ATTACHMENT E

FORM OF CONTRACT
(BASIC ORDERING AGREEMENT)

BASIC ORDERING AGREEMENT

FY14 INDEFINITE DELIVERY/INDEFINITE QUANTITY FOR GENERAL CONSTRUCTION AND DESIGN-BUILD SERVICES

CONTRACT NO. DCAM-14-CS-0157

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

WITNESSETH:

WHEREAS, the Department requires general construction and design-build services for various Projects;

WHEREAS, the Department issued an Invitation for Bid (IFB) to engage a contractor to provide General Construction-Design Build Services.

WHEREAS, the Contractor submitted a proposal in response to the IFB, and the Department wishes to engage the Contractor to provide the requested services.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the sufficiency and adequacy of which is hereby acknowledged, the parties to this Agreement agree as follows:

ARTICLE 1
NATURE OF AGREEMENT

Section 1.1 **Nature of Agreement.** This Agreement is issued pursuant to the Department's Invitation for Bid (IFB) for IDIQ for General Construction and Design Build Services (Solicitation No. DCAM-14-CS-0157) (the "IFB") [**Exhibit A]** and the Contractor's price proposal dated _____ [**Exhibit B],** which is incorporated herein and made a part of this Agreement. The Contractor, by virtue of this Agreement, shall be included on the Department's list of pre-qualified contractors to be eligible to compete, as set forth in Section 1.2 of this Agreement with other pre-qualified contractors on small construction projects (i.e. those having a construction value between $250.00 and $950,000.00) for facilities in DGS' municipal buildings portfolio that generally includes office buildings, fire and police stations, and other similar facilities. This Agreement does not authorize any specific work or constitute a guarantee that any work will be assigned to the Contractor. All work will be awarded and released through individual project Task Orders as set forth in Section 1.2 of this Agreement.

Section 1.2 **Competitive Bidding.**

Section 1.2.1 For each project identified and funded by the Department to be bid through contractors that have entered into contracts pursuant to the IFB, the Department will develop a Scope of Work. The Scope of Work will be issued to two (2) or three (3) of the pre-qualified contractors, and in most cases, each of those Contractors will be provided with an opportunity to walk the project with the Department's representatives in order to better understand and clarify the work.

Section 1.2.2 The Department contemplates that the Scope of Work that will be issued to Contractors during the bidding phase may or may not include complete drawings. The parties acknowledge and agree that contractors may be required to complete work on a design-build or design-assist basis.

Section 1.2.3 Each Contractor will be required to submit, within the time allotted by the Department, a lump sum price or such other pricing as may be requested by the Department for the proposed work. Absent specific instructions to the contrary, proposed Task Order pricing should be "all inclusive" and should include sufficient funding to cover all of the Contractor's costs necessary to complete the project, including, but not limited to, profit, home and field office overhead, supervision, labor, materials, equipment, bonds, insurance and such professional services as may be required to complete the design and obtain the necessary permits.

Section 1.2.4 The Department will select the Contractor to be awarded each such project primarily based on price, but the Department reserves the right to consider non-price factors when making such decisions and will also consider differences in scope and/or proposed finishes, equipment and materials.

Section 1.2.5 In the event the Contractor is selected for the project, the Contractor shall enter into a Task for such project within five (5) days of being presented with such Task Order by the Department.

Section 1.3 **Task Orders.** Any and all work performed under this Agreement or any Task Order issued pursuant here to shall be governed by the terms and conditions set forth in this Agreement. It is contemplated that individual Task Orders shall, in general, contain the following information: (i) a description of the Scope of Work included in such Task Order; (ii) a lump sum price and/or such other terms of compensation for the work included in the Task Order's scope of work; (iii) the Substantial Completion Date for the Task Order's Scope of Work and/or such other schedule requirements for Task Order; (iv) liquidated damages; and (v) any other specific requirements of the Scope of Work. The Task Order shall also set forth a general description and requirements of the project (such description and requirements, the "Project").

Section 1.4 **Term of Agreement.** This Agreement shall be effective from the date of execution by both parties through one (1) year thereafter (such time period, the "Term") with an option to extend the term of the contract in accordance with Section 1.4.2. Any and all work

assigned to the Contractor pursuant to a Task Order issued pursuant to this Agreement must be completed within the Term of this Agreement.

Section 1.4.1 The Department's liability under this contract is contingent upon the future availability of appropriated monies with which to make payment for the contract purposes. The legal liability on the part of the Department for the payment of any money shall not arise unless and until such appropriation shall have been provided.

Section 1.4.2 Option to Extend the Term of the Agreement - The Department shall have the right to extend the term of this Agreement for four (4) one (1) year option periods; provided that the Department shall give the Contractor preliminary written notice of its intent to exercise the option to extend the term of the Contract thirty (30) days prior to the expiration of the contract. The preliminary notice does not commit the Department to an extension. Contractor may waive the thirty (30) day notice requirement by providing a written waiver to the Contracting Officer prior to the expiration of the Contract.

Section 1.4.3 Option Year Pricing. In the event the Department exercises its option to extend the Agreement to cover an option year, the rates applicable to such Option Year are set forth in **Exhibit A** subject to negotiation of individual Task Orders to be issued under the Agreement.

Section 1.5 Standard Task Order Provisions. Unless otherwise expressly stated in a Task Order, all of the Provisions of Articles 3 through Article 16 shall be deemed incorporated into the Task Order as if set forth therein.

Section 1.6 Value of Agreement. The Contractor shall be entitled to receive a minimum of Two Hundred Fifty Dollars ($250.00) pursuant to this Agreement regardless of whether any work is assigned to the Contractor pursuant to any Task Order issued pursuant to this Agreement. In no event, however, shall that the Contractor be entitled to receive more than Nine Hundred and Fifty Thousand Dollars ($950,000.00) for work performed pursuant to all Task Orders issued pursuant to this Agreement.

Section 1.7 CBE Status. The parties acknowledge that this Agreement is awarded pursuant to the IFB on which only Bidders certified by District of Columbia Department of Small and Local Business Development ("DSLBD") as a Certified Business Enterprise ("CBE") were eligible to bid. The Contractor has represented to the Department that it is a CBE, as determined by DSLBD. The Contractor shall maintain its status as a CBE throughout the Term of this Agreement. Should the Contractor lose its status as a CBE for any reason other than that the expiration of the certification period, the Contractor shall promptly notify the Department. Should the Contractor's certification as a CBE expire, the Contractor shall promptly refile if eligible to do so. If the Contractor is no longer eligible for recertification, the Contractor shall promptly advise the Department of its ineligibility for recertification. The Department may terminate this Agreement, including any Task Order issued pursuant hereto, if the Contractor loses its status as a CBE and is ineligible for recertification.

ARTICLE 2
GENERAL PROVISIONS

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

Section 2.2 **General Scope of Project.** The Department anticipates that the projects assigned through Task Orders pursuant this Agreement will be small construction projects and may include building repairs, upgrades, and tenant-fit out improvements including, but not limited to, patching and plumbing, carpentry, masonry, window replacement, fire alarm repairs, electrical and other miscellaneous repairs as may be necessary at various District of Columbia Municipal buildings. Such work shall be performed on an as directed/as needed basis.

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

Section 2.4 **Project Manager.** The Department has assigned a Project Manager to oversee the Contractor's work. The name and contact information for the assigned Project Manager is specified in the Project Information section of this Agreement. The Contractor shall take direction from, and coordinate its work with, the assigned Project Manager. The Contractor acknowledges, however, that the Project Manager is not authorized to modify any of the rights or obligations of the Department or the Contractor pursuant to this Contract, or to issue Change Orders or Change Directives.

Section 2.5 **Prolog.** The Contractor shall utilize the Department's Prolog system to submit any and all documentation required to be provided by the Contractor for the Project, including, but not limited to, (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) proposed Changes; and (v) applications for payment. The Contractor also shall require all major subcontractors and subconsultants to utilize Prolog for the Project.

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

Section 2.7 **Working Hours.** The Contractor shall be required to coordinate with the assigned Project Manager for each individual project. The work may be performed during normal business hours; however, the Contractor may be required to work after hours or on weekends and holidays as to not adversely impact the work of the District of Columbia employees/and or Contractors. The Contractor shall be required to develop work plans that are coordinated with, and acceptable to, the Project Manager assigned to the Task Order.

ARTICLE 3
PRECONSTRUCTION DELIVERABLES

Section 3.1 **Schedule.** Upon assignment of a Task Order, the Contractor shall be required to submit to the Department for its approval a schedule for the Project. Such schedule shall include a schedule for submittals and key milestones that is reasonably acceptable to the Project Manager. The Contractor shall not perform any construction activities until the Project Manager has approved a schedule for the Task Order.

Section 3.2 **Potential Subcontractors and Suppliers.** The Contractor shall furnish to the Project Manager a list of the subcontractors and suppliers that will work on this Project as well as a general description of each such subcontractor's Scope of Work. Within five (5) business days after such list is submitted, the Project Manager shall advise the Contractor if it has any objection to any of the listed subcontractors or suppliers. In the event the Project Manager has a reasonable objection to any such subcontractor or supplier, the parties shall discuss such objection and agree on an appropriate course of action.

Section 3.3 **Design Services.** Prior to providing its bid for the Task Order, the Contractor had an opportunity to review and ask questions regarding the Scope of Work for the Task Order and to ascertain what design services, if any, were necessary in order to complete the Project and has included in its price the costs of any necessary design services, and the Contractor shall be required to provide, at no additional cost to the Department, such design services as necessary to implement the Project. The Contractor and the Project Manager shall agree upon the exact design services to be required prior to the construction commencing.

Section 3.4 **Design Reviews/Submittals.** On or before the dates specified in the approved detailed schedule (**See Section 3.1**), the Contractor shall submit the necessary design information (i.e. permit drawings, shop drawings, submittals, sketches, etc.) to the Project Manager for his review and approval. Unless a different timeframe is established in the approved detailed schedule, the Project Manager shall have five (5) business days to review such documents. In the event the Project Manager finds such documents to be unacceptable, the Contractor shall be required to revise and resubmit such documents. The Contractor shall not commence construction activities unless and until such documents have been approved by the Project Manager. Any delays that result from design resubmissions shall be considered Non-Excusable.

ARTICLE 4
CONTRACT SUM

Section 4.1 **Lump Sum Price.** For the work covered by any given Task Order, the Contractor shall be paid a lump sum price in the amount set forth in the Task Order to fully complete the Project.

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

Section 4.3 **Risks Assumed by Contractor.** Execution of this Agreement and each Task Order by the Contractor is a representation that the Contractor has thoroughly examined the terms of this Agreement and the Scope of Work and has visited the Project site and has become familiar with local conditions under which the Work is to be performed. The Contractor further represents that it has satisfied itself that it can undertake the work for the stated cost. Among other things, by entering into this Agreement, the Contractor assumes the following risks: (1) the nature of the land and subsoil; (2) the form and nature of the site and surrounding areas; (3) details and levels of existing pipe lines, conduits, sewers, drains, cables or other existing services; (4) the quantities, nature and availability of the materials, tools, equipment and labor necessary for the completion of the Work; (5) the means of access to the site and any accommodation that may be required; (6) uncertainties of weather and physical conditions at the site; and in general to have itself obtained all necessary information as to risk contingencies, climatic, hydrological and natural conditions and other circumstances which may influence or affect his performance of the Work.

Section 4.4 **Allowances.** To the extent that the Lump Sum Price related to a Task Order includes one or more allowances identified on **Exhibit D** to such Task Order, the Lump Sum Price associated with that Task Order shall be adjusted (either upward or downward) by change order to reflect the actual cost of the work covered by such allowance.

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

ARTICLE 5
CONSTRUCTION PHASE

Section 5.1 **General.** The Construction Phase for the work covered by a Task Order shall commence when the Project Manager issues a Notice to Proceed for Construction.

Section 5.2 **Mandatory Subcontract Provisions.** To the extent the Contractor intends to subcontract a portion of the work, any subcontract in excess of $25,000 shall include the following provisions:

Section 5.2.1 that, to the extent of the Work or supply within the agreement's scope, the Subcontractor or supplier is bound to the Contractor for the performance of all obligations which the Contractor owes the Department under the Contract;

Section 5.2.2 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;

Section 5.2.3 that the Department is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit;

Section 5.2.4 that the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Contractor is terminated for default;

Section 5.2.5 that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Contractor to suspend or stop work;

Section 5.2.6 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;

Section 5.2.7 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.);

Section 5.2.8 that, if the Department terminates the Contract for convenience, the Contractor may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) days' written notice to the Subcontractor or supplier, and that the Subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in the Termination for Convenience provisions of this Agreement;

Section 5.2.9 that the Department shall have the right to enter into a contract with the Subcontractor or supplier for the same price as its subcontract or supply agreement price less amounts already paid, if the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;

Section 5.2.10 that the Subcontractor or supplier shall not be entitled to payment for defective or non-conforming work, materials or equipment, and shall be obligated promptly to repair or replace non-conforming work, materials or equipment at its own cost;

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

Section 5.4 **Payment by Joint Check in Certain Instances.** If it comes to the Department's attention that a Subcontractor or supplier has not been paid in timely fashion (other than for disputed amounts), and if the Contractor fails to cure the problem within five (5) calendar days after the Department gives it written notice of the failure to pay, the Department may make payments to the Subcontractor or supplier and Contractor by joint check.

Section 5.5 **Field Measurements.** Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor. Once work is started, Contractor assumes the responsibility and costs for the work and the cost of correcting work previously installed.

Section 5.6 **Warranty of the Construction Work.** The Contractor warrants to the Department that materials and equipment furnished under this Agreement will be of good quality and new unless otherwise expressly permitted in writing, that for the one (1) year period following the Substantial Completion Date the construction work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the Scope of Work and/or any approved design documents. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. The Contractor and the Department shall conduct a walk-through of the Project eleven (11) months following Substantial Completion to identify any warranty issues.

Section 5.7 **Extent of Responsibility and Soils Conditions.** The Contractor shall be entitled to an equitable adjustment for differing site or soils conditions only to the extent that: (i) the subsurface conditions on or adjacent to the Project site differ materially from those indicated in the geotechnical reports provide to the Contractor by the Department; or (ii) such conditions could not have been discovered by a competent visual inspection of the site and are of unusual nature and differ materially from those ordinarily encountered and generally recognized as inhering to work of the character provided for in this Agreement.

Section 5.8 **Unsafe Materials and Hazardous Materials**

Section 5.8.1 The Contractor shall not bring, spill or release onto the site asbestos, PCBs, or any other Hazardous Material that is not customarily used in a facility of the type and similar to the Project, and shall bring to the Department's attention any specification of such Hazardous Materials in the design documents. If the Contractor believes that anything in this Agreement would require that it use or bring onto the site asbestos, PCBs, or any Hazardous Material that is not customarily used in a facility of the type and similar to the Project, it shall immediately inform the Department and seek direction before proceeding.

Section 5.8.2 If Hazardous Materials are discovered on the site, the Contractor shall immediately inform the Project Manager of such discovery. Unless abatement of such Hazardous Materials is expressly included in the Scope of Work or the approved design documents, the Contractor shall be entitled to an equitable adjustment by virtue of such discovery.

Section 5.9 **Progress Meetings.** The Contractor shall schedule and conduct at a minimum bi-weekly progress meetings at which the Department, the Program Manager and the Contractor and appropriate Subcontractors can discuss the status of the Work.

Section 5.10 **Written Reports.** The Contractor shall provide written reports to the Program Manager on the progress of the entire Work in accordance at least every other week.

Section 5.11 **Key Personnel.** To carry out the work associated with a Task Order, the Contractor shall provide at least the key personnel identified in **Exhibit E** of the Task Order, who shall carry out the functions identified in the Exhibit. The Contractor shall not replace any of the key personnel without the Department's prior written approval, which shall not be unreasonably withheld.

Section 5.12 **Work by Separate Contractors.** Department reserves the right to perform construction or operations related to the Project with Department's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site.

Section 5.13 **Site Safety and Clean-Up.** The Contractor will be required to: (i) provide a safe and efficient site, with controlled access; (ii) provide wheel washing stations on site so as to prevent the accumulation of dirt and other refuse on the streets surrounding the Project site; (iii) be responsible for site security; and (iv) be responsible for the cost of temporary power used during the construction of the Project, including, but not limited to, the cost of installing such temporary wiring as may be required.

Section 5.14 **Close-out.** The Contractor shall be required to prepare and submit at close-out a complete set of product manuals, warranties, etc. The Contractor shall also provide the Department with a complete set of its Project files, including, but not limited to, shop drawings.

Section 5.15 **Salvaged and Stored Items.** The Contractor shall be responsible for salvaging and storing all items as identified by the Department.

Section 5.16 **Sediment and Erosion Control.** The Contractor shall be responsible for installing sediment and erosion control measures, inclusive of, but not limited to: silt fencing, inlet protection, stabilized construction entrances, and other control measures.

Section 5.17 **Cutting and Patching.** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Department or separate contractors by cutting, patching or otherwise altering such construction, or by excavation.

Section 5.18 **Correction of Work.**

Section 5.18.1 The Department shall be at liberty to object and to require the Contractor to remove forthwith from the Project site and the Work and to promptly replace the Superintendent, any foreman, technical assistant, laborer, agent, representative, or other person used by the Contractor in or about the execution or maintenance of the Work, who in the sole opinion of the Department is misconducting himself, or is incompetent or negligent in the proper performance of his duties, or whose performance in the Work is otherwise considered by the Department to be undesirable or unsatisfactory, and such person shall not be again employed upon the Project without the written permission of the Department or.

Section 5.18.2 Contractor shall promptly correct Work rejected by Department for failing to conform to the requirements of the Scope of Work or any approved design document or applicable law or regulations whether observed before or after the Project's completion and whether or not fabricated, installed or completed, and shall correct any Work found to be not in accordance with the requirements within a period of one (1) year from the date of completion or by terms of an applicable special warranty required by this Agreement.

Section 5.18.3 If during the guarantee or warranty period, any material, equipment or system requires corrective Work because of defects in materials or workmanship, Contractor shall commence corrective Work within forty-eight (48) hours after receiving the notice and work diligently until corrective Work is completed; provided, however, if such notice is received on the day before a weekend or a holiday, Contractor will commence corrective Work on the next business day. If Contractor does not, in accordance with the terms and provisions of the Contract Documents, commence all corrective Work within forty-eight (48) hours or if Contractor commences such Work but does not pursue it in an expeditious manner, Department may either notify the bonding company (if any) to have such Work and/or obligations performed at no additional cost to Department or may perform such Work and/or obligations and charge the costs thereof to Contractor.

Section 5.19 **Manufacturers' Warranties.**

Section 5.19.1 Contractor warrants that all manufacturers' or other warranties on all labor, materials and equipment furnished by Contractor or a Subcontractor or supplier shall run directly to or will be specifically assigned to Department on demand or upon Project completion without demand. In the event any issue or defect which would be covered by any warranty arises but is not addressed by the grantor of the warranty, the Contractor shall be required to act as the guarantor of the obligations under the warranty and to perform under the terms of the warranty.

Section 5.19.2 Contractor warrants that the installation of all materials and equipment shall be in strict accordance with the manufacturers' requirements or specifications.

Section 5.20 **Close-Out and Training.** Contractor shall also provide the Department with a complete set of its Project files, including, but not limited to, shop drawings, etc., at close out so as to assist the Department and/or DCPS in operating the building. In addition, if the Project includes work on heating or cooling systems, at the beginning of the first heating and cooling season following turnover of the Project, the Contractor shall be available to assist with, and train the building engineers and staff in the start-up of the building systems for the new weather cycle.

ARTICLE 6
CLAIMS FOR ADDITIONAL TIME

Section 6.1 Time is of the essence of this Contract. All Projects must be Substantially Complete by the applicable Substantial Completion Date.

Section 6.2 The Contractor will perform the Work so that it shall achieve Substantial Completion by the Substantial Completion Date. Unless the failure to achieve Substantial Completion by the Substantial Completion Date is a result of an Excusable Delay, as defined in Section 5.3, the delay shall be deemed Non-Excusable and the Contractor shall not be entitled to an extension of time. Without limiting the generality of the foregoing, delays for the following reasons shall be regarded as Non-Excusable and shall not entitle the Contractor to an extension of time:

Section 6.2.1 Delays due to job site labor disputes, work stoppages, or suspensions of work;

Section 6.2.2 Delays due to adverse weather, unless the Contractor establishes that the adverse weather was of a nature and duration in excess of averages established by data from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for the Project locale for the ten (10) years preceding the effective date of the Contract;

Section 6.2.3 Delays due to the failure of the Contractor or Subcontractors or material suppliers at any tier to perform in timely or proper fashion, without regard to concepts of negligence or fault; or

Section 6.2.4 Delays due to Site conditions whether known or unknown as of the effective date of the Contract, foreseeable or unforeseeable at that time, naturally occurring or man-made; provided, however, that delays due to Differing Soils Conditions or Hazardous Materials Remediation shall be deemed an Excusable Delay.

Section 6.3 The Contractor shall be entitled to an adjustment in the Substantial Completion Date due to an Excusable Delay. The term "Excusable Delay" shall mean:

Section 6.3.1 Delays due to adverse weather other than those that are classified as a Non-Excusable delay;

Section 6.3.2 Delays due to acts of God, war, unavoidable casualties, civil unrest, and other similar causes of delay that are beyond the control of the Contractor; provided, however, that in no event shall a Non-Excusable delay or the action of the Contractor, or any of its employees, agents, Subcontractors or material suppliers be deemed an Excusable Delay; or

Section 6.3.3 Delays caused by Differing Soils Conditions or Hazardous Materials Remediation.

In addition to the forgoing, a delay shall be deemed to be an Excusable Delay only to the extent that such delay (i) warrants an extension in the Substantial or Final Completion Date; (ii) has not been caused by the Contractor or any of its employees, agents, Subcontractors or material suppliers; (iii) is of a duration of not less than three (3) days; (iv) is on Project's critical path; and (v) is in addition to any time contingency periods set forth in the critical path.

Section 6.4 If the Contractor wishes to make a claim for an increase in the Contract time, written notice as provided herein shall be given. The Contractor's claim shall include an estimate of the cost and of the probable effect of delay on the progress of the Work. In the case of continuing delay, only one claim is necessary.

ARTICLE 7
PAYMENT PROVISIONS

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

Section 7.2 **Schedule of Values.** The Contractor shall prepare a Schedule of Values that breaks down the Lump Sum Price for the various parts of the Work. The Schedule of Values shall be maintained in such a manner to provide a breakdown of the Lump Sum Price in enough detail to facilitate continued evaluation of applications for payment and progress reports. Large subcontracts shall be broken into several line items where, in the opinion of the Program Manager, such detail is necessary to properly track the progress of the Work. The proposed schedule of values shall also include separate line items for each part of the Work if so required

by the Program Manager, which in general shall be required for mechanical systems, vertical transport systems, windows and structural steel. The Contractor and the Program Manager shall meet as necessary to maintain the schedule of values for the Project in a manner acceptable to the Program Manager. No progress payments shall be made unless the then current Schedule of Values is acceptable to the Program Manager.

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

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

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

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

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

Section 7.8 **Right to Withhold Payments.** The Department will notify the Contractor within fifteen (15) days after receiving any Application for Payment of any defect in the Application for Payment or the Contractor's performance which may result in the Department's

declining to pay all or a part of the requested amount. The Department may withhold payment from the Contractor, in whole or part, as appropriate, if:

Section 7.8.1 the Work is defective and such defects have not been remedied; or

Section 7.8.2 the Department has determined that the Contractor's progress has fallen behind the Project Schedule, and the Contractor fails, within ten (10) calendar days of the Department's written demand, to provide the Department with a realistic and acceptable plan to recover the delays; or

Section 7.8.3 the Contractor has failed to pay Subcontractors or suppliers promptly or has made false or inaccurate certifications that payments to Subcontractors or suppliers are due or have been made; or

Section 7.8.4 any mechanic's lien has been filed against the Department, the site or any portion thereof or interest therein, or any improvements on the site, even though the Department has paid all undisputed amounts due to the Contractor, and the Contractor, upon notice, has failed to remove the lien, by bonding it off or otherwise, within ten (10) calendar days; or

Section 7.8.5 the Contractor is otherwise in substantial breach of this Agreement.

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

ARTICLE 8
INDEMNIFICATION

Section 8.1 To the fullest extent permitted by law, the Contractor shall 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 attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

ARTICLE 9
CHANGES CLAUSE

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

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

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

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

Section 9.5 **Detailed Change Request.** Within twenty (20) days after giving notice of a change event, the Contractor shall submit a written change request describing, in reasonable detail, all adjustments it seeks to the Substantial or Final Completion Date or the Lump Sum Price as a result of the Change Event. The change request shall include the same information as described in Section 8.3 with respect to any Contract changes the Contractor seeks due to the Change Event, and the amount of any requested adjustment to the Lump Sum Price Sum shall be limited in accordance with that Subparagraph.

Section 9.6 **Markups.** For Changes to the Lump Sum Price, the following conditions shall apply:

Section 9.6.1 For increases in the Work which the Contractor is permitted to perform by Contractor's own forces, the Lump Sum Price shall be increased by the sum of: (i) the Direct

Cost of the Work; and (ii) a fee (covering home office overhead, field supervision, general conditions and profit) of fifteen percent (15%) of the sum due under (i);

Section 9.6.2 For increases in the Work performed by Subcontractors, the Lump Sum Price shall be increased by the sum of: (i) the Direct Cost of the Work incurred by the Subcontractor for the changed Work; (ii) a fee (covering home office overhead and profit) equal to fifteen percent (15%) of the sum due under (i) above for the Subcontractor performing such Work; and (iii) a fee (covering the Contractor's home office overhead, field supervision, general conditions and profit) of five percent (5%) of the sum of items (i) and (ii). Intervening tier Subcontractors shall be entitled to a mark-up of five percent (5%) (covering home office overhead, field supervision, general conditions and profit); provided, however, that in all situations and regardless of the number of tier Subcontractors involved, the maximum mark-up on the Direct Cost of the Work shall be twenty percent (25%) and provided, further, that the Contractor shall not be entitled to the markup referred to in item (iii) on changes unless such changes exceed, either individually or in the aggregate, five percent (5%) of the Lump Sum Price.

Section 9.6.3 When both additions and credits are involved in any one change in the Work, the Contractor's Change Order and markup shall be figured on the basis of the net increase, if any.

Section 9.6.4 Fee will not be paid by Department for overtime or weekend work unless overtime is requested in writing and approved in writing by Department.

Section 9.6.5 The amount of credit to be allowed by Contractor to Department for a deletion or change which results in a net decrease in the Lump Sum Price shall be the Cost avoided as confirmed by Department plus fifteen percent (15%) for profit on the deleted work.

Section 9.7 **Failure to Agree.** If the Contractor claims entitlement to a change in the Contract, 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 Contract, as it determines are appropriate pursuant to the Contract. The Contractor shall proceed with the Work and the Department's directives, without interruption or delay, and shall make a claim as provided in Article 12. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Contract and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

Section 9.8 **Department's Designated Representative.** The Department designates Brian J. Hanlon, Director, Department of General Services, as its representative with express authority to bind the Department with respect to all matters requiring the Department's approval or authorization; provided, however, the Department's Associate Director, Contracts & Procurement Division, shall have the express authority to bind the Department for matters that are administrative in nature or of a value no greater than One Hundred Thousand Dollars ($100,000). These representatives shall have the exclusive authority to make decisions on behalf

of the Department concerning estimates and schedules, construction budgets, changes in the Work, and execution of Change Orders or Change Directives, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Contractor. In order for the Department to effectively manage the Project and assure that the Contractor does not receive conflicting instructions regarding the Work, the Contractor shall promptly notify the Department's representative upon receiving any instructions or other communication in connection with the Contractor's Work from any employee of the Department or other purported agent of the Department other than the Department's representative.

ARTICLE 10
LIQUIDATED DAMAGES

Section 10.1 If the Contractor fails to achieve Substantial Completion by the Substantial Completion Date, the parties acknowledge and agree that the actual damage to the Department for the delay will be impossible to determine, and in lieu thereof, the Contractor shall pay to the Department, as fixed, agreed and liquidated delay damages in the amount set forth in the Project Task Order per day for each calendar day of delay for failure to meet the Substantial Completion Date. The Contractor and the Department agree that the liquidated damages do not constitute, and shall not be deemed, a penalty but represent a reasonable approximation of the damages to the Department associated with a delay in the Project.

ARTICLE 11
INSURANCE AND BONDS

Section 11.1 The Contractor will be required to maintain the following types of insurance throughout the life of the contract. In the event that a claim for or related to the Project is made on any such policy or any other policy, the Design-Contractor shall be responsible for the payment of any applicable deductible and shall not be entitled to an increase in Lump Sum for the costs of paying such deductible.

Section 11.1.1 Commercial general public liability insurance ("Liability Insurance") against liability for bodily injury and death and property damage, such Liability Insurance to be in an amount not less than One Million Dollars ($1,000,000) for liability for bodily injury, death and property damage arising from any one occurrence and One Million Dollars ($1,000,000) from the aggregate of all occurrences within each policy year. The policy should include completed operations coverage.

Section 11.1.2 Workers' compensation and Employers Liability coverage providing statutory benefits for all persons employed by the Contractor, or its contractors and subcontractors at or in connection with the Work.

Section 11.1.3 Automobile Liability, including Hired and Non-Owned Auto Liability in the amount of at least One Million Dollars ($1,000,000) for each occurrence for bodily injury

and property damage.

Section 11.1.4 Contractor's risk insurance written on an "all risk" basis and covering the value of the improvements being constructed. This coverage does not need to be maintained until such time as construction operations begin.

Section 11.1.5 With respect to the design team, errors and omissions coverage written on a claim made basis and having an aggregate policy limit of at least One Million Dollars ($1,000,000).

Section 11.1.6 Excess umbrella liability coverage (on at least a follow form basis) and when combined with the general liability policy has an aggregate limit of at least Two Million Dollars ($2,000,000).

Section 11.2 Each insurance policy shall be issued in the name of the Contractor and shall name as additional insured parties the Department and the District of Columbia, and the officers, agents and employees of each. Such insurance shall not be cancelable or reduced without thirty (30) days prior written notice to the Department.

Section 11.3 All such insurance shall contain a waiver of subrogation against the Department and the District of Columbia, and their respective agents.

Section 11.4 All such insurance policies shall be written by a company that is rated at least A- by A.M. Best and having a surplus size rating of at least XV and is licensed/approved to do business in the District of Columbia.

Section 11.5 **Performance Bond and Payment Bond.** The Contractor shall be required to provide payment and performance bonds, each having a penal value equal to 100% of the contract amount prior to performing any work on the contract. All bonding companies must be licensed to conduct business in the District of Columbia and be included on the United States Department of Treasury's Listing of Approved Sureties website. Such bonds shall remain in full force and effect until Final Completion is achieved and the Department shall be able to draw upon such bond regardless of the amount paid by the Department to the Contractor, even if such amount exceeds the penal value of such bond.

ARTICLE 12
ECONOMIC INCLUSION REQUIREMENTS

Section 12.1 **LSDBE Utilization.** The Contractor shall comply with the requirements of the approved LSDBE Utilization Plan attached to each individual Task Order.

Section 12.2 **First Source Employment Act.** For projects valued at $300,000.00 or more, the Contractor shall comply with subchapter III of Chapter 11 Title 1, and subchapter II of Chapter 11 of Title 1 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The Contractor and all member firms and Subcontractors

shall execute a First Source Agreement with the District of Columbia Department of Employment Services ("DOES") prior to beginning Work at the Project site.

Section 12.3 **Compliance with the Apprenticeship Act.** The Contractor agrees to comply with the requirements of the Apprenticeship Act of 1946, D.C. Code §§ 32-1401, *et seq.* It is understood and agreed that thirty five percent (35%) of all apprentice hours for the Project must be District residents. If the Contractor or any of its subcontractors fail to use its best efforts to meet this goal, the Contractor or the subcontractor shall be subject to a penalty of five percent (5%) of the labor costs associated with the Contract.

ARTICLE 13
ALTERNATIVE DISPUTE RESOLUTION

Section 13.1 **Notice of Claim.** If the Contractor has complied with all provisions in Section 9.4 regarding changes, and the Department has denied the changes requested in a written Change Proposal, or has failed to respond to a written Change Proposal within thirty (30) days, and the Contractor wishes to pursue a claim over the disputed item, it shall inform the Department, in writing, of its claim. The notice must be delivered to the Department within fifteen (15) days of the Department's decision, or within thirty (30) days of the written request for a Change Order, if the Department has failed to respond to the request. If the Contractor wishes to assert a claim, as such term is defined in the General Conditions, over a dispute not arising from matters related to a Change Event, Change Order or Change Directive, the written notice of claim must be delivered within fifteen (15) days of the date the Contractor knew or should reasonably have known of the events giving rise to the claim or dispute.

Section 13.2 **Contents of Notice.** The notice of claim shall state the nature of the claim, the events or circumstances giving rise to the claim, the type of relief requested, and the amount of time or additional compensation, or other damages sought. If the amount of time, compensation, or other damages sought is not reasonably ascertainable at the time, the Contractor shall so state, explain why, and provide whatever estimates it can reasonably provide. The notice shall state clearly that the Contractor intends to assert a claim in arbitration with respect to the claimed items.

Section 13.3 **Mediation.** Unless the parties hereafter otherwise agree, all disputes arising from or in connection with this Contract or its breach, or relating to the Project, whether framed in contract, tort or otherwise, shall first be referred to non-binding mediation in accordance with the American Arbitration Association's Construction Industry Mediation Rules. Within a reasonable time following the execution of the Contract, the Department, subject to the Contractor's reasonable approval, shall appoint an independent mediator(s), which will be charged with overseeing the mediation process.

Section 13.4 **Procedures.** Unless the parties hereafter otherwise agree, all disputes arising under or in connection with the Agreement or its breach, or relating to the Project, whether framed in contract, tort or otherwise, and which are not resolved by mediation, shall be resolved by the District of Columbia Board of Contract Appeals in accordance with Title X of

the *Procurement Practices Reform Act of 2010* (PPRA). However, if a third party brings any claim against the Department, including, without limitation, claims of infringement of patents, copyrights or other intellectual property rights, the Department may bring an action for defense or indemnification against the Contractor in the court in which such claim is being litigated.

ARTICLE 14
MISCELLANEOUS PROVISIONS

Section 14.1 **Extent of Contract.** The Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Department and Contractor and supersedes all prior negotiations representations or agreements, either written or oral. The Contract may be amended only by written instrument signed by both the Department and Contractor. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

Section 14.2 **Ownership And Use of Documents.** The Drawings, Specifications and other documents prepared by the Contractor's Architect/Engineer, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Department and the Architect/Engineer.

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

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

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

Section 14.6 **False Claims Act.** Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in District of Columbia Code § 22-2514.

Section 14.7 **No Third-Party Beneficiary Rights.** Nothing in this Agreement shall be construed as creating third-party beneficiary rights in any person or entity, except as otherwise expressly provided in this Agreement.

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

Section 14.9 Binding Effect; Assignment. The Contract shall inure to the benefit of, and be binding upon and enforceable by, the parties and their respective successors and permitted assigns. The Contractor shall not assign its rights under the Contract, including the right to all or a portion of its compensation, without the Department's prior written consent. Any delegation or assignment made contrary to the provisions of this Paragraph shall be null and void.

Section 14.10 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.

Section 14.11 No Waiver. If the Department waives any power, right, or remedy arising from the Contract or any applicable law, the waiver shall not be deemed to be a waiver of the power, right, or remedy on the later recurrence of any similar events. No act, delay, or course of conduct by the Department shall be deemed to constitute the Department's waiver, which may be effected only by an express written waiver signed by the Department.

Section 14.12 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 Department may have, including, without limitation, at law or in equity. The Department's rights and remedies will be exercised at its sole discretion, and shall not be regarded as conferring any obligation on the Department's to exercise those rights or remedies for the benefit of the Contractor or any other person or entity.

Section 14.13 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 unless made in writing signed by both the Department and the Contractor, unless otherwise expressly provided to the contrary in the Contract.

Section 14.14 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable; each part of this Agreement is intended to be severable.

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

Section 14.16 **Termination for Default.** The Department may terminate the Contract for default if the Contractor fails materially to perform any of its duties or obligations under the Contract. The Department must provide the Contractor with written notice of its intent to terminate the Contract under this provision seven (7) days before actually putting the termination into effect. If the Contractor has begun its curative action and has made progress satisfactory to the Department within the seven days, the Department may so notify the Contractor and the termination will not take effect. Otherwise, the termination shall take effect after seven days without further notice or opportunity to cure.

Section 14.17 **Termination for Convenience** The Department may, upon seven (7) days written notice to the Contractor, terminate the Contract in whole or specified part, for its convenience, whether the Contractor is in breach of Contract or not. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions. The Contractor shall be entitled to receive only the following with respect to the terminated portion of the Project: (1) Cost of Work performed up to the date of termination; (2) reasonable costs of terminating outstanding subcontracts and supply agreements and other similar wind-up costs in a reasonable amount; (3) a fair and reasonable portion of the overhead and profit attributable to the Work performed on the terminated portion of the Project, up to the time of termination. In the event of a termination for convenience, the Contractor shall not be entitled to profit on unperformed elements of the Work.

Section 14.18 **Anti-Competitive Practices and Anti-Kickback Provisions.**

Section 14.18.1 The Contractor recognizes the need for markets to operate competitively and shall observe and shall comply with all applicable law, rules, and regulations prohibiting anti-competitive practices. The Contractor shall not engage, directly or indirectly, in collusion or other anti-competitive practices that reduces or eliminates competition or restrains trade. The Department shall report to the appropriate authority any activity that evidences a violation of the antitrust laws, and take such other further action to which it is entitled or obligated under the law.

Section 14.18.2 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 Contractor to the Department. The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in this subparagraph in its own operations and direct business relationships. The Department may take any recourse available to it under the law for violations of this anti-kickback provision.

Section 14.18.3 The Contractor represents and warrants that it did not, directly or indirectly, engage in any collusive or other anti-competitive behavior in connection with the bid, negotiation or award of the Contract.

Section 14.19 Ethical Standards for the Department's Employees and Former Employees.

Section 14.19.1 The Department expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed under the 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.

Section 14.20 Gratuities and Officers Not To Benefit Provisions.

Section 14.20.1 If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any official, employee or agent of the Department or the District with a view toward securing the 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 and may pursue such other rights and remedies provided by law and under the Contract.

Section 14.20.2 In the event the Contract is terminated as provided in Section 14.20.1,

the Department shall be entitled:

Section 14.20.2.1 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

Section 14.20.2.2 as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Department) which shall be not less than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

Section 14.20.3 No member of, nor delegate to Congress, Mayor or City Council Member, nor officer nor employee of the District, nor officer nor employee of the Department shall be admitted to any share or part of the Contract or to any benefit that may arise therefrom, and all agreements entered into by the authorized representative of the Department in which he or any officer or employee of the Department shall be personally interested as well as all agreements made by the Department in which the Mayor or City Council Member or officer or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department or by any officer thereof; but this provision shall not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or officer or employee of the District is de minimus.

Section 14.21 <u>Covenant Against Contingent Fees Provisions</u>.

Section 14.21.1 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 Department shall have the right to terminate the Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the Department, percentage, brokerage of contingent fee.

Section 14.22 <u>Conformance with Laws.</u> It shall be the responsibility of the Contractor to perform the Contract in conformance with the Department's Procurement Regulations (27 DCMR § 4700 *et seq.*) and all statutes, laws, codes, ordinances, regulations, rules, requirements and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Contractor to determine the Procurement Regulations, statutes, laws, codes, ordinances, regulations, rules, requirements and orders that apply and their effect on the Contractor's obligations thereunder. This Section 14.22 shall apply during both the Design and Preconstruction Phase and the Construction Phase.

Section 14.23 <u>Warranties and Representations</u>

Section 14.23.1 All disclosures, representations, warranties, and certifications the Contractor makes in its proposal in response to the IFB shall remain binding and in effect throughout the term of the Contract. The Contractor reaffirms that all such disclosures, representations, warranties, and certifications are true and correct.

Section 14.23.2 If any disclosure, representation, warranty or certification the Contractor has made or makes pursuant to the IFB or the Contract, including, without limitation, representations concerning the Contractor's construction or design experience and qualifications, claims or litigation history or financial condition, is materially inaccurate, that shall constitute a material breach of the Contract, entitling the Department to all available remedies.

Section 14.23.3 The terms and conditions of Section 14.23 shall apply during both the Preconstruction and Construction and Design Management Phases.

Section 14.24 Responsibility for Agents and Contractors. At all times and during both the Preconstruction and Construction Phases, the Contractor shall be responsible to the Department for any and all acts and omissions of the Contractor's agents, employees, Subcontractors, Sub-Subcontractors, material suppliers, and laborers, and the agents and employees of the Subcontractors, Sub-Subcontractors, material suppliers, and laborers performing or supplying Work in connection with the Project. This Section 14.24 shall apply during both the Preconstruction and Construction Phases.

ARTICLE 15
DEPARTMENT'S RESPONSIBILITIES

Section 15.1 Information and Services

Section 15.1.1 The Department shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Department's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

Section 15.2 Department's Designated Representatives

Section 15.2.1 Chief Contracting Officer (CCO) In accordance with 27 DCMR, Chapter 47, Section 4704 contracts may be entered into and signed on behalf of the District Government only by CCO. The address and telephone number of the CCO is:

Brian J. Hanlon
Director
Department of General Services
2000 14th Street, N.W. – 8th Floor
Washington, D.C. 20009
Telephone: (202) 727-2800

E-mail:brian.hanlon@dc.gov

Section 15.2.2 Authorized Changes by the CCO

Section 15.2.2.1 In accordance with Article 3 of the General Provisions of the Standard Contract Provisions For Use With Specifications for District of Columbia Construction Projects Revised March 2011, the CCO is the only person authorized to approve changes to any of the requirements of the contract.

Section 15.2.2.2 The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the CCO.

Section 15.2.2.3 In the event the Contractor effects any change at the instruction or request of any person other than the CCO, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

Section 15.2.3 Project Manager

Section 5.2.3.1 The Project Manager is responsible for general administration of the contract and advising the CCO as to the Contractor's compliance or noncompliance with the contract. The Project Manager has the responsibility for the day-to-day monitoring and supervision of the contract, of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in writing by the CCO and/or in the contract. These include:

Section 15.2.3.1.1 Keeping the CCO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CCO of any potential problem areas under the contract;

Section 15.2.3.1.2 Coordinating site entry for Contractor personnel, if applicable;

Section 15.2.3.1.3 Reviewing invoices for completed work and recommending approval by the CCO if the Contractor's prices and costs are consistent with the contractual amounts and progress is satisfactory and commensurate with the rate of expenditure;

Section 15.2.3.1.4 Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and

Section 15.2.3.1.5 Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

Section 15.2.3.1.6 The address and telephone number of the Project Manager will be named in

each individual Task Order.

Section 15.2.4 The Project Manager shall NOT have the authority to:

Section 15.2.4.1 Award, agree to, or sign any contract, delivery order or task order. Only the CCO shall make contractual agreements, commitments or modifications;

Section 15.2.4.2 Grant deviations from or waive any of the terms and conditions of the contract;

Section 15.2.4.3 Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,

Section 15.2.4.4 Authorize the expenditure of funds by the Contractor;

Section 15.2.4.5 Change the period of performance; or

Section 15.2.4.6 Authorize the use of District property, except as specified under the contract.

Section 15.2.4.7 Contractor shall be held fully responsible for any changes not authorized in advance, in writing, by the CCO, and may be denied compensation or other relief for any additional work performed that is not authorized by the CCO in writing. In addition, Contractor may also be required at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

ARTICLE 16
DEFINITIONS

Section 16.1 **Agreement.** The term Agreement shall mean this Agreement consisting of 30 pages. It does not include exhibits attached hereto or any document incorporated by reference.

Section 16.2 **Change Directive.** A written direction signed and issued by the Department ordering the Contractor either to provide pricing and schedule impact information for a described change to the Work or to proceed with a described change and provide pricing and schedule impact information after beginning the changed Work.

Section 16.3 **Change Event.** Any condition, event, act, omission or breach, other than the issuance of a Change Directive, which the Contractor believes entitles it to a change in the Lump Sum Price, or the Substantial or Final Completion Date.

Section 16.4 **Change Order.** A written document, executed by the Department and the Contractor, setting forth the agreed terms upon which a change to the Contract has been made.

Section 16.5 **Construction Documents.** The final Drawings and Specifications, as prepared, sealed by the Architect/Engineer's design professional in accordance with the law, and issued by the Contractor for the purpose of obtaining bids from potential trade Subcontractors and material suppliers for use in constructing the Project.

Section 16.6 **Contract.** The entire, integrated agreement between the Department and the Contractor with respect to the Project, consisting of this Agreement and the Exhibits to the Agreement, the Construction Documents released for the Contractor's use and any Change Directives or Change Orders that have been executed by the Department.

Section 16.7 **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 16.8 **Final Completion.** The point at which Substantial Completion has been achieved, all punch list items noted at Substantial Completion have been completed and all documents the Contractor is required to deliver to the Department as a condition to receiving final payment.

Section 16.9 **Final Completion Date.** The date established herein by which the Contractor shall achieve Final Completion. The Final Completion Date may be modified only by Change Order or Change Directive in accordance with the Agreement.

Section 16.10 **Fully Complete.** To undertake all of the Work necessary to fully construct and complete the Project and execute all tasks necessary to obtain the final Certificate of Occupancy for the Project from the District of Columbia; submit final lien releases from the Contractor and Subcontractors and material suppliers; complete all punch list items to the Department's approval and sign-off; and cause all representations, warranties and guarantees to be honored and otherwise fulfill all of the requirements set forth in the Contract.

Section 16.11 **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 16.12 **Notice to Proceed.** A written notice to proceed, signed by the Department, directing the Contractor to proceed with the Project or any portion of the Project.

Section 16.13 **Project Schedule.** The schedule for the project agreed to by the Department and the Contractor herein. Such schedule shall not be changed except by a Change

Order or Change Directive issued by the Department. The schedule shall be in a form and contain such detail as may be agreed upon by the parties.

Section 16.14 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 16.15 Subcontractor. Any person, natural or legal, to whom the Contractor delegates performance of any portion of the Work required by the Contract. The term "Subcontractor," used without a qualifier, shall mean a subcontractor in direct privity with the Contractor. "Subcontractors at all tiers" shall mean not only those Subcontractors in direct privity with the Contractor, but also those performing Work pursuant to multi-tiered sub-subcontracts. "Subcontractors" shall include both those who are retained to perform labor only and those who are retained both to perform labor and to supply material or equipment. "Subcontractors" shall also include design professionals who are not the Contractor's employees and to whom the Contractor delegates any part of its responsibilities under the Contract, except that references to "trade Subcontractors" shall exclude design professionals.

Section 16.16 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 permanent certificate of occupancy and all other required permits or approvals have been obtained; (3) all operating and maintenance manuals, training videotapes and warranties required by the Contract have been delivered to the Department; (4) any supplemental training session required by the Contract for operating or maintenance personnel have been completed; (5) all clean-up required by the Contract has been completed; and (6) the Project is ready for the Department to use it for its intended purpose. "Minor punch list items" are defined for this purpose as items that, in the aggregate, can be completed within ninety (90) days without interfering with the Department's normal use of the Project.

Section 16.17 Substantial Completion Date. The date established herein by which the Contractor shall achieve Substantial Completion. The Substantial Completion Date may be modified only by Change Order or Change Directive in accordance with the Agreement.

ARTICLE 17
GENERAL CONDITIONS

Section 17 General Conditions. To the extent that this Agreement is silent on an action or requirement of the Contractor, and current as of the date of this Agreement the Standard Contract Provisions For Use With Specifications for District of Columbia Construction Projects Revised March 2011 shall govern the Contractor's obligations with respect to such action or requirement under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

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

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

[CONTRACTOR]

By: _____
Name: _____
Its: _____
Date: _____