information Section of this Agreement as a replacement fee and not a penalty, to reimburse the Department for its administrative costs arising from the Design-Builder'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.

Section 5.8 Qualified Personnel/Cooperation.

The Design-Builder 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 Design-Builder 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 Design-Builder shall promptly comply.

Section 5.9 Warranty.

The Design-Builder 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 Design-Builder's warranty excludes remedies for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear from normal usage. The Design-Builder 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 Design-Builder and a representative of the Department shall walk the Project to identify any necessary warranty work.

Section 5.10 Open Book Reporting.

The Design-Builder shall maintain an open book reporting system with the Department, allowing the Department or its consultants access to the Design-Builder'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 Design-Builder.

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 in **Exhibit M** 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 Design-Builder 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, the delay shall be deemed Non-Excusable and the Design-Builder 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 Design-Builder to an extension of time:

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

5.11.2.2 Delays due to adverse weather, unless the Design-Builder 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 Design-Builder 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 or Hazardous Materials Remediation shall be deemed an Excusable Delay.

5.11.3 The Design-Builder 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 Design-Builder; provided, however, that in no event shall a Non-Excusable Delay or the action or inaction of the Design-Builder, 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 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;
- 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 Design-Builder or any of its employees, agents, subcontractors or material suppliers; or

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 Design-Builder 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 Design-Builder wishes to make a claim for an adjustment in time allotted per the Project Schedule, written notice as provided herein shall be given. The Design-Builder'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 Design-Builder be entitled to an increase in the GMP or the Design-Build 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 Design-Builder 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 Design-Builder shall not be entitled to any profit or home office overhead, including, but not limited to, an increase in the Design-Build Fee, on any amounts to which the Design-Builder may be entitled pursuant to the preceding sentence.

Section 5.12 Site Safety and Clean-Up.

- 5.12.1** The Design-Builder will be required to provide a safe and efficient site, with controlled access. As part of this obligation, the Design-Builder 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.
- 5.12.2 Safety Plan.** Prior to the start of construction activities, the Design-Builder shall prepare a safety plan for the construction phase conforming to OSHA 29 CFR 1926 (such plan, the "Safety Plan"). Pursuant to OSHA 29 CFR 1926, the Design-Builder shall provide all employees with the necessary Personal Protective Equipment ("PPE") to comply with all COVID-19 regulations, and shall additionally require anyone on site to comply with any PPE requirements. This Safety Plan developed by the Design-Builder 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 Design-Builder shall

comply with it at all times during construction. The Design-Builder shall be required to revise the Safety Plan as may be requested by the Department or Client Agency at any time, including, but not limited to, as necessary to address any new national or local COVID-19 regulations, recommendations, or restrictions. The cost of revising and complying with the plan shall not entitle the Design-Builder to an increase in the GMP. In the event the Design- Builder fails to provide the Safety Plan, the Design-Builder 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 Design-Builder shall comply with the requirements of Article 27, Section A of the Standard Contract Provisions.

5.12.3 Safety Barriers/Fences. As part of its responsibility for Project safety, the Design-Builder shall install such fences and barriers as may be necessary to separate the construction areas of the site from those areas that are then being used by Client Agency for educational purposes. The Design-Builder shall describe in the Safety Plan the proposed separation and the specific nature of the fences and barriers that will be used.

5.12.4 Site Security. The Design-Builder 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 Design-Builder from the obligation to maintain a safe site.

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

5.13.1 Workhours. The Design-Builder 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 Design-Builder shall provide and maintain a fully-equipped construction office for the Project site.

- 5.13.3 Parking.** The Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder 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 fulltime, on-site construction supervision and provide daily inspections, quality control, monitoring, coordination of various trades, record drawings, and daily work log.
- 5.13.7 Move-in Assistance.** The Design-Builder shall assist DPR in relocating FF&E and other items, as applicable. The GMP shall include an allowance and Scope of Work for these activities.

Section 5.14 Close-out & FF&E.

- 5.14.1** A detailed list of FF&E requirements will be developed during the design & preconstruction phase and attached hereto as **Exhibit N.**
- 5.14.2 Punchlist.** Promptly after the Project reaches Substantial Completion, the Design-Builder shall cause the Architect to develop a punchlist. Once the punchlist is prepared, the Design-Builder 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 Design-Builder shall correct all punchlist items no later than thirty (30) days after Substantial Completion is achieved.

5.14.3 Warranties & Manuals. Subsequent to Substantial Completion and no later than fifteen (15) days following Substantial Completion, the Design-Builder 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 Design-Builder shall prepare and submit: (i.) a complete set of its Project files; and (ii.) a set of record drawings.

The Design-Builder shall prepare an “as-built” plan of the site including all the modifications performed during construction, within 30 days of completion. The Design-Builder shall also submit warranty information on all design requirements within 30 days of completion.

5.14.4 Support for Initial Heating & Cooling Season. The Design-Builder and its mechanical Subcontractor shall provide support to the 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.

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

5.14.6 The Design-Builder 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 Design-Builder, 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 Design-Builder 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 Design-Builder 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 Design-Builder shall be responsible for all activities necessary to manage, control, and document work to ensure compliance with Contract Documents. The Design-Builder's responsibility includes ensuring adequate quality control services are provided by the Design-Builder'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 design development documents are approved, the Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder to accelerate the Work if, in the reasonable judgment of Department: (i) the Design-Builder 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 Design-Builder with written notice of such event and the Design-Builder 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 Design-Builder 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 on 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 Design-Builder 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 direct the Design-Builder 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 Design-Builder with written notice of the

occurrence of such Quality Control Event and the Design-Builder 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 Design-Builder are unable to agree on the terms of the Corrective Action Plan within five (5) days after the issuance of the notice (i.e. within forty eight (48) hours after the receipt of the proposed corrective action plan), the Department shall have the right to direct such corrective action measures as the Department, in its reasonable judgment, deems necessary. Such directive may include adjustments to the procedural provisions set forth in the Quality Control Plan and/or may impose additional requirements on the manner in which Work is being performed. Provided the Department complies with the notice provisions of this Section, the cost of any such corrective action directed under this Section shall not justify an adjustment to the GMP on the Substantial Completion Date.

Section 5.20 Use of ProjectTeam.

The Design-Builder shall utilize the Department’s ProjectTeam system to submit any and all documentation required to be provided by The Design-Builder 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) GMP and any Submissions that require approval by DC Council (viii) punch list; and (ix) other Project documents as may be designated by the Department.

Section 5.21 Use of the DC Vendor Portal.

The Design-Builder shall be required to utilize the DC Vendor Portal for all invoice submissions and will be subject to providing any required additional back up information requested for the invoice submitted.

Section 5.22 Conformance with Laws.

It shall be the responsibility of the Design-Builder 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, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Design-Builder to determine the Procurement Regulations, statutes, laws, codes, ordinances, regulations, rules, requirements and orders that apply and their effect on the Design-Builder’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 5.23 Licensing, Accreditation and Registration

The Design-Builder 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 5.24 Construction Phase Deliverables.

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

Section 5.25 Close-Out Deliverables.

The deliverables set forth in **Exhibit N** are required during the Project's Close-Out and prior to Final Payment, as set forth in Section 10.12.

Article 6 DESIGNATED REPRESENTATIVES

Section 6.1 Department's Designated Representative.

The Department designates the individual(s) identified in **Exhibit I** 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 I**, 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 Design-Builder. In order for the Department to effectively manage the Project and assure that the Design-Builder does not receive conflicting instructions regarding the Work, the Design-Builder shall promptly notify the Department's representative upon receiving any instructions or other communication in connection with the Design-Builder's Work from any employee of the Department or other purported agent of the Department other than the Department's designated representative.

Section 6.2 Design-Builder's Designated Representative.

The Design-Builder designates the individual(s) identified in **Exhibit H** as its representative with express authority to bind the Design-Builder with respect to all matters requiring the Design-Builder's approval or authorization. In addition, the Department retains the right to approve candidates to serve as on-site personnel in accordance with each candidate's experience with similar projects and local marketplace conditions. Once approved, individuals cannot be changed without the Department's prior approval. During the entire term, it is agreed that the Design-Builder'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 Design-Builder shall be performed in accordance with the highest professional standards recognized and adhered to by design-builders that design and construct similar municipal facilities and projects that are similar to the Project in large urban areas.

**Article 7 COMPENSATION AND PAYMENTS FOR DESIGN & PRECONSTRUCTION
PHASE SERVICES**

Section 7.1 Compensation

7.1.1 The Department shall compensate and make payments to the Design-Builder for Design & Preconstruction Services in accordance with this Article 7. For Preconstruction Services, the Design-Builder's compensation shall be as set forth in the Project Information Section of this Agreement (the "Preconstruction Fee"). The Preconstruction Fee shall be the Design-Builder's sole compensation for Preconstruction Phase Services. The Preconstruction Fee shall include, but not be limited to, amounts necessary to compensate the Design-Builder 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 design & 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

7.1.2 The Department shall compensate and make payments to the Design-Builder for design services in accordance with this Article 7 and Article 10. For design services, the Design-Builder's compensation shall not exceed the amount set forth in the Project Information Section of this Agreement (the "Design Fee").

Section 7.2 Payment

- 7.2.1** Payments for Design & Preconstruction Phase Services shall be made monthly over the anticipated duration of the Design & Preconstruction Phase following presentation and acceptance of the Design-Builder's invoice and shall be in proportion to services performed. In no event, however, will the aggregate of the Design-Builder's monthly invoices for Design & Preconstruction Phase Services exceed the Preconstruction Fee.
- 7.2.2** Payments are due and payable in accordance with 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.

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

8.1.1 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 fully execution of this Agreement, the Department shall appoint a committee that will determine entitlement to those portions of the Award Fee Pool so designated below (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 the 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.

8.1.2 The Design-Builder may earn the At-Risk Portion of the Design-Build Fee in accordance with **Exhibit P**.

Section 8.2 Lump Sum General Conditions Cost.

The Design-Builder shall not be entitled to recover more than the amount set forth in the Project Information Section of this Agreement for the Cost of General Conditions (such amount, the "Lump Sum General Conditions Cost"). If, as a result of any Change Order(s) or Change Directive(s): (i) the Project durations extends 30 days or more beyond the Substantial Completion Date; and (ii) the Design-Builder 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 Design-Builder, its Subcontractors, material men, consultants or anyone making claims thereunder, the Design-Builder may request a Change Order to adjust the Lump Sum General Conditions Cost. To the extent the Design-Builder incurs Costs of General Conditions in excess of the Lump Sum

General Conditions Cost, the Design-Builder shall not be entitled to reimbursement for such amounts unless the Department authorizes, in writing, an increase to the Lump Sum General Conditions Cost. Nonetheless, in such an event, if the Design-Builder exceeds the Lump Sum General Conditions Cost, the Design-Builder 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 Design-Builder be entitled to recover more than the Initial NTE unless the Design-Builder 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 Design-Builder 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 Design-Builder shall submit an itemized breakdown of the work that the Design-Builder 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 Design-Builder pursuant to this Agreement, and in no event shall the Design-Builder be entitled to recover more than the Project Budget unless the Design-Builder 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 Design-Builder to develop a GMP that meets the programmatic requirements set forth in **Exhibit A** by the Client Agency and the Project Budget as set forth herein (*i.e.* designed to budget), to allow for Substantial Completion of the Work to be achieved no later than the Substantial Completion Date. The Design-Builder shall be entitled to an adjustment to the Design-Build 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 Design-Builder’s original concept estimate by more than five percent (5%); or (ii) the Department makes additions to the scope provided for herein which (other than for punchlist or warranty work) which requires the Design-Builder’s services at the Project to extend 30 days or more beyond the Substantial Completion Date. With regard to Change Orders issued after the GMP is established, the Design-Builder shall be entitled to an increase in the Design-Build 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 Design-Builder’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 as follows:

8.6.1.1 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 Design-Builder to self-perform, the Design-Builder shall also be entitled to a markup 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 Design-Builder, the markup contemplated in this Section shall be the Design-Builder's exclusive compensation and it shall not be entitled to the markup contemplated in Section 8.6.1.3;

8.6.1.2 Intervening tier Subcontractors shall be entitled to a markup 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;

8.6.1.3 In no event shall the maximum mark-up on the Direct Cost of the Work exceed five 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 Design-Builder. No personnel above the level of a working foreman shall be considered a Direct Cost of the Work).

Section 8.7 Direct Cost of Work

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

8.7.1 Labor. Payment will be made for direct labor cost plus indirect labor cost such as insurance, taxes, fringe benefits and welfare

provided such costs are considered reasonable. Indirect costs shall be itemized and verified by receipted invoices. If verification is not possible, up to eighteen percent (18%) of direct labor costs may be allowed.

8.7.2 Rented Equipment. Payment for required equipment rented from an outside company that is neither an affiliate of, nor a subsidiary of, the Design-Builder 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 CO for consideration. No additional allowance will be made for overhead and profit. The Design-Builder shall submit written certification to the CO that any required rented equipment is neither owned by nor rented from the Design-Builder or an affiliate of or subsidiary of the Design-Builder.

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

8.7.4 Materials. Incorporated and unincorporated materials as permitted under **Section 8.7.**

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

Article 9 COST OF THE WORK FOR CONSTRUCTION PHASE

Section 9.1 Cost of the Work.

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

9.1.1 Payments made by the Design-Builder to subcontractors and suppliers, but only in accordance with the Subcontracts and Supply Agreements.

9.1.2 All amounts due to the Design-Builder under the terms of the Department's written authorization for the Design-Builder to perform any portion of the Work as Self-Performed Work. If an authorization for the Design-Builder 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 Design-Builder, 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 Design-Builder'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 the Agreement or has been approved in advance by the Department;

9.1.4 Fees for obtaining all required approvals or permits associated with the abatement, demolition, utilities abandonment, and utility relocation, and all trade permit fees and the building permit fee.

9.1.5 Cost of the Design-Builder's Architect/Engineer's contract reimbursed at cost and without markup; provided, however, that such costs shall not exceed the Design Fee set forth in this Agreement. Any amounts in excess of the Design Fee shall not be reimbursable as a Cost of Work.

9.1.6 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 Design-Builder 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 Design-Builder 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 All performance and payment bonds and general liability insurance. The Department may, in its sole discretion, allow the Design-Builder 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.

9.1.9 Payments made by the Design-Builder to its design consultants and sub-consultants; provided, however, that the Design-Builder shall not be reimbursed for the costs of design services in excess of the Design Fee.

9.1.10 Costs of repairing or correcting damaged or nonconforming Work executed by the Architect, or Design-Builder's other consultants, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder, and only to the extent that the cost of repair or correction is not recoverable by the Design-Builder 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 Design-Builder's Lump Sum General Conditions Cost shall be the extent of what the Design-Builder is entitled to recover for the cost of General Conditions. General Conditions may include, but are not limited to:

- a) Cost of construction staff;
- b) Fringe Benefits associated with construction staff;
- c) Payroll taxes and payroll insurance associated with construction staff;
- d) Staff costs associated with obtaining permits and approvals;
- e) Out-of-house consultants, including permit expeditors;
- f) Job vehicles;
- g) The field office(s) for the Design-Builder and Department, including, but not limited to:
 - (i) trailer purchase and/or rental;
 - (ii) field office installation, relocation and removal;
 - (iii) utility connections and charges during the Construction Phase;
 - (iv) furniture;
 - (v) office supplies;
- h) Office equipment including, but not limited to: (i) computer hardware and software; (ii) fax machines; (iii) copying machines; (iv) voice/data system installation and use charges;
- (v) Job radios;
- i) Local delivery and overnight delivery costs;
- j) Field computer network;
- k) First aid facility;
- l) Printing cost for drawings, bid packages, etc.;
- m) BIM Cost (software, seats, hardware);
- n) Parking costs for the construction staff;
- o) Salting sidewalks and shoveling snow on sidewalks that surround the site; and
- p) Exterior site fencing, fence wrapping, and construction signage.

Section 9.3 Non-Reimbursable Costs

The following costs shall not be reimbursable:

- 9.3.1** Any personnel or labor costs other than those provided for in Section 9.1.2(a).
- 9.3.2** Fees for any permits or licenses the Design-Builder requires to conduct its general business operations.
- 9.3.3** Capital expenses and interest on capital employed for the Work.
- 9.3.4** The cost of home or regional offices, it being understood that compensation for such costs included in the Design-Build Fee.
- 9.3.5** Sales or use taxes, unless the Design-Builder establishes that applicable law required payment of such taxes.
- 9.3.6** Costs due to the errors or omissions of the Design-Builder or its subcontractors or suppliers at all tiers, negligent or otherwise.
- 9.3.7** Costs due to breach of Contract by the Design-Builder 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 Design-Builder or its subcontractors or material suppliers at all tiers.
- 9.3.8** Any costs incurred in performing work of any kind before Preconstruction NTP, unless specifically authorized by the Department in advance and in writing.
- 9.3.9** Direct or indirect costs of any kind, except those expressly included in **Section 9.1**.

Section 9.4 Discounts, Rebates And Refunds.

- 9.4.1** Cash discounts obtained on payments made by the Design-Builder shall accrue to the Department if: (i) before making such payment(s), the Design-Builder included them in an Application for Payment and received payment therefor from the Department; or (ii) the Department has deposited funds with the Design-Builder with which to make such payment(s). All other cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Department, and the Design-Builder 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 9.3 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 Design-Builder 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 Design-Builder shall not be entitled to share in such savings.

Section 9.6 Accounting Records.

The Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Agreement. The Design-Builder'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 Design-Builder's records, books, correspondence, instruction, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Design-Builder 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 9.7 Excluded Cost Elements.

It is the Department's intent that the Design-Builder provide a turnkey solution for the implementation of the Project, and the Project Budget set herein has been developed based on such framework. The Design-Builder 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:

- a) 3rd Party Material Testing;
- b) 3rd Party Commissioning;
- c) 3rd Party Inspections;
- d) Costs of active DPR equipment;
- e) 3rd Party Plan Review; and
- f) Public Art.

Article 10 CONSTRUCTION PHASE PAYMENTS

Section 10.1 Progress Payments.

The Design-Builder 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 Cost of Work for Pay Period x portion of Design-Build Fee not at risk

Current approved estimated

Cost of Work through Final Completion

Plus Any subset of the At Risk Portion of the Design-Build Fee to which the Department has determined the Design-Builder 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) Design-Build 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 Design-Builder'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 Design-Builder shall nevertheless maintain complete documentation of the costs.

An executed Release of Liens and Claims in the format required by the CO 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 Design-Builder'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 Design-Builder requests the Department to allow payments for storage of materials offsite, the Design-Builder 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 Design-Builder's Certification.

Each Application for Payment shall be accompanied by the Design-Builder's signed certification that:

Section 10.5.1. all amounts paid to the Design-Builder 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 Design-Builder's knowledge, free from defect and meets all of the requirements set forth in the Agreement; and

Section 10.5.4. that the Design-Builder's subcontracts include the clauses

required by subparagraphs (1) through (4) of D.C. Official Code §2-221.02(d) (2017).

Section 10.5.5. The Design-Builder shall not include in an Application for Payment amounts for Work for which the Design-Builder 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 K** for the Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder. 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 Design-Builder until Substantial Completion, unless otherwise agreed by the Department, in writing.

Section 10.8 Submission.

On the twenty-fifth (25) day of each month the Design-Builder 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 Design-Builder 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 Design-Builder may protest and pursue a claim as provided in this Agreement and the Standard Contract Provisions (Construction Contracts and Architectural and Engineering Services Contracts).

Section 10.9 Right to Withhold Payments.

The Department will notify the Design-Builder within fifteen (15) days after receiving any Application for Payment of any defect in the Application for Payment or the Design-Builder'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 Design-Builder, 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 Design-Builder's progress has fallen behind the Project Schedule, and the Design-Builder 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 5.18; or
- 10.9.3** the Design-Builder's monthly schedule update reflects that the Design-Builder has fallen behind the Project Schedule, and the Design-Builder fails to include, in the same monthly report, a realistic and acceptable Recovery Plan in accordance with 5.18; or
- 10.9.4** the Design-Builder has failed to provide reports in full compliance with 5.5 of this Agreement; or
- 10.9.5** the Design-Builder 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 Design-Builder, and the Design-Builder, 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 Design-Builder is otherwise in substantial breach of this Agreement (including, without limitation, failures to comply with LSDBE Utilization requirements.

10.9.10 the Application for Payment is incomplete, unsubstantiated and/or does not contain sufficient documentation for evaluation by the CO.

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 a consultant or Subcontractor performing portions of the Work.

Section 10.12 Final Payment.

A final payment (“Final Payment”) shall be made by the Department to the Design-Builder when: (i) Final Completion has been achieved; (ii) all deliverables set forth in 5.14, and **Exhibit N** have been delivered to and are accepted by the Department; (iii) the Design-Builder 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 Design-Builder 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 Design-Builder’s final accounting and the Design-Build Fee; 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 Design- Builder, the Design-Builder 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 Design-Builder.
- 10.12.2** The Department will review and report in writing on the Design-Builder's final accounting within 30 days after delivery of the final accounting to the Department by the Design-Builder. Based upon Department's determination of the Cost of the Work, and provided the other conditions of Section 13.1 have been met, the Department will, within fifteen (15) days after the Department's determination, notify the Design-Builder of any amount that the Department will withhold and the reasons therefor. The time periods stated in this Paragraph 10.12 supersede those for typical progress payments.
- 10.12.3** If the Department determines that the Cost of the Work is than claimed by the Design-Builder, the Design-Builder shall be entitled to proceed in accordance with Article 3 of the Standard Contract Provisions. Pending a final resolution of the disputed amount, the Department shall pay the Design-Builder the amount that the Department determines to be appropriate.

Article 11 - INSURANCE

- A. GENERAL REQUIREMENTS. The Design-Builder at its sole expense shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder and the CA. The Design-Builder must provide proof of the subcontractor's required insurance prior to commencement of work by the subcontractor. If The Design-Builder 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 Design-Builder.

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 Design-Builder 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 Design-Builder or its subcontractors, and not the additional insured. The additional insured status under The Design-Builder'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 Design-Builder'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 Design-Builder or its subcontractors, or anyone for whom The Design-Builder or its subcontractors may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

If The Design-Builder 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 Design-Builder and subcontractors.

B. INSURANCE REQUIREMENTS

1. Commercial General Liability Insurance (“CGL”) - The Design-Builder 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 Design-Builder, 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 Design-Builder 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 Design-Builder 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 Design-Builder, with minimum per accident limits equal to the greater of (i) the limits set forth in The Design-Builder’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 Design-Builder 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 Design-Builder 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 Design-Builder shall provide evidence satisfactory to the CO 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 Design-Builder 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 Design-Builder. 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 Design-Builder'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 Design-Builder warrants that any retroactive date applicable to coverages under the policy precedes The Design-Builder'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 Design-Builder 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 Design-Builder for losses arising from facility(ies) accepting, storing or disposing hazardous materials or other waste as a result of The Design-Builder's operations. Such coverages must be maintained with limits of at least the amounts set forth above.

6. Installation-Floater Insurance - For projects not involving structural alterations, The Design-Builder 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 Design-Builder.
7. Professional Liability Insurance (Errors & Omissions) - The Design-Builder 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 Design-Builder warrants that any applicable retroactive date precedes the date The Design-Builder 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.
8. Sexual/Physical Abuse & Molestation - The Design-Builder shall provide evidence satisfactory to the CO with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate of affirmative abuse and molestation liability coverage. Coverage should include physical abuse, such as sexual or other bodily harm and non-physical abuse, such as verbal, emotional or mental abuse; any actual, threatened or alleged act; errors, omission or misconduct. This insurance requirement will be considered met if the general liability insurance includes an affirmative sexual abuse and molestation endorsement for the required amounts. 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.
9. Commercial Umbrella or Excess Liability - The Design-Builder 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 Design-Builder's umbrella or excess liability policy or (ii) \$5,000,000 per occurrence and \$5,000,000 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.

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 Design-Builder 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 Design-Builder’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 Design-Builder shall include all of the costs of insurance and bonds in the contract price.

H. NOTIFICATION. The Design-Builder 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 Design-Builder shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. The Design-Builder will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract.

I. CERTIFICATES OF INSURANCE. The Design-Builder 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:

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

The CO may request and The Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder, 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 BONDS

Section 12.1 Performance Bond and Payment Bond.

The Design-Builder shall, before commencing the Construction Phase, provide to the Department a payment bond and performance bond, each with a penal sum equal to the full value of the GMP. The Design-Builder 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 Design-Builder must deliver to the CO 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 Design-Builder, even if such amount exceeds the penal value of such bond. Unless otherwise directed by the Department, the Design-Builder shall require all Subcontractors whose Subcontract prices exceed One Hundred Thousand Dollars (\$100,000.00) to provide payment and performance bonds, with a penal sum equal to one hundred percent (100%) of the subcontract price. Further, the Design-Builder must deliver to the CO 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 Design-Builder and the Department as dual obligees. If the GMP 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 Design-Builder shall promptly comply. The Design-Builder 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 Design-Builder shall promptly provide substitute security acceptable to the Department. If the Design-Builder 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 13 ECONOMIC INCLUSION REQUIREMENTS

Section 13.1 LSDBE Utilization.

If the Design-Builder 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”). 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 Design-Builder has developed a Subcontracting Plan that is attached hereto as **Exhibit D**. The Design-Builder shall comply with the terms of the SBE Subcontracting Plan in making purchases and administering its subcontracts and supply agreements.

Section 13.2 Mandatory Subcontracting Requirements

Section 13.2.1 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 13.2.2 If there are insufficient SBEs to completely fulfill the requirement of Section 13.2.1, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.

Section 13.2.3 A prime contractor that is certified by DSLBD as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of Sections 13.2.1 and 13.2.2.

Section 13.2.4 Except as provided in Sections 13.2.1 and 13.2.2, a prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

Section 13.2.5 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 13.2.6 Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.

Section 13.3 Subcontracting Plan (Exhibit D)

If the Design-Builder 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 13.4 Copies of Subcontracts

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

Section 13.5 Subcontracting Plan Compliance Reporting

Section 13.5.1 If The Design-Builder has a subcontracting plan required by law for this contract, The Design-Builder shall submit a quarterly report to the Contracting Officer, 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 13.5.2 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 13.6 Annual Meetings

Upon at least 30-days written notice provided by DSLBD, The Design-Builder 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 13.7 DSLBD Notices

The Design-Builder 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 13.8 Enforcement and Penalties for Breach of Subcontracting Plan

Section 13.8.1 A contractor shall be deemed to have breached a subcontracting plan required by law if The Design-Builder (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 13.8.2 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 13.8.3 If the CO determines The Design-Builder's failure to be a material breach of the contract, the CO shall have cause to terminate the contract under the default provisions in **Article 16** of the Contract.

Section 13.8.4 Neither the Design-Builder 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 Design-Builder developing a plan that is, in the Department's sole and absolute judgment, adequate to maintain the level of LSDBE participation in the Project.

Section 13.9 Equal Employment Opportunity and Hiring of District Residents

13.9.1 For contracts for services in the amount of \$300,000 or more, the Design-Builder 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").

13.9.2 The Design-Builder shall enter into and maintain during the term of the Contract, a First Source Employment Agreement (Employment Agreement) (**Exhibit V**) with the District of Columbia Department of Employment Service's (DOES), in which the Design-Builder 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.

13.9.3 If applicable, the Design-Builder 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.

13.9.4 The Design-Builder shall not begin the 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.

13.9.5 The Design-Builder agrees that at least 51% of the new employees hired to perform the Contract shall be District residents. The Design-Builder shall ensure that at least fifty-one percent (51%) of the Design-Builder and every sub-consultants and subcontractor's employees hired after the effective date of the Agreement, or after such subconsultant or subcontractor enters into a contract with the Design-Builder, 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.

13.9.6 The Design-Builder's hiring and reporting requirements under the First Source Act and any rules promulgated thereunder shall continue for the term of the Contract.

13.9.7 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.

13.9.8 If the Design-Builder 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 Design-Builder fails to meet its hiring requirements.

13.9.9 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.

13.9.10 The Design-Builder 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.

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

13.9.12 Construction projects or contracts covered by this Section 13.9 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 13.10 Economic Inclusion Reporting Requirements

Section 13.10.1 Upon execution of the Agreement, the Design-Builder 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 13.10.2 The Design-Builder 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 Design-Builder 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 13.10.3 The Design-Builder shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

Section 13.10.4 The Design-Builder shall be responsible for: (i) including the provisions of Section 13.3 in all subcontracts; (ii) collecting the information required in Section 13.3 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in the reports required to be submitted by the Design-Builder pursuant to Section 13.3.

Section 13.10.5. Service Contract Act Provision. The Design-Builder agrees that the work performed under this Agreement shall be subject to the Service Contract Act Wage Determination in effect on the date this agreement is executed. Service Contract Wage Schedules are available at wdol.gov, **Exhibit E**.

Section 13.10.6 Living Wage Act. In addition to the requirements set forth in the First Source Employment Agreement, the Design-Builder shall comply with all applicable provisions of the Living Wage Act of 2006, **Exhibit Q**, as amended (codified at D.C. Official Code §§ 2-220.01 et seq.) and its implementing regulations.

Section 13.10.7 Apprenticeship Act. The D.C. Apprenticeship Act of D.C. Law 2-156, (as amended, the Act) may apply to these Projects. As applicable, the Design-Builder firms and their subcontractors selected to perform work on the Projects on a craft-by-craft basis may be required to comply with the Act. If applicable, all terms and conditions of the D.C. Apprenticeship Council Rules and Regulations shall be implemented, and the selected Design-Builder firms shall be liable

for any subcontractor non-compliance.

Section 13.11 WAY TO WORK AMENDMENT ACT OF 2006

13.11.1. Except as described in **Section 13.11.8** below, the Design-Builder 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.

13.11.2 The Design-Builder shall pay its employees and subcontractors who perform services under the Contract no less than the current living wage.

13.11.3 The Design-Builder 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.

13.11.4 The DOES may adjust the living wage annually and Design-Builder will find the current living wage rate on its website at www.does.dc.gov.

13.11.5 The Design-Builder shall provide a copy of the Fact Sheet attached within **Exhibit Q** to each employee and subcontractor who performs services under the Contract. The Design-Builder shall also post the Notice attached within **Exhibit Q** in a conspicuous place in its place of business. The Design-Builder 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.

13.11.6 The Design-Builder 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.

13.11.7 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.

13.11.8 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 tax 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.

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

13.12 SPECIAL PROVISIONS RELATED TO THE COVID-19 EMERGENCY

The Design-Builder 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.

Article 14 LIQUIDATED DAMAGES

Section 14.1 RESERVED

Section 14.2 RESERVED

Section 14.3 Delay in Substantial Completion.

If the Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder otherwise complies with the provisions set forth in the Standard Contract Provisions. In the event the Design-Builder fails to meet the Substantial Completion Date for more than sixty days, the Design-Builder consents to a Termination for Default.

Section 14.4 Early Completion.

In the event the Design-Builder achieves Substantial Completion of the Project prior to the Substantial Completion Date, the Design-Builder 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 15 MISCELLANEOUS PROVISIONS

Section 15.1 Ownership and Use of Documents.

The Drawings, Specifications and other documents prepared by the Design-Builder and copies thereof furnished to the Design-Builder, are for use solely with respect to this Project. They are not to be used by the Design-Builder, 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 Design-Builder. The referenced Drawing, Specifications and other documents shall become the property of the Department.

Section 15.2 Assignment.

The Department and Design-Builder 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 15.3 Buy American Act Provision.

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

Section 15.3.1 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 Design-Builder agrees that only domestic construction material will be specified in the performance of the Agreement, except for non-domestic material listed in the Agreement.

Section 15.3.2 “Components” as used in this Section, means those articles, materials and supplies incorporated directly into the end products.

Section 15.3.3 “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.

Section 15.3.4 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.

Section 15.3.5 “End Products”, as used in this Section, means those articles, materials, and supplies to be acquired for public use under this Contract.

Section 15.3.6 The Design-Builder shall specify only domestic end products, except those:

- i. For use outside the United States;
- ii. 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;
- iii. For which the District determines that domestic preference would be inconsistent with the public interest; or
- iv. For which the District determines the cost to be unreasonable.

Section 15.3.7 Domestic Construction Material. “Construction material” means any article, material or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a “domestic construction material” if it has been mined or produced in the United States. A manufactured construction material is a “domestic construction material” if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. “Component” means any article, material, or supply directly incorporated in a construction material.

Section 15.3.8 Domestic Component. A component shall be considered to have been “mined, produced, or manufactured in the United States” regardless of its source, in fact, if the article, material or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

Section 15.3.9 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 15.4 Davis-Bacon Act Provision.

The Design-Builder agrees that the construction work performed under this Agreement shall be subject to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-7). The wage rates applicable to this Project are attached as **Exhibit G**. The Design-Builder further agrees that it and all of its subcontractors shall comply with the regulations implementing the Davis-Bacon Act and such regulations are hereby incorporated by reference.

Section 15.5 The Quick Payment Clause

Section 15.5.1 Interest Penalties to Contractors

Section 15.5.1.1 The District will pay interest penalties on amounts due to The Design-Builder 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% 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:

- 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.

Section 15.5.1.2 Any amount of an interest penalty which remains unpaid at the end of any 30day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

Section 15.5.2 Payments to Subcontractors

Section 15.5.2.1 The Design-Builder must take one of the following actions within seven (7) days of receipt of any amount paid to The Design-Builder 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 District and the Subcontractor, in writing, of The Design-Builder's intention to withhold all or part of the Subcontractor's payment and state the reason for the nonpayment.

Section 15.5.2.2 The Design-Builder 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% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before:

- a) the 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.

Section 15.5.2.3 Any amount of an interest penalty which remains unpaid by The Design-Builder at the end of any 30-day period shall be added to the principal amount of the debt to the Subcontractor and thereafter interest penalties shall accrue on the added amount.

Section 15.5.2.4 A dispute between The Design-Builder and Subcontractor relating to the amounts or entitlement of a Subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District of Columbia is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

Section 15.5.3 Subcontract flow-down requirements

Section 15.5.3.1 The Design-Builder shall include in each subcontract under this contract a provision requiring the Subcontractor to include in its contract with any lower-tier Subcontractor or supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code §2-221.02(d).

Section 15.5.4 Requirements for Change Order payments

Section 15.5.4.1 The Department and The Design-Builder 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 CO:

- (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 CO; and
- (iv) Gives written notice of the funding certification from the Chief Financial Officer to the prime contractor;

Section 15.5.4.2 The Design-Builder 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 CO; and

Section 15.5.4.3 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 15.6 Contract Work Hours And Safety Standards Act Provision.

The Design-Builder 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 15.7 False Claims Act.

Design-Builder 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 District of Columbia Code §22-2514 and §§2-381.01 et seq. In the event that it is discovered that the Design-Builder has made a false, fraudulent or unsupported statement or claim to the Department, the Department may terminate this Agreement without liability.

Section 15.8 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 Design-Builder, as the intent of the Agreement is, with specific identified exceptions, to require the Design-Builder 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 (Construction Services), as amended, and any missing term in this Agreement shall be addressed in accordance with the Standard Contract Provisions; and
3. The Construction Documents released or approved by the Department.

Section 15.9 Independent Contractor.

In carrying out all its obligations under the Agreement, the Design-Builder shall be

acting as an independent contractor, and not as an employee or agent of the Department, or Joint Venture or partner with the Department. The Design-Builder shall have exclusive authority to manage, direct, and control the Work, and shall be responsible for all construction means, methods, techniques, sequences, and procedures, as well as for the Project safety.

Section 15.10 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 15.11 Media Releases.

Neither the Design-Builder, 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 15.12 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 15.13 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:

If to the Design-Builder:

George Lewis,
Associate Director and Chief CO
Department of General Services
3924 Minnesota Avenue NE
Washington, DC 20019

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 15.14 Limitations.

The Design-Builder 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 15.15 Survival.

All agreements warranties, and representations of the Design-Builder contained in the Agreement or in any certificate or document furnished pursuant to the Agreement shall survive termination or expiration of the Agreement.

Section 15.16 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 15.17 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 Design-Builder or any other person or entity.

Section 15.18 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 15.19 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 Design-Builder, 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 15.20 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 15.21 Anti-Deficiency Act.

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

Section 15.22 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 15.23 Americans With Disabilities Act of 1990 (“ADA”). During the performance of this Contract, the Design-Builder and any of its Subcontractors shall comply with the ADA. The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability. See *42 U.S.C. §12101 et seq.*

Section 15.24 Contracts in Excess of One Million Dollars. Any contract in excess of \$1,000,000 shall not be binding or give rise to any claim or demand against the District until approved by the Council of the District of Columbia and signed by the Contracting Officer.

Section 15.25 Gratuities Not to Benefit Provisions.

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

Section 15.25.1 In the event the Agreement is terminated as provided in Article 16 of this Agreement, the Department shall be entitled:

a. to pursue the same remedies against the Design-Builder as it could pursue in the event of a breach of the Agreement by the Design-Builder; and

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

Section 15.25.2 No member of, nor delegate to Congress, Mayor or City Council Member, nor the Department nor employee of the District or employee of the Department shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom, and all agreements entered into by the CO of the Department in which he or she be personally interested as well as all agreements made by the Department in which the Mayor or City Council Member or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department; but this provision shall not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or employee of the District is de minimis.

Section 15.26 Ethical Standards for the Department's Employees And Former Employees.

The Department expects the Design-Builder to observe the highest ethical standards and to comply with all applicable laws, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Design-Builder, nor any person associated with the Design-Builder, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan, or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Design-Builder shall not engage the services of any person or persons in the employment of the Department or the District for any work required, contemplated, or performed under the Agreement. The Design-Builder may not assign to any former employee or District employee or agent who has joined the Design-Builder's firm any matter on which the former employee, while employed by the Department, had material or substantial involvement in the matter. The Design-Builder may request a waiver to permit the assignment of such matters to former personnel on a case-by-case basis. The Design-Builder shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Design-Builder or vendor.

Section 15.27 Non-Discrimination in Employment Provisions.

15.27.1 District of Columbia Human Rights Act

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

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

1. The Design-Builder shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap.

2. The Design-Builder agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. The affirmative action shall include, but not be limited to, the following:

- i. Employment, upgrading, or transfer;
- ii. Recruitment or recruitment advertising;
- iii. Demotion, layoff, or termination;
- iv. Rates of pay, or other forms of compensation; and
- v. Selection for training and apprenticeship.

3. Unless otherwise permitted by law and directed by the Department, the Design-Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Department setting forth the provisions paragraphs 1 and 2 of Section 15.28.1(b) of this Agreement, concerning non-discrimination and affirmative action.

4. The Design-Builder shall, in all solicitations or advertisements for employees placed by or on behalf of the Design-Builder, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in **Section 15.27.3.**

5. The Design-Builder agrees to send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Department, advising each labor union or workers' representative of the Design-Builder's commitments under this **Section 15.27.1**, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

6. The Design-Builder agrees to permit access by the Department to all books, records and accounts pertaining to its employment practices for purposes of investigation to ascertain compliance with this **Section 15.27.1**, and to require under terms of any Subcontractor agreement each Subcontractor to permit access of the Subcontractors, books, records, and accounts for such purposes.

7. The Design-Builder shall include in every subcontract this **Section 15.27.1** so that such provisions shall be binding upon each subcontractor or vendor.

8. The Design-Builder shall take such action with respect to any subcontract as the CO may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided, however, that in the event the Design-Builder becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the Department, the Design-Builder may request the District to enter into such litigation to protect the interest of the District.

Section 15.27.2 Pregnant Workers Fairness

a. The Design-Builder shall comply with the Protecting Pregnant Workers Fairness Act of 2016, D.C. Official Code § 32-1231.01 *et seq.* (PPWF Act).

b. The Design-Builder shall not:

1. Refuse to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding for an employee, unless the Design-Builder can demonstrate that the accommodation would impose an undue hardship;

2. Take an adverse action against an employee who requests or uses a reasonable accommodation in regard to the employee's conditions or privileges of employment, including failing to reinstate the employee when the need for reasonable accommodations ceases to the employee's original job or to an equivalent position with equivalent:

- i. Pay;
- ii. Accumulated seniority and retirement;
- iii. Benefits; and
- iv. Other applicable service credits;

3. Deny employment opportunities to an employee, or a job applicant, if the denial is based on the need of the employer to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding;

4. Require an employee affected by pregnancy, childbirth, related medical conditions, or breastfeeding to accept an accommodation that the employee chooses not to accept if the employee does not have a known limitation related to pregnancy, childbirth, related medical

conditions, or breastfeeding or the accommodation is not necessary for the employee to perform her duties;

5. Require an employee to take leave if a reasonable accommodation can be provided; or

6. Take adverse action against an employee who has been absent from work as a result of a pregnancy-related condition, including a pre-birth complication.

c. The Design-Builder shall post and maintain in a conspicuous place a notice of rights in both English and Spanish and provide written notice of an employee's right to a needed reasonable accommodation related to pregnancy, childbirth, related medical conditions, or breastfeeding pursuant to the PPWF Act to:

1. New employees at the commencement of employment;
2. Existing employees; and
3. An employee who notifies the employer of her pregnancy, or other condition covered by the PPWF Act, within 10 days of the notification.

d. The Design-Builder shall provide an accurate written translation of the notice of rights to any non-English or non-Spanish speaking employee.

e. Violations of the PPWF Act shall be subject to civil penalties as described in the PPWF Act.

15.27.3 UNEMPLOYED ANTI-DISCRIMINATION

a. The Design-Builder shall comply with the Unemployed Anti-Discrimination Act of 2012, D.C. Official Code § 32-1361 *et seq.* (“Anti-Discrimination Act”).

b. The Design-Builder shall not:

1. Fail or refuse to consider for employment, or fail or refuse to hire, an individual as an employee because of the individual's status as unemployed; or
2. Publish, in print, on the Internet, or in any other medium, an advertisement or announcement for any vacancy in a job for employment that includes:
 - i. Any provision stating or indicating that an individual's status as unemployed disqualifies the individual for the job; or
 - ii. Any provision stating or indicating that an employment agency will not consider or hire an individual for employment based on that individual's status as unemployed.

c. Violations of the Unemployed Anti-Discrimination Act shall be subject to civil penalties as described in the Anti-Discrimination Act.

Section 15.28 ASSIGNMENT OF CONTRACT PAYMENTS

a. Subject to this **Section 15.28**, in accordance with Title 27 DCMR Section 3250, the Design-Builder may assign due or to become due as a result of the performance of this Design-Builder to a bank, trust company, or other financing institution funds.

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

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

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

Section 15.29 FREEDOM OF INFORMATION ACT (“FOIA”)

The District of Columbia Freedom of Information Act, at *D.C. Official Code § 2-532 (a-3)*, requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Design-Builder receives a request for such information, the Design-Builder shall immediately send the request to the PM designated in **Exhibit I** of this Agreement who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Design-Builder pursuant to the Contract, the PM will forward a copy to the Design-Builder. In either event, the Design-Builder is required by law to provide all responsive records to the PM within the timeframe designated by the PM. The FOIA Officer for the agency with programmatic responsibility will determine the releasability of the records. The District will reimburse the Design-Builder for the costs of searching and copying the records in accordance with *D.C. Official Code §2-532* and Chapter 4 of Title 1 of the *D.C. Municipal Regulations*.

Section 15.30 CAMPAIGN FINANCE REFORM ACT

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

Article 16 TERMINATION OR SUSPENSION

Section 16.1 All terminations or suspensions arising out of or under this Agreement shall be in accordance with the terms of the Standard Contract Provisions (Construction Contracts and Architectural/Engineering Services Contracts).

Section 16.2 Failure to Agree Upon GMP.

The Department shall have the right to terminate this Agreement in the event that the Department and the Design-Builder 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 Design-Builder'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 16.3 Termination for Default.

The Department may terminate the Agreement for default if the Design-Builder 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 Design-Builder 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 Design-Builder 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
3. The Department reasonably determines that the Design-Builder has abandoned the Work, or has failed to pay laborers, mechanics, materialmen, Subcontractors or suppliers when payment is due; or
4. The Design-Builder 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 Design-Builder has a receiver appointed, or files for dissolution or otherwise is dissolved; or

5. The Design-Builder fails to pay its debts in a timely manner or becomes insolvent, the Department reasonably determines that the Design-Builder does not have the financial ability to carry out its obligations under the Agreement and the Design-Builder fails to give the Department prompt and reasonable assurances of its ability to perform.

Section 16.3.2 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 16.4 Termination for Convenience.

The Department may, upon seven (7) calendar days written notice to the Design-Builder, terminate the Contract in whole or specified part, for its convenience, for any reason whether the Design-Builder is in breach of contract or not. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions. The termination for convenience that arises out of or under this Agreement shall be in accordance with the terms of the Standard Contract Provisions.

Section 16.5 Continued Responsibility After Termination.

If the Design-Builder is terminated, for default, for Convenience or otherwise, the Design-Builder shall remain responsible for defects or non-conformities in all Work performed to the date of the termination.

Article 17 OTHER CONDITIONS AND SERVICES

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

Article 18 CHANGES IN THE WORK

Section 18.1 Changes Authorized.

In accordance with the Standard Contract Provisions (Construction Contracts), 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 Design-Builder via written Change Directive or Change Order.

Section 18.2 Executed Change Directive/Change Order Required.

Only a written Change Directive or Change Order, executed by the Department, may make changes to the Agreement. In particular, but without limitation, a written Change Directive or Change Order executed by the Department is the only means by which changes may be made to the Substantial or Final Completion Dates, the Design-Build Fee, or the GMP.

Section 18.3 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 Design-Builder a written Change Directive, either directing the Design-Builder 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 Design-Builder believes that Substantial or Final Completion Dates and/or the GMP should be adjusted to take the Change Order or Change Directive into account.
2. Within ten (10) days of receiving a Change Directive, the Design-Builder 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 GMP 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 GMP 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 Design-Builder 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 GMP shall be limited to increased Cost of the Work due to the Change Directive. The Design-Builder is not entitled to any markup on any kind of Change Orders except as authorized in Section 18.8, and if so authorized, any mark-up shall be in accordance with Section 18.11.

3. If the Department has not yet directed the Design-Builder 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 Design-Builder to proceed, the Design-Builder shall immediately proceed with the changed Work and, the Department and the Design-Builder shall use their good faith best efforts to reach an agreement upon the modifications to the Substantial or Final Completion Dates, and/or the GMP that are justified by the Change Directive. If the Department and the Design-Builder reach agreement, the agreement shall be set forth in a Change Order and the Design-Builder 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 Design-Builder's detailed statement pursuant to Section 18.3.2, and such other documentation as the Department may request, the Design-Builder 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 Design-Builder such adjustments, if any, to the Substantial or Final Completion Dates, the GMP, and/or the Preconstruction or Design-Build Fee as the Department has judged to be appropriate.

Section 18.4 Notice of Change Event.

The Design-Builder must give the Department written notice of any Change Event within ten (10) calendar days of the date on which the Design-Builder 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 Design-Builder 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 GMP arising from the Change Event and, if the notice is not given within the required time, the Design-Builder will have waived the right to any adjustment to the Substantial or Final Completion Dates, or the GMP arising from the Change Event.

Section 18.5 Detailed Change Request.

Within twenty (20) days after giving notice of a Change Event, the Design-Builder 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 GMP as a result of the Change Event. The Change Request shall include the same information as described in Section 18.3 with respect to any Agreement changes the Design-Builder seeks due to the Change Event, and the amount of any requested adjustment to the GMP shall be limited in accordance with that Section 18.3.

Section 18.6 Changes to GMP.

Subject to the condition precedent that the Design-Builder have complied with the notice and documentation provisions of this Article, and subject to the limitations stated in this Agreement, the Design-Builder is entitled to an adjustment to the GMP in the following cases:

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

Section 18.7 Deductive Change Orders.

The Department reserves the right to issue deductive Change Orders (reducing the GMP 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 18.8 No Adjustments to Fee.

The Design-Builder understands and agrees that the Design-Build Fee shall not be increased or decreased as a result of any Change Orders or Change Directive. In furtherance of this understanding, the Design-Builder agrees that it shall not be entitled to an increase in the Lump Sum General Conditions Cost, or the Design-Build Fee by virtue of changes authorized by the Department unless such changes fall outside the general scope of work contemplated by this Agreement. The term general scope of work shall mean a state-of-the-art recreation center facility that is consistent with the Department's program of requirements and incorporates sustainable design initiatives. Without limiting the generality of the foregoing, it is understood and agreed that the Design-Builder shall not be entitled to any additional fees or general conditions unless (i) the Department makes additions to the scope provided for in this Agreement that cause the GMP, either individually or in the aggregate, to increase by more than ten percent (10%); or (ii) the Department makes additions to the scope provided for herein which (other than for punchlist or warranty work) require the Design-Builder's services for the Project to extend beyond **30 days after Substantial Completion.**

Section 18.9 Executed Change Orders Final.

The Design-Builder agrees that any Change Order executed by the Department and Design-Builder constitutes its full and final adjustment for all costs, delays, disruptions, inefficiencies, accelerations, schedule impacts, or other consequences arising from the change in question, whether a Change Directive, or a Change Event, or from any claimed cumulative effect of changes made to the date of the Change Order, and that no further adjustments in compensation or time shall be sought or made with respect to the Change Directive or the Change Event giving rise to the Change Order. Although the Parties anticipate that most Change Orders will not require an adjustment to the Cost of General Conditions, if the Work described

in a Change Order requires an increase or decrease in the Lump Sum General Conditions Cost (i.e. because such a Change requires additional field staff or other equipment that would be classified as General Conditions Costs), the Change Order shall contain an increase to the Design-Build Fee adjusting such amount. The cost of processing a Change Order shall not be considered an event that will require an increase in the Lump Sum General Conditions Cost.

Section 18.10 Failure to Agree.

If the Design-Builder 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 Design-Builder shall proceed with the Work and the Department's directives, without interruption or delay, and shall make a claim as provided in Article 18 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.

Article 19 CLAIMS & DISPUTE RESOLUTION

All claims or disputes arising out of this Agreement shall be governed by the terms of the Standard Contract Provisions (Construction Contracts and Architectural and Engineering Services).

IN WITNESS WHEREOF, the Parties have executed this Agreement (DCAM-23-CS-RFP-0029) through their duly authorized representatives as of the last date written below.

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

[DESIGN-BUILDER]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Its: _____

Date: _____

Date: _____

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF GENERAL SERVICES



ATTACHMENT N

Form of Notice to Proceed and Letter Contract

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



[DATE]

[Contractor's address]

Reference: Request For Proposals No. DCAM-23-CS-RFP-0029 (“RFP”) – Design-Build Services for Upshur Recreation Center Modernization

Subject: **Notice to Proceed and Letter Contract**

Dear Mr. Ranjbar,

We refer to the proposal submitted by _____ (the “Contractor” or “Design-Builder”) 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 (“Letter Contract”) is signed by the Contractor without modification of any kind, it will serve as a notice to proceed with 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 RFP shall govern. Once the Definitized Contract is executed by an authorized Contracting Officer, this Letter Contract shall be incorporated into and merged into the Definitized Contract.
2. Scope of Work. The Contractor shall provide Design-Build Services for Upshur Recreation Center Modernization, located at 4300 Arkansas Avenue NW, Washington, DC 20011, as described in the Contractor’s Proposal dated _____ submitted in response to the subject RFP.
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 and Form of Contract 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 a disincentive fee Two Thousand and Five Hundred Dollars (\$2,500.00) plus Five Hundred Dollars (\$500.00) 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 limit of this authorization is up to **\$950,000.00** (“Not to Exceed” amount or “NTE”) including portions of the design fee, and general conditions cost, in addition to other costs as further described in the Schedule of the Values (**Exhibit A**). 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 not-to-exceed amount includes all costs incurred by the Contractor in connection with the work authorized hereby.

5. Construction Phase Compensation. The Contractor understands and agrees that the Department makes no representation or warranty that the Contractor shall be entitled to serve as the builder for the Project. If, however, the Department and the Contractor agree upon a GMP and schedule for the Project, the Contractor agrees that it shall be paid a Design-Build Fee of _____ and that the Lump Sum General Conditions Cost shall be _____ based on the schedule and budget set forth in the RFP. The Contractor further agrees to enter into a design-build agreement that is substantially similar to the Agreement for Design-Build Services issued with the RFP, subject only to such adjustments as were requested by the Contractor in its bid and which are agreed to by the Department.

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** and **Article 6** of the District of Columbia Department of General Services Standard Contract Provisions General Provisions for Construction Contracts.

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. Key Personnel. To carry out its duties, the Design-Builder shall provide at least the key personnel identified in **Exhibit F** (“Key Personnel”), who shall carry out the functions identified in **Exhibit F**. Among other things, the Key Personnel shall include:

A - Key Personnel of the Design-Builder:

- i. Project Manager
- ii. Superintendent
- iii. Project Executive

2.14.2 Identification of Key Personnel of the Design-Builder’s Architect/Engineer The following individuals shall be considered the Key Personnel of the Architect:

- i. Project Manager
- ii. Project Architect
- iii. Principal in Charge
- iv. Lead Mechanical Engineer

- v. Lead Envelope Consultant
- vi. Net Zero/LEED Consultant
- vii. Pool Consultant

It is contemplated that these Key Personnel will work from the design stage, purchasing, and throughout the bulk of the fieldwork. The Design-Builder's obligation to provide adequate staffing is not limited to providing the Key Personnel but is determined by the needs of the Project. If any of the Key Personnel become unavailable to perform services in connection with the Letter Contract due to death, disability, or separation from the employment of the Design-Builder or any affiliate of the Design-Builder, then the Design-Builder 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. Certain members of the Design-Builder's Key Personnel shall be subject to a replacement fee for their removal or reassignment by the Design-Builder.

If the Design-Builder replaces one of the key personnel listed in **Exhibit F** as being subject to a replacement fee, without the prior written consent of the Department, then the Design-Builder shall pay the Department \$25,000 for each replacement as a replacement fee and not a penalty, to reimburse the Department for its administrative costs arising from the Design-Builder'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.

10. The Design-Builder shall utilize the Department's current project management software, ProjectTeam, to submit any and all project documentation required to be provided by the Design-Builder 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) GMP and any Submissions that require approval by DC Council (viii) punch list; and (ix) other Project documents as may be designated by the Department.

Electronic storage and transmission of information via ProjectTeam system shall be compliant with the provisions of DGS document security.

11. 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.

12. 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 Shafi Anwary via shafi.anwary@dc.gov directly to obtain this number.

13. 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.

14. 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. In addition to the requirements set forth in any such subsequent authorization, prior to executing this Letter Contract, 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. In the event the Contractor fails to provide the Department with such certificates of insurance, the agreement for indemnity or bond, the Department may withhold any subsequent payment until such documents are provided.

15. Entire Agreement; Modification. This Letter Contract, along with the Standard Contract Provisions, (**Exhibit B1** – Architectural & Engineering Services and **Exhibit B2** – Construction Services) 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.

16. 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 D** in effect at the time of Letter Contract execution by the Department.

17. Service Contract Act. The Contractor agrees that the work performed under this Letter Contract shall be subject to the Service Contract Act as set forth in **Exhibit E** in effect at the time of Letter Contract execution by the Department.

18. 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 G**.

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

ISSUED BY:

ACCEPTED BY:

The Department of General Services

By: _____
Name: Obaidullah Ranjbar
Title: Contracting Officer
Date: _____

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

Exhibits

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF GENERAL SERVICES



ATTACHMENT O

Bid Guarantee Certification

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

Certification Letter for Cashier’s Check or Irrevocable Letter of Credit

Offerors who submit a cashier’s check or an irrevocable letter of credit (“Alternate Bid Security”) in lieu of a bid bond must also submit this certification, properly notarized, with their proposal. By executing this document, Offeror acknowledges that, if awarded this contract, Offeror shall be required to post promptly a payment and performance bond equal to the full value of the contract. In the event Offeror fails to post such payment and performance bond, the Offeror understands and agrees that; (i) the Department shall draw upon the Alternate Bid Security as liquidated damages; (ii) the award and or contract shall be terminated; (iii) for a period of two (2) years thereafter, the Department will not accept from such Offeror Alternate Bid Security in lieu of a bid bond; and (iv) the Offeror hereby waives the right to protest the termination of any such award or contract. The Offeror further acknowledges and agrees that the damages the Department would experience in the event such award or contract are terminated due to the Offeror’s failure to post a payment and performance bond are difficult to determine and that the value of the Alternate Bid Security represents a reasonable estimate of the damages the Department would incur.

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

District of Columbia) ss:

On the ____ day of _____, 2020, before me, a notary public in and for the District of Columbia, personally appeared _____, who acknowledged himself/herself to be _____ of _____, and that he/she as such, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires: _____

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF GENERAL SERVICES



ATTACHMENT P

Conflict of Interest Disclosure

Statement

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

CONFLICT OF INTEREST DISCLOSURE STATEMENT

Offeror's Name: _____("Offeror(s)")

Offeror's attention is directed to **Section 4705** and **Section 4707** of the Department of General Services Procurement Rules for Construction and Related Services regarding organizational conflicts of interest ("Organizational Conflicts of Interest"). Offerors are advised that certain firms will not be allowed to participate in the Project or on any Offeror's team for the Project because of their work with the Department in connection with the Project procurement.

(Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement or the RFP).

Required Disclosure of Conflicts

In the space provided below identify all relevant facts relating to past, present, or planned interest(s) of the Offeror's team (including the Offeror, principal/major participants, proposed subconsultants and proposed subcontractors, and their respective chief executives, directors, and other key personnel for the Project) which may result, or could be viewed as, an Organizational Conflict of Interest in connection with the RFP.

Offeror should disclose: (a) any current contractual relationships with the Department, (b) any past, present, or planned contractual or employment relationships with any officer or employee of Department, and (c) any other circumstances that might be considered to create a financial interest in the Agreement by any Department member, officer or employee if Offeror is awarded the Contract. Offeror should also disclose matters such as having directors in common with any of the individuals or entities involved in preparing the RFP. Offeror should also disclose contractual relationships (i.e. Joint Ventures) with any of the individuals or entities involved in preparing the RFP, as well as relationships wherein such individual or entity is a contractor or consultant (or subcontractor or subconsultant) to Offeror or a member of Offeror's team. The foregoing is provided by way of example, and shall not constitute a limitation on the disclosure obligations.

Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Signature

Name

Title

Company Name

_____, 2022

Date

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF GENERAL SERVICES



ATTACHMENT Q

Release of Lien Forms

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



RELEASE OF LIEN

Project Name:

Contract No.:

Task Order No.:

Work Performed:

Contract Date:

Contract Amount:

Date:

Release of Liens:

The undersigned (insert Consultant/Contractor), has been paid partial payments totaling the sum of (insert net amounts), which is _____% of the current contract value, in accordance with the contract terms for the above referenced project, and hereby indemnifies, waives, releases and holds the District of Columbia harmless for the above referenced project, including all claims, right to liens, and stop work notices upon said premises or the improvements thereon under the statutes of the jurisdiction in which the project is located.

In consideration of this payment due in the net amount of insert net amount due, in accordance with contract terms for the above referenced project. Hereby indemnifies, waives, and releases the District of Columbia for the above referenced project. All claims, right to liens, stop work notices upon said premises or the improvements thereon under the statutes of the jurisdiction in which the project is located.

The undersigned further represents and warrants, as of this date, that he/she is duly authorized to sign and execute this Release of Liens on behalf of (insert Consultant/Contractor); that (insert Consultant/Contractor) has properly performed all work in accordance with the Contract Documents and that all consultants, subcontractors or material men have been paid for all labor, including fringe benefits, workers compensation, materials, equipment, services, taxes, insurance premiums, and bonds (if required), and that any materials supplied to or incorporated in this project were taken from fully paid or open stock with any exceptions noted below.

This letter must be signed and notarized below by authorized individuals.

Insert Consultants /Contractors name: _____

By: _____

Print Name: _____

Title: _____ Date: _____

DISTRICT OF COLUMBIA) ss

I, a Notary Public in and for the District of Columbia, hereby certify that, on this ____ day of _____, 20____, personally appeared before me _____, known to me (or satisfactorily proven) to be the person who executed the foregoing Final Release of Liens and Claims, as of (insert Consultant/Contactor name) who acknowledged having done so for the purposes therein contained.

IN WITNESS WHEREOF, I have set my hand and official seal.

Notary Public, D.C.

My commission expires: _____

[NOTARIAL SEAL]

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



FINAL RELEASE OF LIENS AND CLAIMS

Project Name:

Contract No.:

Task Order No.:

Work Performed:

Contract Date:

Contract Amount:

Date:

Final Release of Liens and Claims:

The undersigned (insert Consultant/Contractor name), in consideration of payments received and upon receipt of the amount of a final payment of \$ _____ hereby indemnifies, waives, releases, and holds the District of Columbia harmless for the above referenced project, including all claims, right to liens, terminations, and stop notices upon said premises or the improvements thereon under the statutes of the jurisdiction in which the project is located.

The undersigned further represents and warrants, as of this date, that he/she is duly authorized to sign and execute this Release of Final Liens and Claims on behalf of (insert Consultant /Contractor; that (insert Consultant /Contractor) has properly performed all work and furnished all materials of the specified quality in accordance with all contract documents in an acceptable workmanlike manner to the Department of General Services/Construction Division, District of Columbia and that (insert Consultant /Contractor) has paid for all labor, including fringe benefits and workers compensation, all materials, equipment, services, taxes, insurance premiums, and bonds (if required) and that any materials supplied to or incorporated in this project have been paid.

(Insert Consultant/Contractor) is executing this Final Release of Liens and Claims for the express purpose of inducing the District to make final disbursement and payment to (insert Consultant/Contractor name) of \$_____.

This letter must be signed and notarized below by authorized individuals.

Insert Consultants /Contractors name: _____

By: _____

Print Name: _____

Title: _____ Date: _____

DISTRICT OF COLUMBIA) ss

I, a Notary Public in and for the District of Columbia, hereby certify that, on this ____ day of _____, 20____, personally appeared before me _____, known to me (or satisfactorily proven) to be the person who executed the foregoing Final Release of Liens and Claims, as of (insert Consultant/Contactor name) who acknowledged having done so for the purposes therein contained.

IN WITNESS WHEREOF, I have set my hand and official seal.

Notary Public, D.C.

My commission expires: _____

[NOTARIAL SEAL]

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF GENERAL SERVICES



ATTACHMENT R

Equal Employment Opportunity

("EEO") Policy Statement

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

CONTRACTOR'S LETTERHEAD

EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY STATEMENT

_____ SHALL NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT BECAUSE OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS.

_____ AGREES TO AFFIRMATIVE ACTION TO ENSURE THAT APPLICANTS ARE EMPLOYED, AND THAT EMPLOYEES ARE TREATED DURING EMPLOYMENT WITHOUT REGARD TO THEIR ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. THE AFFIRMATIVE ACTION SHALL INCLUDE, BUT NOT BE LIMITED TO THE FOLLOWING: (A) EMPLOYMENT, UPGRADING, OR TRANSFER; (B) RECRUITMENT OR RECRUITMENT ADVERTISING; (C) DEMOTION, LAYOFF, OR TERMINATION; (D) RATES OF PAY, OR OTHER FORMS OR COMPENSATION; AND (E) SELECTION FOR TRAINING AND APPRENTICESHIP.

_____ AGREES TO POST IN CONSPICUOUS PLACES THE PROVISIONS CONCERNING NON-DISCRIMINATION AND AFFIRMATIVE ACTION.

_____ SHALL STATE THAT ALL QUALIFIED APPLICANTS WILL RECEIVE CONSIDERATION FOR EMPLOYMENT PURSUANT TO SUBSECTION 1103.2 THROUGH 1103.10 OF MAYOR'S ORDER 85-85; "EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS IN CONTRACTS."

_____ AGREES TO PERMIT ACCESS TO ALL BOOKS PERTAINING TO ITS EMPLOYMENT PRACTICES, AND TO REQUIRE EACH SUBCONTRACTOR TO PERMIT ACCESS TO BOOKS AND RECORDS.

_____ AGREES TO COMPLY WITH ALL GUIDELINES FOR EQUAL EMPLOYMENT OPPORTUNITY APPLICABLE IN THE DISTRICT OF COLUMBIA.

_____ SHALL INCLUDE IN EVERY SUBCONTRACT THE EQUAL OPPORTUNITY CLAUSES, SUBSECTION 1103.2 THROUGH 1103.10 SO THAT SUCH PROVISIONS SHALL BE BINDING UPON EACH SUBCONTRACTOR OR VENDOR.

AUTHORIZED OFFICIAL AND TITLE

DATE

AUTHORIZED SIGNATURE NAME

FIRM/ORGANIZATION

CONTRACTOR'S LETTERHEAD

ASSURANCE OF COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS MAYOR'S ORDER 85-85, EFFECTIVE JUNE 10, 1985, AND THE RULES IMPLEMENTING MAYORS ORDER 85-85, 33 DCR 4952, (PUBLISHED AUGUST 15, 1986), "ON COMPLIANCE WITH EQUAL OPPORTUNITY REQUIREMENTS IN DISTRICT GOVERNMENT CONTRACTS," ARE HEREBY INCLUDED AS PART OF THIS BID/PROPOSAL. THEREFORE, EACH BIDDER/OFFEROR SHALL INDICATE BELOW THEIR WRITTEN COMMITMENT TO ASSURE COMPLIANCE WITH MAYOR'S ORDER 85-85 AND THE IMPLEMENTING RULES. FAILURE TO COMPLY WITH THE SUBJECT MAYOR'S ORDER AND THE IMPLEMENTING RULES SHALL RESULT IN REJECTION OF THE RESPECTIVE BID/PROPOSAL.

I, _____, THE AUTHORIZED REPRESENTATIVE OF _____, HEREINAFTER REFERRED TO AS "THE CONTRACTOR," CERTIFY THT THE CONTRATOR IS FULLY AWARE OF ALL OF THE PROVISIONS OF MAYOR'S ORDER 85-85, EFFECTIVE JUNE 10, 1985, AND OF THE RULES IMPLEMENTING MAYOR'S ORDER 85-85, 33 DCR 4952. I FURTHER CERTIFY AND ASSURE THAT THE CONTRACTOR WILL FULLY COMPLY WITH ALL APPLICABLE PROVISIONS OF THE MAYOR'S ORDER AND IMPLEMENTING RULES IF AWARDED THE D.C. GOVERNMENT REFERENCED BY THE CONTRACT NUMBER ENTERED BELOW. FURTHER, THE CONTRACTOR ACKNOWLEDGES AND UNDERSTANDS THAT THE AWARD OF SAID CONTRACT AND ITS CONTINUATION ARE SPECIFICALLY CONDITIONED UPON THE CONTRACTOR'S COMPLIANCE WITH THE ABOVE-CITED ORDER AND RULES.

CONTRACTOR

NAME

SIGNATURE

TITLE

CONTRACT NUMBER

DATE

EQUAL EMPLOYMENT OPPORTUNITY EMPLOYER INFORMATION REPORT

| | | | | | |
|--|--|--|--------------------------|-----------------------------|-----|
| GOVERNMENT OF THE DISTRICT OF COLUMBIA DC Office of Contracting and Procurement Employer Information Report (EEO) | Reply to: Office of Contracting and Procurement 441 4th Street, NW, Suite 700 South Washington, DC 20001 Washington, DC 20001 | | | | |
| Instructions: Two (2) copies of DAS 84-404 or Federal Form EEO-1 shall be submitted to the Office of Contracting and Procurement. One copy shall be retained by the Contractor. | | | | | |
| Section A – TYPE OF REPORT | | | | | |
| 1. Indicate by marking in the appropriate box the type of reporting unit for which this copy of the form is submitted (MARK ONLY ONE BOX) | | | | | |
| Single Establishment Employer (1) <input type="checkbox"/> Single-establishment Employer Report | Multi-establishment Employer: (2) <input type="checkbox"/> Consolidated Report (3) <input type="checkbox"/> Headquarters Report (4) <input type="checkbox"/> Individual Establishment Report (submit one for each establishment with 25 or more employees) (5) <input type="checkbox"/> Special Report | | | | |
| 1. Total number of reports being filed by this Company. _____ | | | | | |
| Section B – COMPANY IDENTIFICATION (To be answered by all employers) OFFICIAL | | | | | |
| OFFICIAL USE ONLY | | | | | |
| 1. Name of Company which owns or controls the establishment for which this report is filed | | | | | |
| a. | | | | | |
| Address (Number and street) | City or Town | Country | State | Zip Code | b. |
| b. Employer Identification No. | | | | | |
| 2. Establishment for which this report is filed. | | OFFICIAL USE ONLY | | | |
| a. Name of establishment | | c. | | | |
| Address (Number and street) | City or Town | Country | State | Zip Code | d. |
| b. Employer Identification No. | | | | | |
| 3. Parent of affiliated Company | | OFFICIAL USE ONLY | | | |
| a. Name of parent or affiliated Company | b. Employer Identification No. | | | | |
| Address (Number and street) | City or Town | Country | State | Zip Code | |
| Section C - ESTABLISHMENT INFORMATION | | | | | |
| 1. Is the location of the establishment the same as that reported last year? | | 2. Is the major business activity at this establishment the same as that reported last year? | | OFFICIAL USE ONLY | |
| Yes | No | Did not report last year | Report on combined basis | as that reported last year? | Yes |
| | | No report last year | Reported on combined | | |
| basis | | | | | |
| 2. What is the major activity of this establishment? (Be specific, i.e., manufacturing steel castings, retail grocer, wholesale plumbing supplies, title insurance, etc. Include the specific type of product or service provided, as well as the principal business or industrial activity. | | | | | e. |
| 3. MINORITY GROUP MEMBERS: Indicate if you are a minority business enterprise (50% owned or 51% controlled by minority members). | | | | | |
| Yes | | No | | | |

SECTION D – EMPLOYMENT DATA

Employment at this establishment – Report all permanent, temporary, or part-time employees including apprentices and on-the-job trainees unless specifically excluded as set forth in the instructions. Enter the appropriate figures on all lines and in all columns. Blank spaces will be considered as zero. *In columns 1, 2, and 3, include ALL employees in the establishment Including those in minority groups*

| JOB CATEGORIES | TOTAL EMPLOYEES IN ESTABLISHMENT | | | MINORITY GROUP EMPLOYEES | | | | | | | | |
|---|--|-------------------------------------|---------------------------------------|--------------------------|-----------|---|--------------|------------------|-----------|----------------------|---------------|------|
| | Total Employees Including Minorities (1) | Total Male Including Minorities (2) | Total Female Including Minorities (3) | MALE | | | | FEMALE | | | | |
| | | | | Black (4) | Asian (5) | American Indian (6) | Hispanic (7) | Black (8) | Asian (9) | American Indian (10) | Hispanic (11) | |
| Officials and Managers | | | | | | | | | | | | |
| Professionals | | | | | | | | | | | | |
| Technicians | | | | | | | | | | | | |
| Sales Workers | | | | | | | | | | | | |
| Office and Clerical | | | | | | | | | | | | |
| Craftsman (Skilled) | | | | | | | | | | | | |
| Operative (Semi-Skilled) | | | | | | | | | | | | |
| Laborers (Unskilled) | | | | | | | | | | | | |
| Service Workers | | | | | | | | | | | | |
| TOTAL | | | | | | | | | | | | |
| Total employ reported in previous report | | | | | | | | | | | | |
| (The trainee below should also be included in the figures for the appropriate occupation categories above) | | | | | | | | | | | | |
| Formal On-The-Job Trainee | White collar | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) |
| | Production | | | | | | | | | | | |
| 1. How was information as to race or ethnic group in Section D obtained? a. Visual Survey c. Other Specify _____ b. Employment Record _____ | | | | | | 2. Dates of payroll period used _____ 3. Pay period of last report submitted for this establishment. _____ | | | | | | |
| Section E – REMARKS Use this Item to give any identification data appearing on last report which differs from that given above, explain major changes in composition or reporting units, and other pertinent information. | | | | | | | | | | | | |
| Section F - CERTIFICATION | | | | | | | | | | | | |
| Check 1. > All reports are accurate and were prepared in accordance with the instructions (check on consolidated only) One 2. > This report is accurate and was prepared in accordance with the instructions. | | | | | | | | | | | | |
| Name of Authorized Official | | | Title | | | Signature | | | Date | | | |
| Name of person contact regarding This report (Type of print) | | | Address (Number and street) | | | | | | | | | |
| Title | | | City and State | | | Zip Code | | Telephone Number | | Extension | | |

INFORMATION CITED HEREIN SHALL BE HELD IN CONFIDENCE.

SOLICITATION NO: _____

PROJECTED GOALS AND TIMETABLES FOR FUTURE HIRING

| MINORITY GROUP EMPLOYEES GOALS | | | | | TIMETABLES | | | | |
|---|-------|-------|-----------------|----------|------------|---------------|-----------------|----------|--|
| JOB CATEGORIES | MALE | | | | FEMALE | | | | |
| | Black | Asian | American Indian | Hispanic | Black | Asian | American Indian | Hispanic | |
| Officials and Managers | | | | | | | | | |
| Professionals | | | | | | | | | |
| Technicians | | | | | | | | | |
| Sales Workers | | | | | | | | | |
| Office and Clerical | | | | | | | | | |
| Craftsman (Skilled) | | | | | | | | | |
| Operative (Semi-Skilled) | | | | | | | | | |
| Laborers (Unskilled) | | | | | | | | | |
| Service Workers | | | | | | | | | |
| TOTAL | | | | | | | | | |
| NAME OF AUTHORIZED OFFICIAL: | | | | TITLE: | | | SIGNATURE: | | |
| FIRM NAME: | | | | | | TELEPHONE NO: | | DATE: | |
| INDICATE IF THE PRIME UTILIZES A "MINORITY FINANCIAL INSTITUTION" _____ Yes _____ No NAME: ADDRESS: TYPE OF ACCOUNT/S: | | | | | | | | | |

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF GENERAL SERVICES



ATTACHMENT S

Certification to Furnish Performance

and Payment Bonds

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



Certification to Furnish Performance & Payment Bond

Dear Sir/Madam:

By virtue of this notice, _____ hereby certify, that we will furnish the required Performance & Payment Bond in the amount of the submitted bid or a maximum of _____ dollars if _____ (General Contractor) is successfully awarded the contract for the _____.

This required Bond shall be furnished in compliance with the stipulations of the contract document. This guarantee shall remain valid and irrevocable for a period of one hundred and twenty (120) days from the date of bid submission.

IN WITNESS WHEREOF, we have hereunto set our hands with the intent to be legally binding.

Name of agent: _____

Address of agent: _____

Contact Phone: _____ Email: _____

Type or Print Name

Signature

PLEASE NOTE: The person affixing his/her signature herein MUST be authorized to sign for the company.

Sworn to before me this _____ day of _____ 20_____

Notary Public

My commission expires

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF GENERAL SERVICES



ATTACHMENT T

Payment and Performance Bonds

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

| | |
|---|--|
| PERFORMANCE BOND (CONSTRUCTION) (See Instructions on Reverse) | Date Bond Executed (Must be same or later than date of Contract) |
|---|--|

| | |
|---|--|
| PRINCIPAL (Legal Name and Address) | TYPE OF ORGANIZATION ("X") <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION STATE OF INCORPORATION |
|---|--|

| | | | | | | | | | |
|--|--|-----------------|-------------|------------|-------|---------------|--|-----------------|--|
| SURETY(IES) (Name(s) and Address(es)) | PENAL SUM OF BOND | | | | | | | | |
| | <table border="1" style="width:100%; border-collapse: collapse; text-align: center;"> <tr> <td style="width:25%;">MILLION(S)</td> <td style="width:25%;">THOUSAND(S)</td> <td style="width:25%;">HUNDRED(S)</td> <td style="width:25%;">CENTS</td> </tr> <tr> <td colspan="2">CONTRACT DATE</td> <td colspan="2">CONTRACT NUMBER</td> </tr> </table> | MILLION(S) | THOUSAND(S) | HUNDRED(S) | CENTS | CONTRACT DATE | | CONTRACT NUMBER | |
| MILLION(S) | THOUSAND(S) | HUNDRED(S) | CENTS | | | | | | |
| CONTRACT DATE | | CONTRACT NUMBER | | | | | | | |

KNOW ALL MEN BY THESE PRESENTS. That we, the Principal and Surety(ies) hereto are firmly bounds to the District of Columbia Government, a municipal corporation, hereinafter called the District, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, and successors, bind ourselves in such sum "jointly" and "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into the Contract identified above.

NOW THEREFORE, if the Principal shall well and truly perform and fulfill all undertakings, covenants, terms and condition, and agreements of the Contract during the original term of the Contract and any extension thereof that may be granted by the District with or without notice to the Surety, and during the life of guaranty required under the Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any duly authorized modifications of the Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, and shall save harmless and indemnify the District from any and all claims, delays, suits, costs, charges, damages, counsel fees, judgments and decrees to which the District may be subjected at any time on account of any infringement by the Principal of letters, patents, or copyrights, unless otherwise specifically stipulated in the Contract or on account of any injury to persons or damage to property or premises that occur as a result of any act or omission of Principal in connection with the prosecution of the work under the Contract and shall pay the same, then the above obligation shall be void; otherwise to remain in full force and virtue.

IN WITNESS WEHREOF, the Principal and Surety(ies) have executed this performance bond and have affixed their seals on the date set forth above.

| | | |
|----------------------------|----------------------|----------------|
| PRINCIPAL | | |
| 1. Signature (Seal) | 1. Attest | Corporate Seal |
| Name & Title (typed) | Name & Title (typed) | |
| 2. Signature (Seal) | 2. Attest | Corporate Seal |
| Name & Title (typed) | | |

SURETY (IES)

| | | | |
|-------------------------------|------------------------|-----------------|----------------|
| 1. Name & Address (typed) | State of Inc. | Liability Limit | Corporate Seal |
| Signature of Attorney-in-Fact | Attest (Signature) | | |
| Name & Address (typed) | Name & Address (typed) | | |
| 1. Name & Address (typed) | State of Inc. | Liability Limit | Corporate Seal |
| Signature of Attorney-in-Fact | Attest (Signature) | | |
| Name & Address (typed) | Name & Address (typed) | | |

BOND PREMIUM

| | | |
|-------------------|---------------|--|
| Rate Per Thousand | Total Premium | Name & Address of Agency or Agent Receiving Commission |
|-------------------|---------------|--|

INSTRUCTIONS

1. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of this form. The bond shall be signed by the authorized person signing the Contract. When such person signing is other than the President or Vice-President of a corporation, evidence of authority shall be furnished. Such evidence shall be in the form of either an Extract of Minutes of a meeting of the Board of Directors, or Extract of Bylaws, certified by the Corporate Secretary, or Assistant Secretary and with Corporate Seal affixed thereto.
2. Corporations executing the bond as sureties shall be among those appearing on the U.S. Treasury Department's list of approved sureties and shall be acting within the limitations set forth therein, and shall also be licensed by the Insurance Administration, Department of Consumer and Regulatory Affairs, to do business in the District of Columbia. The surety shall (1) insert on the bond form the name and addresses of the agency receiving the commission; and (2) attach an adequate Power-of-Attorney for each representative signing the bond.
3. Corporations executing the bond shall affix their Corporate Seals. Individuals shall sign full first name, middle initial and last name opposite the word "seal"; two witnesses shall sign and include their addresses, under the word "witness". If executed in Maine or New Hampshire, an adhesive seal shall be affixed.
4. The name of each person signing this performance bond shall be typed in the space provided.

| | | | | |
|---|--|--|-----------------|-------|
| PAYMENT BOND (CONSTRUCTION) (See Instructions on Reverse) | | Date Bond Executed (Must be same or later than date of Contract) | | |
| PRINCIPAL (Legal Name and Address) | TYPE OF ORGANIZATION ("x") | | | |
| | <input type="checkbox"/> INDIVIDUAL | <input type="checkbox"/> PARTNERSHIP | | |
| | <input type="checkbox"/> JOINT VENTURE | <input type="checkbox"/> CORPORATION | | |
| | STATE OF INCORPORATION | | | |
| SURETY (IES) (Name(s) and Address(es)) | PENAL SUM OF BOND | | | |
| | | THOUSAND(S) | HUNDRED(S) | CENTS |
| | CONTRACT DATE | | CONTRACT NUMBER | |
| <p>KNOW ALL MEN BY THESE PRESENTS. That we, the Principal and Surety(ies) hereto are firmly bounds to the District of Columbia Government, a municipal corporation, hereinafter called the District, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, and successors, bind ourselves in such sum "jointly" and "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.</p> <p>THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal entered into the Contract identified above.</p> <p>NOW THEREFORE, if the Principal shall well and truly perform and fulfill all undertakings, covenants, terms and condition, and agreements of the Contract during the original term of the Contract and any extension thereof that may be granted by the District with or without notice to the Surety, and during the life of guaranty required under the Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any duly authorized modifications of the Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, and shall save harmless and indemnify the District from any and all claims, delays, suits, costs, charges, damages, counsel fees, judgments and decrees to which the District may be subjected at any time on account of any infringement by the Principal of letters, patents, or copyrights, unless otherwise specifically stipulated in the Contract or on account of any injury to persons or damage to property or premises that occur as a result of any act or omission of Principal in connection with the prosecution of the work under the Contract and shall pay the same, then the above obligation shall be void; otherwise to remain in full force and virtue.</p> <p>IN WITNESS WEHREOF, the Principal and Surety (ies) have executed this payment bond and have affixed their seals on the date set forth above.</p> | | | | |
| PRINCIPAL | | | | |
| 1. Signature (Seal) | 1. Attest | | Corporate Seal | |
| Name & Title (typed) | Name & Title (typed) | | | |
| 2. Signature (Seal) | 2. Attest | | Corporate Seal | |
| Name & Title (typed) | | | | |

SURETY (IES)

| | | | |
|-------------------------------|------------------------|-----------------|----------------|
| 1. Name & Address (typed) | State of Inc. | Liability Limit | Corporate Seal |
| Signature of Attorney-in-Fact | Attest (Signature) | | |
| Name & Address (typed) | Name & Address (typed) | | |
| 1. Name & Address (typed) | State of Inc. | Liability Limit | Corporate Seal |
| Signature of Attorney-in-Fact | Attest (Signature) | | |
| Name & Address (typed) | Name & Address (typed) | | |

BOND PREMIUM

| | | |
|-------------------|---------------|--|
| Rate Per Thousand | Total Premium | Name & Address of Agency or Agent Receiving Commission |
|-------------------|---------------|--|

INSTRUCTIONS

1. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of this form. The bond shall be signed by the authorized person signing the Contract. When such person signing is other than the President or Vice-President of a corporation, evidence of authority shall be furnished. Such evidence shall be in the form of either an Extract of Minutes of a meeting of the Board of Directors, or Extract of Bylaws, certified by the Corporate Secretary, or Assistant Secretary and with Corporate Seal affixed thereto.
2. Corporations executing the bond as sureties shall be among those appearing on the U.S. Treasury Department's list of approved sureties and shall be acting within the limitations set forth therein, and shall also be licensed by the Insurance Administration, Department of Consumer and Regulatory Affairs, to do business in the District of Columbia. The surety shall (1) insert on the bond form the name and addresses of the agency receiving the commission; and (2) attach an adequate Power-of-Attorney for each representative signing the bond.
3. Corporations executing the bond shall affix their Corporate Seals. Individuals shall sign full first name, middle initial and last name opposite the word "seal"; two witnesses shall sign and include their addresses, under the word "witness". If executed in Maine or New Hampshire, an adhesive seal shall be affixed.
4. The name of each person signing this payment bond shall be typed in the space provided.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF GENERAL SERVICES



ATTACHMENT U

DGS Project Turnover Manual

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

GOVERNMENT OF THE
DISTRICT OF COLUMBIA



BUILD ***
MAINTAIN
SUSTAIN

Projects Turnover Protocol

Prepared by Capital Construction Division



2016



Revision 1.1 July 17, 2017 (Pages 18 & 19 added)
Revision 1.2 Feb. 05, 2018 (FTM changed)
Revision 1.3 Mar. 10, 2020 (Logo changed)

1. INTRODUCTION:

The Turnover Protocol is the process for transfer of a construction project from the Capital Construction Division (Construction) to the Facilities & Maintenance Division (Facilities) of the District of Columbia's Department of General Services (DGS).

The following Step by Step Procedures, and associated documents, provide the process to:

- a) Allow Facilities input into the design process,
- b) Provide Facilities with prior knowledge of upcoming revisions and additions to their portfolio, and
- c) Facilitate timely transfer of the documents required by Facilities to adequately maintain the facility, immediately the project is turned over to them.

The process also allows for the collection of project documents required to be placed in DGS archiving system for future use and reference.

The two principal contacts for the Turnover Protocol are currently:

Construction Turnover Manager (CTM):

Robbie Stewart
robbie.stewart@dc.gov
202-481-3440 (office)
202-735-6857 (cell)

Facilities Turnover Manager: (FTM)

Vaughn Wallace
vaughn.wallace@dc.gov

2. STEP BY STEP PROCEDURE

The following step by step procedure should be followed as described in the “Description” column using the forms and documents noted in the “Documents” column, copies of which are attached. If you are unclear as to the intent of any of the steps, or how to process the information, please contact the Construction Turnover Manager noted in the introduction section above.

TURNOVER PROTOCOL - STEP BY STEP PROCEDURE

| STEP | TITLE | DESCRIPTION | TURNOVER DOCUMENTS |
|---------------------------|---|--|---|
| DESIGN PHASE | | | |
| 1 | Invite Construction Turnover Manager to Design Kickoff Meeting. | PM shall invite Turnover Managers to the Design Kick-Off Meeting to familiarize themselves with the anticipated scope and schedule. FTM will provide lessons learned from previous projects, any preferences regarding the building systems and institutional knowledge of the facility. CTM will advise on latest Division 1 specifications to be used for project. Project Manager (PM) will advise the Turnover Managers of the anticipated document review schedule. | Lessons Learned & Recommendations (Provided by Facilities, Agency Dependent). |
| 2 | Opportunity to review A/E submittals- Schematic Documents. | PM will provide CTM with an electronic copy of Schematic Design Documents for distribution to appropriate Facilities staff for review and comment. (not more than ten working days review time). CTM will collate and provide comment to PM. Turnover Managers shall be invited to the design review meeting. | Review Comment Form |
| 3 | Opportunity to review A/E submittals- Design Development Documents. | PM will provide CTM with an electronic copy of Design Development Documents for distribution to appropriate Facilities staff for review and comment. (not more than ten working days review time). PM will also provide a response to the previous comments. CTM will collate and provide comments to PM. Turnover Managers shall be invited to the design review meeting. | Review Comment Form |
| 4 | Opportunity to review A/E submittals- Construction Documents. | PM will provide CTM with an electronic copy of proposed Construction Documents for distribution to appropriate Facilities staff for review and comment. (not more than ten working days). PM will also provide a response to the previous comments. CTM will collate and provide comment to PM. Turnover Managers shall be invited to the design review meeting. | Review Comment Form |
| CONSTRUCTION PHASE | | | |
| 5 | Construction Kickoff meeting. | PM shall invite Turnover Managers to the Construction Kick-Off Meeting. FTM shall be provided with a copy of the contract drawings, specifications and construction schedule. Turnover Managers shall be made aware of the Progress Meeting schedule. | |

TURNOVER PROTOCOL - STEP BY STEP PROCEDURE

| STEP | TITLE | DESCRIPTION | TURNOVER DOCUMENTS |
|------|---|--|--|
| 6 | Pre Close-In Walkthrough. | At appropriate times during construction, Project Manager shall invite Turnover Managers to a walkthrough of the project. This will allow Facilities staff to observe and familiarize themselves with the as-built condition of building systems, prior to close-in, and comment on any noted concerns. Client agency staff should also be invited to these walk-throughs. | |
| 7 | Notify Turnover Managers of Commissioning Schedule. | Once active commissioning is scheduled FTM & CTM shall be advised. This will allow Facilities to observe the commissioning, to the extent they determine applicable, based on the systems involved in the project. PM should provide the completed Equipment List at this time. | Equipment List |
| 8 | Schedule Closeout Conference | PM and contractor shall schedule Project Closeout Conference with sufficient time to prepare for requesting Substantial Completion. (see specification section 013100) CTM shall provide the Turnover Checklist and discuss the items applicable to the project. | Turnover Checklist Base |
| 9 | Schedule Training Sessions. | Contractor and PM, in coordination with Turnover Managers, shall schedule the training sessions required by the contract documents. Provide Turnover Managers with a minimum of five working days notice (10 preferred) to allow Facilities to schedule the correct personnel. Record all training sessions in accordance with specification section 017900. | |
| 10 | Pre-Substantial Completion Walkthrough. | PM shall invite the FTM to the inspection. (Following the contractors written request for Substantial Completion in accordance with specification section 017700) | Request for Substantial Completion Letter |
| 11 | Process Certificate of Substantial Completion. | PM shall review the documents provided by the Contractor, mark up the Pre-Substantial Completion Section of Turnover Checklist and provide to CTM for verification. PM and CTM shall process the Certificate of Substantial Completion. | 1. Certificate of Substantial Completion 2. Turnover Checklist (Pre-Substantial Completion Section) |
| 12 | Process Certificate of final Completion. | PM shall review the documents provided by the Contractor, mark up the Pre-Final Completion section of the Turnover Checklist and provide to CTM for verification. <i>PM will not process the Certificate of Final Completion (final Payment) until CTM advises all requirements have been met.</i> | Marked up Turnover Checklist (Pre-Final Completion Section) |

TURNOVER PROTOCOL - STEP BY STEP PROCEDURE

| STEP | TITLE | DESCRIPTION | TURNOVER DOCUMENTS |
|--------------------------------|---|--|--|
| POST-CONSTRUCTION PHASE | | | |
| 13 | Confirm Second Season HVAC Commissioning done. | Sign and date relevant box in the Post-Final Completion section of the checklist and forward to CTM. | Marked up Turnover Checklist (Post-Final Completion Section) |
| 14 | Confirm miscellaneous Post-Final Completion items are done. | Once items are done, sign and date relevant box in the Post-Final Completion section of the Turnover Checklist. Forward to CTM. | Marked up Turnover Checklist (Post-Final Completion Section) |
| 15 | One Year Warranty Expiration Walkthrough. | PM shall schedule this walkthrough, invite the Turnover Managers and client agency representatives. Once the generated punch list is complete, sign and date relevant box in the Post-Final Completion section of the Turnover Checklist and forward to CTM. | Marked up Turnover Checklist (Post-Final Completion Section) |
| 16 | Final LEED Documentation Completion. | Once LEED certification is complete, sign and date the relevant box in the Post-Final Completion section of the Turnover Checklist. Forward a copy of certification to CTM. | Marked up Turnover Checklist (Post-Final Completion Section) |

3. TURNOVER RELATED DOCUMENTS

TURNOVER PROTOCOL REVIEW AND COMMENT FORM

Project:
Reviewer:

Date:
Review Stage:

| ITEM | DRAWING/ SECTION | TOPIC | COMMENT | RESPONSE | FOLLOW UP |
|------|---------------------|-------|---------|----------|-----------|
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MEP - Equipment Listing

| | |
|----------|--|
| Agency | |
| Facility | |
| Address | |

NOTE: If in doubt whether or not to include a piece of equipment, include anything that has a serial number.

| | Equipment Type | Manufacturer | Model No. | Serial No. | Refrigerant | RPM | Voltage | AMPS | Horse Power | Installation Date | BTU | Fuel Type | Filter Size | Size/Capacity | Room Number | Floor Number | Label |
|----|--------------------------|--------------|-----------|------------|-------------|-----|---------|------|-------------|-------------------|-----|-----------|-------------|---------------|-------------|--------------|-------|
| | <u>PLUMBING</u> | | | | | | | | | | | | | | | | |
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| | <u>HVAC</u> | | | | | | | | | | | | | | | | |
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| | <u>ELECTRICAL</u> | | | | | | | | | | | | | | | | |
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GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES
CONSTRUCTION / FACILITIES DIVISIONS



TURNOVER CLOSEOUT CHECK LIST

Project Name:

Project Manager:

Anticipated Date of Substantial Completion:

Pre-Substantial Completion

As of

| Activity | Initials | | | Comments | Distribution | | | | Note |
|--|--------------|----------------|---------------|----------|--------------|---|---|---|------|
| | SPEC SECTION | DGS PM INITIAL | Date Complete | | A | B | C | D | |
| Operation Certificates & Permits | | | | | | | | | |
| Certificate of Occupancy | 01 77 00 | | | | | | | | 2.1 |
| Occupancy Load Certificates posted | 01 77 00 | | | | | | | | 2.2 |
| Boiler inspection (Green Stickers) | 01 77 00 | | | | | | | | 2.3 |
| Elevator (conveying system) inspection | 01 77 00 | | | | | | | | 2.3 |
| Health Inspection | 01 77 00 | | | | | | | | 2.3 |
| Fire sprinkler and fire alarm certification | 01 77 00 | | | | | | | | 2.3 |
| Other operator certificates (per project) | 01 77 00 | | | | | | | | 2.3 |
| Emergency evacuation plans (completed) | | | | | | | | | 2.4 |
| Inspection Approval Card | | | | | | | | | 2.3 |
| Punch list with all material items resolved. | 01 77 00 | | | | | | | | 2.5 |
| Equipment schedule (in excel) | 01 78 23 | | | | | | | | 2.6 |
| Equipment Label schedule, if applicable. | 01 78 23 | | | | | | | | 2.7 |
| Commisioning / HVAC balancing complete | 01 91 13 | | | | | | | | 2.8 |
| All training completed | 01 79 00 | | | | | | | | 2.8 |
| Project contact information list. | | | | | | | | | 2.9 |
| O & M manuals submitted | 01 78 23 | | | | | | | | 2.10 |
| Proposed schedule of maintenance | 01 78 23 | | | | | | | | 2.11 |
| Final cleaning completed | 01 50 00 | | | | | | | | 2.8 |
| Keys: permanent cores and keys to COTR | 01 77 00 | | | | | | | | 2.8 |

Verified Received by:

| | |
|-----------------------------|------|
| Name: | |
| Facilities Turnover Manager | Date |



GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES
 CONSTRUCTION / FACILITIES DIVISIONS



TURNOVER CLOSEOUT CHECK LIST

Project Name:

Project Manager:

Anticipated Date of Substantial Completion:

Pre-Final Completion

As of

| Documents from GC | Initials | | | Comments | Distribution | | | | Note |
|--|--------------|----------------|---------------|----------|--------------|---|---|---|-------|
| | SPEC SECTION | DGS PM INITIAL | Date Complete | | A | B | C | D | |
| Valid Bonds & Insurance (post-construction) | 01 77 00 | | | | | | | | 3.1 |
| Elevator (conveying system) certification | 01 77 00 | | | | | | | | 3.2 |
| Warranty information / documents | 01 78 70 | | | | | | | | 3.3 |
| Maintenance Agreements | 01 78 70 | | | | | | | | 3.4 |
| Punch list with all items resolved. | 01 77 00 | | | | | | | | 3.2 |
| Attic stock, parts and equipment list | 01 78 61 | | | | | | | | 3.5 |
| As-built documents. | | | | | | | | | 3.6 |
| Drawings (hard copies & PDF and CAD files) | 01 78 39 | | | | | | | | 3.6.1 |
| Specifications | 01 78 39 | | | | | | | | 3.6.2 |
| LEED, Preliminary Construction Review | 01 77 00 | | | | | | | | 3.7 |
| Tags, labels, plaques (if applicable) | | | | | | | | | |
| Meter plan | | | | | | | | | 3.2 |
| Valve Plan | | | | | | | | | 3.2 |
| Dedication Plaque Posted | | | | | | | | | 3.2 |
| Emergency evacuation plans (posted). | | | | | | | | | 3.2 |
| Environmental, Health & Safety documents. | | | | | | | | | |
| Environmental Reports (Phase 1, 2, etc.) | | | | | | | | | 3.8 |
| Asbestos Closure Report | 01 77 00 | | | | | | | | 3.8 |
| Lead Paint Closure Report | 01 77 00 | | | | | | | | 3.8 |
| UST/Contaminated Soil Closure Report | 01 77 00 | | | | | | | | 3.8 |
| Hazardous Materials Manifest (if not in reports) | | | | | | | | | 3.8 |
| SWM approval | | | | | | | | | 3.8 |
| MSDS for finishes & materials incorporated. | | | | | | | | | 3.8 |
| Termite pre-treatment report | 01 77 00 | | | | | | | | 3.8 |
| Mold prevention certification | 01 50 00 | | | | | | | | 3.8 |
| Pest Control Inspection Field Report | 01 50 00 | | | | | | | | 3.8 |
| Final meter reading for utilites | 01 50 00 | | | | | | | | 3.9 |
| Permanent utility meters installed | | | | | | | | | 3.10 |
| Fuel Tanks Filled | 01 77 00 | | | | | | | | 3.2 |
| Training video submitted | 01 79 00 | | | | | | | | 3.11 |
| Final Commissioning report. | | | | | | | | | 3.12 |
| Removal of all temporary facilities. | 01 50 00 | | | | | | | | 3.2 |
| Final Property Survey | | | | | | | | | 3.13 |
| Waste Removal, Recycling & Utilities | | | | | | | | | 3.14 |

Verified Received by:

| | |
|-----------------------------|------|
| Name: | |
| Facilities Turnover Manager | Date |



GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES
CONSTRUCTION / FACILITIES DIVISIONS



TURNOVER CLOSEOUT CHECK LIST

Project Name:

Project Manager:

Anticipated Date of Substantial Completion:

Post-Final Completion

As of

| Documents from GC | Initials | | | Date Complete | Comments | Distribution | | | | Note | |
|--|--------------|----------------|--|---------------|----------|--------------|---|---|---|------|-----|
| | SPEC SECTION | DGS PM INITIAL | | | | A | B | C | D | | |
| Second season HVAC commissioning completed. | | | | | | | | | | | 4.1 |
| Pre 1 year warranty expiration inspection. | | | | | | | | | | | 4.1 |
| Elevator inspection report (one year) | | | | | | | | | | | 4.2 |
| Fire Alarm inspection report (one year) | | | | | | | | | | | 4.2 |
| Infrared testing of electrical system (6 months) | | | | | | | | | | | 4.2 |
| LEED EA Credit 5 verification. | | | | | | | | | | | 4.2 |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| Verified Received by: | | | | | | | | | | | |
| Name: | | | | | | | | | | | |
| Facilities Turnover Manager | | | | | | Date | | | | | |

1. GENERAL NOTES

- 1.1. PM to initial and date (when completed) against each item applicable to the project.
- 1.2. PM to note "N/A" against each item not applicable to the project.
- 1.3. For each phase, all documents are to be collected by PM and turned over to Turnover Manager at one time.
- 1.4. When submitting each phase, don't leave a box in the 'PM Check' column blank. Either initial as done, mark N/A, or provide a comment.
- 1.5. Distribution Columns will be filled in by Construction Turnover Manager.
 - A. One hard copy and one electronic copy to Facilities Turnover Manager, through Construction Turnover Manager
 - B. One electronic copy to Facilities Turnover Manager, through Construction Turnover Manager.
 - C. One hard copy to the Facilities. Location to be co-ordinated with Facilities.
 - D. One electronic copy of schedule to Facilities Turnover Manager, through Construction Turnover Manager. Materials and equipment to facility at location agreed with Agency/DGS Facilities.

2. SUBSTANTIAL COMPLETION

- 2.1. Certificate of Occupancy: Provide an electronic copy. Provide partial if this Turnover is for a particular phase of the project.
- 2.2. Occupancy Load Certificates: Confirm these have been posted.
- 2.3. Other Inspections: Provide copies of final inspections and approvals as applicable to project.
- 2.4. Emergency Evacuation Plans: Confirm these are prepared and ready for posting. They must be posted at time of occupancy.
- 2.5. Punch List with all material items resolved: Provide a copy of the consolidated punch list. At Substantial Completion all material punch list items have to be completed. Material punch list items are those that would restrict the Districts full intended use of the facility.
- 2.6. Equipment Schedule: Provide an equipment schedule in accordance with the example attached.
- 2.7. Equipment Label Schedule: If the specifications require equipment to be labeled for ease of identification, provide a schedule identifying the piece of equipment, the designation, the room and the label location.
- 2.8. Confirm complete by initializing in the "PM Check" column and dating in the "Date complete" column.
- 2.9. Project Contact Information Sheet: Provide an electronic copy at this stage. Include at front of the warranty binder at final completion.
- 2.10. O&M Manuals Submitted:
 - 2.10.1. Manuals are required at Substantial Completion as the Owner will be responsible for maintenance as of that date.
 - 2.10.2. O&M Manuals shall be organized in the same order as the project specification sections. Provide electronic files divided by specification division and with filenames starting with the specification section. This will allow for ease of archiving and retrieval.
- 2.11. Proposed Schedule of Maintenance: The O&M manuals shall include a written schedule of maintenance.

3. FINAL COMPLETION

- 3.1. Valid Bonds and Insurance: Confirm contractor has complied with the contract requirements by initializing in the "PM Check" column. Mark N/A if not applicable.



TURNOVER CLOSEOUT CHECK LIST

Project Name:

Project Manager:

Anticipated Date of Substantial Completion:

- 3.2. Confirm complete by initializing in the “PM Check” column and dating in the “Date complete” column.
- 3.3. Warranty Information/Documents:
 - 3.3.1. All warranties shall start on the date Substantial Completion is determined.
 - 3.3.2. Special warranties, those extending past the General Contractors standard one year warranty, must not be addressed solely to the General Contractor. They must also be addressed to the benefit of the District.
 - 3.3.3. Provide warranties in a separate binder and electronic file, regardless of whether or not provided in the O&M’s.
- 3.4. Maintenance Agreements: If the project includes Maintenance Agreement(s) these agreements shall start at the date of Substantial Completion unless otherwise agreed to in writing by the COTR. Agreements must be written to the benefit of the District. The scope of work must be clearly stated, in the agreement, to allow the Facilities Maintenance staff to confirm the work is being completed.
- 3.5. Attic Stock: Confirm all attic stock has been provided by initializing in the PM Check column. Provide an itemized list, with quantities, of all materials, parts and equipment.
- 3.6. As Built Documents:
 - 3.6.1. Drawings: Provide electronic PDF files by discipline. Provide CAD files (BIM if specified), including all required XRef files.
 - 3.6.2. Specifications: Provide an electronic copy of the complete set of project specifications, amended to reflect any changes occurring during the construction phase.
- 3.7. LEED Preliminary Construction Review: Confirm information has been submitted by initializing in the PM Check column. Mark N/A if not applicable.
- 3.8. Environmental, Health & Safety Documents: Provide all applicable documents in electronic format for archiving. Mark N/A if not applicable. Do not leave blank.
- 3.9. Final Meter Reading for Utilities: Confirm final readings have been taken and responsibility transferred to the District. If a Landlords responsibility mark N/A.
- 3.10. Permanent Meters installed: Confirm no temporary meters remain in use.
- 3.11. Training Recordings Submitted: Submit electronic copies of all training sessions.
- 3.12. Final Commissioning Report: Provide in electronic format.
- 3.13. Final Property Survey: Provide in PDF format if required by Contract Documents or Surveyors office.
- 3.14. Waste Removal and Recycling: Confirm systems set up and coordinated with Sustainability. If a Landlords responsibility mark N/A.

4. POST-FINAL COMPLETION

- 4.1. Confirm complete by initializing in the “PM Check” column and dating in the “Date Complete” column.
- 4.2. If required by contract documents, confirm complete by initializing in the “PM Check” column and dating in the “Date complete” column. Mark N/A if not applicable.

REQUEST FOR SUBSTANTIAL COMPLETION

[Date]

Capital Construction Services
Department of General Services
1250 U Street, NW, 4th Floor
Washington D.C. 20009

Attention: _____ [COTR]

Reference: _____ [project name]

Dear Sir/Madam,

_____ [contractor] hereby requests an inspection for determination of date of Substantial Completion for the above referenced project, or portion hereof as detailed below. [insert description of partial area] The following documents are attached:

- Certificate of Occupancy.
- Other final inspections, operating certificates, and similar releases, permitting District unrestricted use of Work and access to services and utilities. [list]
- Draft copies of warranties, workmanship bonds, maintenance service agreements, final certifications, and similar documents, including a warranty contact list.
- Comprehensive Punch List, as approved by COTR, with all material items completed.
- Schedule of Attic Stock, including all tools, spare parts, extra materials, and similar items, as required by Specification Section 017861.
- Operation and Maintenance Manuals in accordance with specification section 017823.
- Equipment list in spreadsheet format, including equipment label information.
- Closure reports for environmental abatement work performed by the contractor. (list)
- Draft commissioning report of systems, subsystems, and equipment in accordance with Section 01 91 13, including letter from Commissioning Agent certifying that all material issues have been resolved and systems are fully functional.

Additionally we advise the following:

- The following utility meter numbers need to be transferred to District responsibility as of date of Substantial Completion
 - PEPCO _____
 - Washington Gas _____
 - DC Water. _____
 - Other [specify] _____
- We have contacted and advised the door hardware manufacturer to have the permanent keys and cores delivered directly to you prior to date of Substantial Completion.
- All fuel oil tanks have been filled. They will be topped off on the day designated for Substantial Completion.
- All training required by the Contract Documents has been completed.

Please advise when the inspection will be conducted.

Sincerely

[Signature and printed name]



CERTIFICATE OF SUBSTANTIAL COMPLETION

PROJECT NAME: _____

CONTRACTOR: _____

CONTRACT No.: - - -

COMPLETE PROJECT.

PARTIAL – List areas/phase

COTR to complete Section 1 or Section 2

SECTION 1

As requested by the Contractor, the COTR has inspected the project and the submitted close-out documents.

The following items must be completed or corrected prior to certifying the Date for Substantial Completion.

| ITEM | DESCRIPTION | COMPLETE |
|------|-------------|----------|
| 1 | | |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |
| 6 | | |
| 7 | | |
| 8 | | |
| 9 | | |
| 10 | | |
| 11 | | |
| 12 | | |

Once the above noted items are complete, submit written request for re-inspection.

COTR and printed name

Date



CERTIFICATE OF SUBSTANTIAL COMPLETION



SECTION 2

As requested by the Contractor, the COTR has inspected the project and the submitted close-out documents and recommends the Project, or Specified area of the Project, be accepted as Substantially Complete at _____ (time) on _____, 20__ . (date)

DGS PM and printed name

Date

Construction Turnover Manager and printed name

Date

Executive Program Manager and printed name

Date

The Project, or specified area of the Project, are accepted as Substantially Complete at _____ (time) on _____, 20__ . (date)

All warranties will start the day of Substantial Completion, with the exception of those items remaining on the attached punch list, which will start as of the date of Final Completion. The failure to include an item on the punch list does not alter the responsibility of the Contractor to complete all the Work in accordance with the Contract Documents, including authorized changes thereof. The Contractor shall complete or correct the work on the attached punch list by ____/____/____. If the list of items is not completed within the time allotted the District has the right to be compensated for the delays and/or complete the work with the help of an independent contractor at the expense of the retained project funds. If the retained project funds are insufficient to cover the delay/completion damages, the district shall be promptly reimbursed for the balance of the funds needed to compensate the District, either directly or by claim against the Performance Bond.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF GENERAL SERVICES



ATTACHMENT V

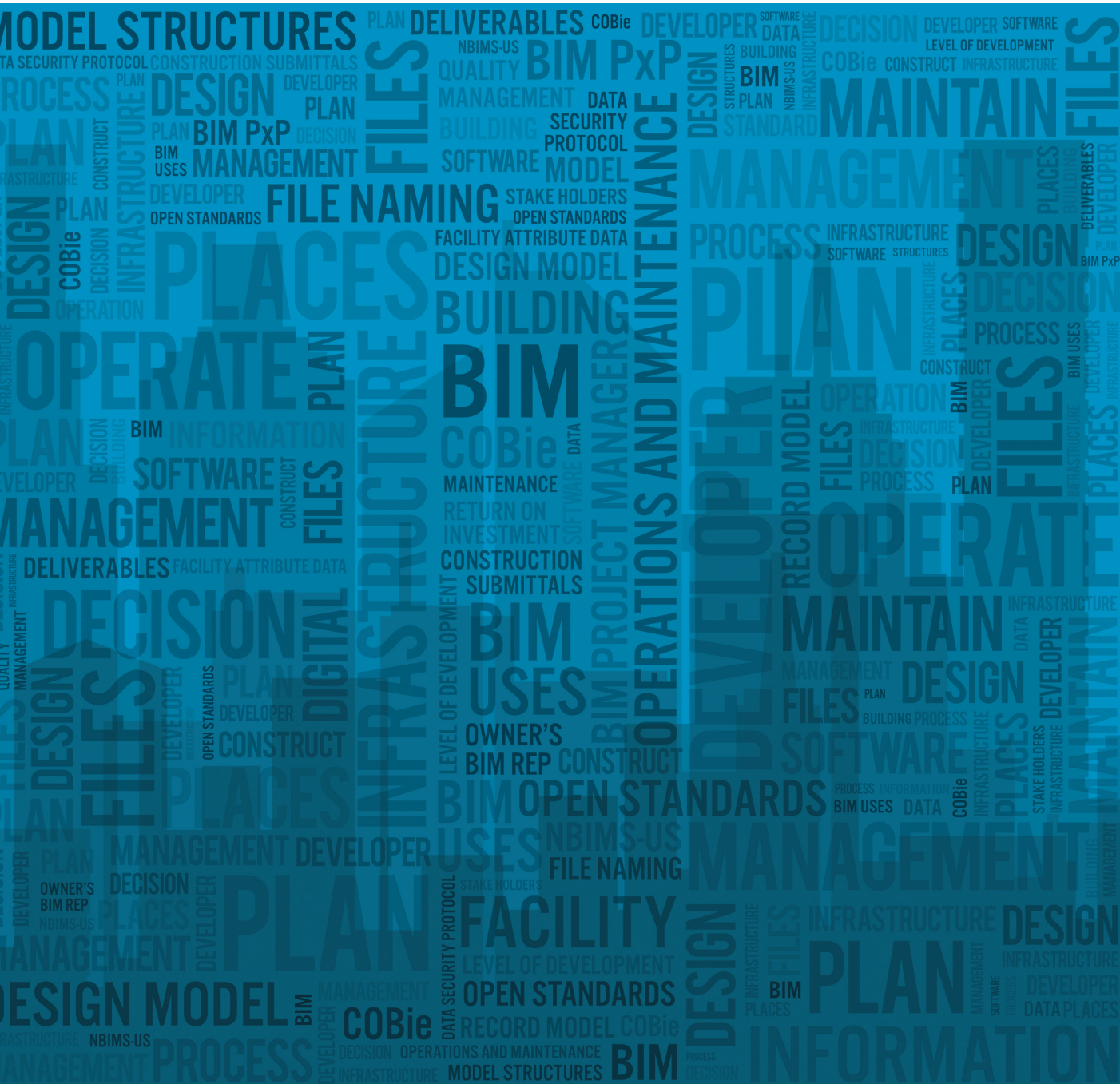
National Building Information

Modeling (BIM) Guide

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]



National BIM Guide for Owners



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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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.

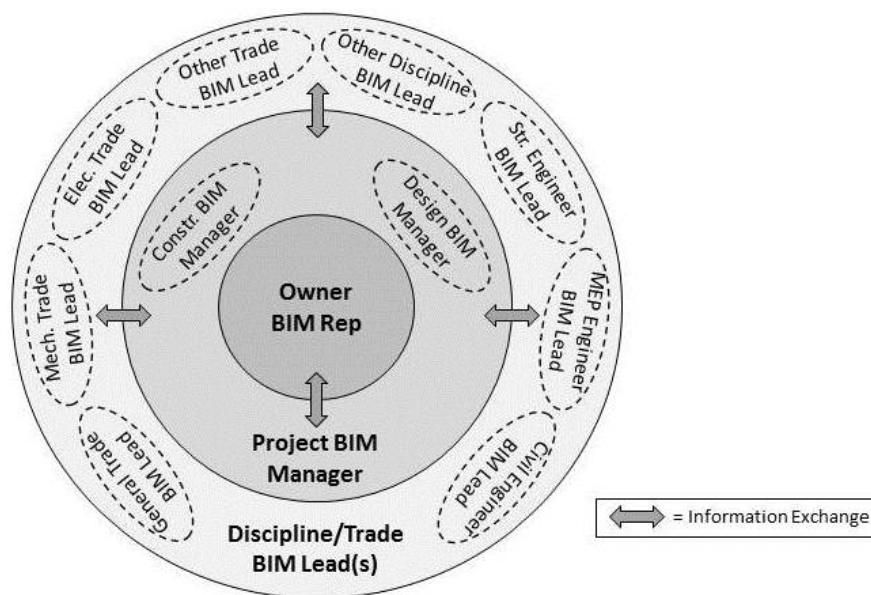


Figure 1. BIM Role and Responsibility Chart

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:

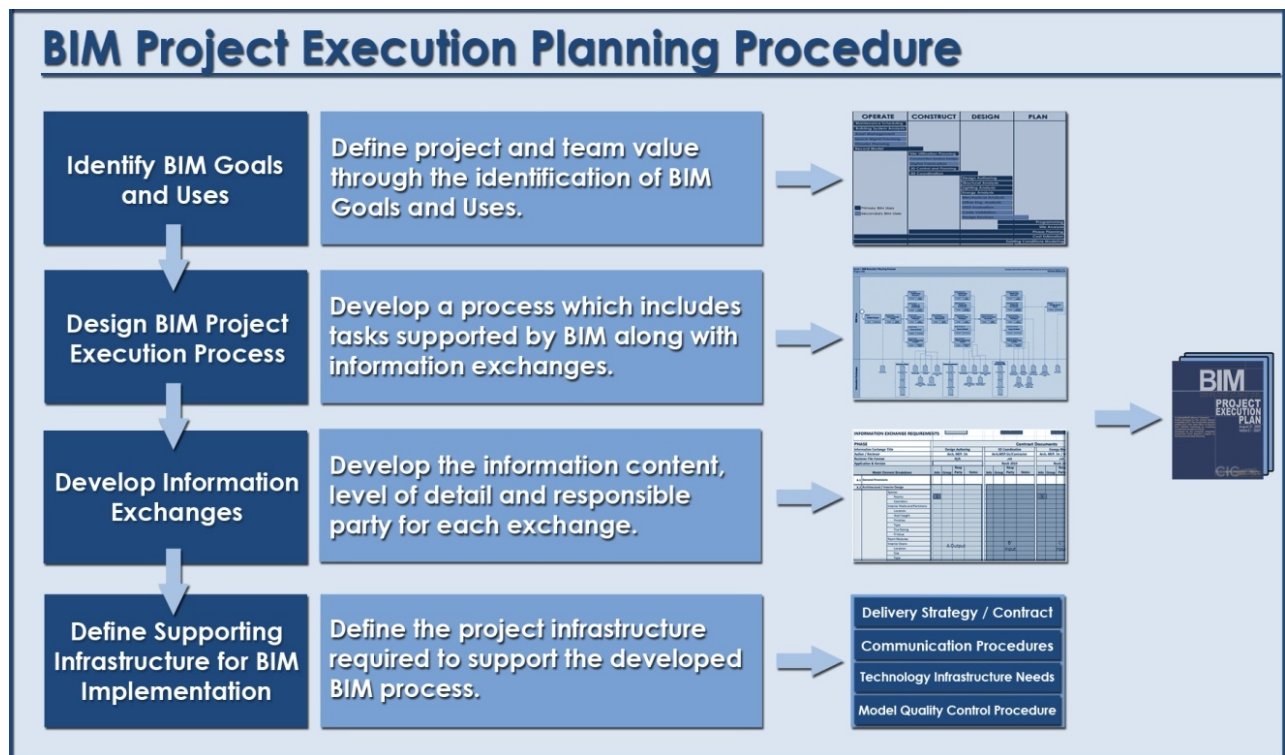


Figure 2. BIM Project Execution Planning Procedure⁶

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.

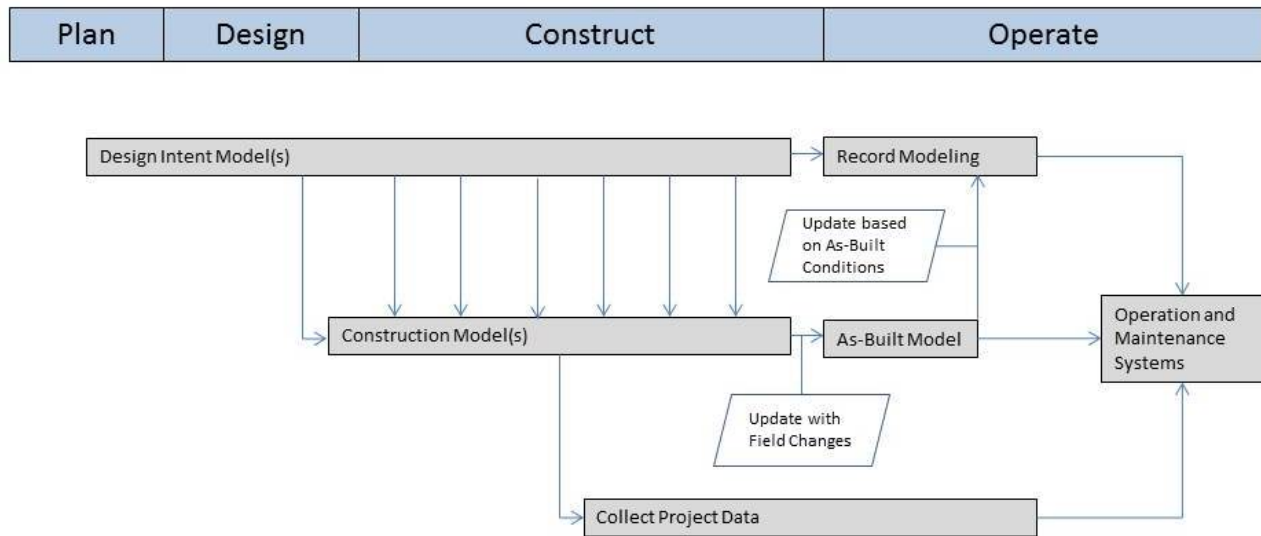


Figure 3. Lifecycle Model Requirements: A Sample Process

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.

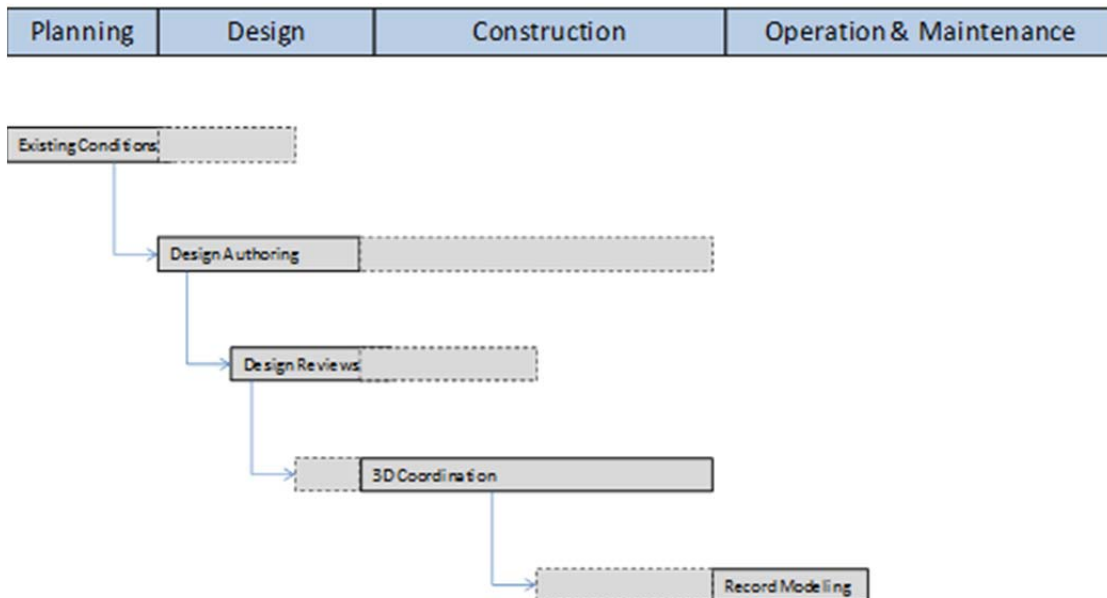


Figure 4. Minimum BIM Example

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.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF GENERAL SERVICES



ATTACHMENT W

Department's Quality Control

Master Program

[Due to high load of file, please refer to the link below]

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF GENERAL SERVICES



ATTACHMENT X

Campaign Finance Reform Self-

Certification Form

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]



CONTRACTOR SELF-CERTIFICATION

Business Name* :

Tax ID* :

Business Mailing Address * :

Select State/Region: _____ Post Code: _____

List the name and title of the individual completing the form on behalf of the business.

Business Title * :

Name * :

Email * :

[D.C. Law 22-250. Campaign Finance Reform Amendment Act of 2018. | D.C. Law Library \(dccouncil.gov\)](#)

Since November 9, 2022, has the business entity or any of its Principals made a political contribution to any of the following: (i) the Mayor, (ii) any candidate for Mayor, (iii) any political committee affiliated with the Mayor or a candidate for Mayor, or (iv) any constituent-service program affiliated with the Mayor? [yes/no]

Since November 9, 2022, has the business entity or any of its Principals made a political contribution to any of the following: (i) the Attorney General, (ii) any candidate for Attorney General, or (iii) any political committee affiliated with the Attorney General or a candidate for Attorney General? [yes/no]

Since November 9, 2022, has the business entity or any of its Principals made a political contribution to any of the following: (i) any Councilmember, (ii) any candidate for Councilmember, (iii) any political committee affiliated with a Councilmember or a candidate for Councilmember, or (iv) any constituent-service program affiliated with a Council member? [yes/no]

Prior to the date of this of this Certification, has the business entity been determined to be in violation of D.C. Official Code § 1-1163.34a? [yes/no]

Is the business entity currently in violation of D.C. Official Code § 1-1163.34a? [yes/no]

Does the business entity certify that it will not be in violation of D.C. Official Code § 1-1163.34a? [yes/no]

Who else will modify this certification for the business?

Modifier1:

Modifier2:



Check to certify that the information is accurate and complete. *

Check to acknowledge that the business must always keep these records updated*

Check to certify that the business entity currently is not and will not be in violation of the Campaign Finance Reform Amendment Act of 2018 *

Sworn to this before me this ___ day of _____ 20__

Notary Public

My commission expires