GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES

SYSTEMIC UPGRADES
AT THE
WARD 1 SENIOR WELLNESS CENTER

Solicitation No.: DCAM-12-CS-0108

Addendum No. 2
Issued: February 14, 2013

This Addendum No. 2 is issued and hereby published on the DGS website on February 14, 2013. Except as modified hereby, the Request for Proposals ("RFP") remains unmodified.

Item #1 Request For Information (RFI's)

See the attached responses to the Offeror's Request for Information (RFI's).

Item #2 Form of Contract

Form of Contract: Attached to this Addendum is the Form of Contract. THE TERMS OF THE FORM OF CONTRACT SHALL PREVAIL OVER THE RFP. TO THE EXTENT THERE IS AN INCONSISTENCY BETWEEN THE FORM OF CONTRACT ISSUED HEREWITH AND THE RFP, THE FORM OF CONTRACT SHALL GOVERN.

- End of Addendum No. 2 -

By: _____ **Date:** 2/14/13
JW Lanum
Associate Director/ Contracting Officer

2000 14th St. NW, 8th Floor, Washington DC 20009 | Telephone (202) 727-2800 | Fax (202) 727-7283

DCAM-13-CS-0108
SYSTEMIC UPGRADES AT THE WARD 1 SENIOR WELLNESS CENTER

REQUEST FOR INFORMATION (RFI'S)

RESPONSE TO OFFEROR RFI'S:

Q-1. Do you have a cost estimate/cost range available for this project?

Response: The price range for this project is between $100,000-$250,000.

Q-2. Refer to Drawing SK-01. While the building has a 1st and 2nd floor, the Drawings only have 1 floor plan. In absence of the floor plan for the 2nd floor, it is not clear how many windows need window screens. Do the windows, on the 1st and 2nd floor, located in the corridor near the nutrition education room need window screens?

Response: The window screens to be replaced are shown on Sketches SK-01 and SK-02.

Q-3. Sketch SK-02 includes elevation drawings. Please provide the elevation drawings for the 2nd floor.

Response: No other elevation drawings are required for this project.

Q-4. Do any of the exterior and interior windows require replacement in conjunction with the installing of the security screens?

Response: Windows are not being replaced on this project.

Q-5. Refer to Drawing SK-04. How many hose bibbs need to be installed on the 1st floor?. Can, or should, the hose bibbs cross the exterior concrete wall? Should hose bibs be installed on the 2nd floor?

Response: The hose bibb is to be installed on the exterior of the building at the location shown on Sketch SK-02.

Q-6. Should the 2" forced main pipes from the sewage ejector pump join to the existing 5" Sanitation Pipe (S.P.) or a separate line?

Response: The discharge from the sewage ejector pit connects to the existing 5" S.P. that is connected to the street main as shown on the sketch.

Q-7. Please provide existing panel board drawings. Are modifications to the existing electrical panel board needed?

Response: Panel board drawing is not required. The drawing provides sufficient information to provide power to the new pump set.

Q-8. Refer to DrawingSK-06. Does the whole project need only one K3 Luminaire. If more than one, how many we require?

Response: The number of K3 Luminaires are shown on Drawing SK-06.

Q-9. Please give us a plan holder list or the list showing the contractors who signed in for the last site visit.

Response: Please see Addendum No. 1 of this solicitation that is posted to the DGS website.

CONSTRUCTION AGREEMENT

FOR
SYSTEMIC UPGRADES AT THE WARD 1 SENIOR WELLNESS CENTER

BY AND BETWEEN

THE DEPARTMENT OF GENERAL SERVICES

AND

DCAM-13-CS-0108

CONSTRUCTION AGREEMENT
SYSTEMIC UPGRADES AT THE WARD 1 SENIOR WELLNESS CENTER
DCAM-13-CS-0108

THIS AGREEMENT ("Agreement") 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 _____, and with a place of business at _____ (the "Contractor").

WITNESSETH:

WHEREAS, the Department requires a contractor to provide all labor, materials, supervision, and other services necessary for systemic upgrades at the Ward 1 Senior Wellness Center located at 3531 Georgia Avenue, NW Washington DC consistent with the Drawings and Specifications attached hereto as **Exhibit A** (the "Project");

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

WHEREAS, the Department requires that the Project be completed no later than the date specified in the written Notice to Proceed (the "Substantial Completion Date").

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

ARTICLE 1
GENERAL PROVISIONS

Section 1.1 **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 Contracting Officer's Technical Representative (COTR) in furthering the interests of the Department. The Contractor shall use its best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Department. The Department shall endeavor to promote harmony and cooperation among the Department, Contractor, COTR, and other persons or entities employed by the Department for the Project. In performing its duties under this Contract, the Contractor shall at all times use the standard of care used by Contractors that renovate or construct facilities such as the Project in large, urban areas. Whenever the term "competent" is used herein to describe the Contractor's actions or duties, that term shall refer to the level of competence customarily possessed by those Contractors that renovate or construct facilities such as the Project in large, urban areas.

Section 1.2 **Project Description.** The Project consists of removal of existing window insect screens, installation of reinforced security window screens, installation of sewage ejector pit and sump pump in the basement mechanical room, removal of existing lighting fixtures and installation of high capacity exterior lighting fixtures, and installation of free standing hose bibb at the Fontenau Senior Wellness Center (Ward 1) located at 531 Georgia Avenue, NW Washington, DC 20011.

Section 1.3 **COTR.** The COTR shall provide certain program management functions. The COTR shall, at all times, act solely for the benefit of the Department, not the Contractor. The Contractor acknowledges that the COTR 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 1.4 **General Description of Contractor's Duties.** The Contractor shall perform the services described in Articles 3 and 4. The Contractor shall supply and furnish at the location where the Work is to be performed all labor, materials, equipment, tools, services, and supervision, and shall bear all items of expense, necessary to complete and satisfactorily perform this Contract, except such items that the Department, in this Contract, specifically agrees to supply or furnish to or for the use of Contractor. Any labor, materials, equipment, tools, services or supervision not specifically described in this Contract, but which may be fairly implied as required thereby or necessary to properly complete the Contract Work, shall be deemed within the scope of the Contract Work and shall be provided by Contractor at Contractor's sole expense.

ARTICLE 2
(Intentionally Omitted)

ARTICLE 3
LUMP SUM PRICE

Section 3.1 **Lump Sum Price.** The Contractor shall be paid a lump sum price of $_____ (such amount, the "Lump Sum Price") to Fully Complete the Project.

Section 3.2 **Certain Work Included in the Lump Sum Price.** The Contractor acknowledges and understands that the Lump Sum Price is based on the Drawings & Specifications listed in **Exhibit A**. 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 provide all labor, materials, supervision, and other services necessary for systemic upgrades at the Ward 1 Senior Wellness Center as contemplated in the Bid Set 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 the drawings; (iii) elements of work not shown on the Bid Set, but which are reasonably inferable from the Bid Set; (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 or non-performance. It is understood and agreed by the parties that items (i) through (v) listed in the preceding sentence are not intended to be an exclusive list of the risks assumed by the Contractor and that such items represent a partial list of the risks assumed by the Contractor.

Section 3.3 **Review of Lump Sum Drawings & Specifications.** The Department has selected the Contractor because of its special expertise in constructing similar projects. Before agreeing to the Lump Sum Price, the Contractor reviewed the Bid Set for accuracy, constructability and completeness and was required to bring such deficiencies to the attention of the Department and its Architect/Engineer to address any such deficiencies. To the extent that any such deficiencies in the Lump Sum Drawings & Specifications could have been identified by such review by a competent Contractor, such deficiencies shall not be the basis for a change in the Lump Sum Price or delaying the Project Schedule.

Section 3.3.1 During the course of the Work, should any errors, omissions, ambiguities or discrepancies be found on the Lump Sum Drawings or in the Specifications, or should there be found any discrepancies between the Drawings and the Specifications to which Contractor has failed to call attention before agreeing to the Lump Sum Price, the Contractor shall bring any such errors, omissions, ambiguities or discrepancies to the attention of Department, and the Department will interpret the intent of the Drawings and Specifications. Contractor hereby agrees to abide by and to carry out the Work in accordance with the decision of the Department. Wherever the intent of the Drawings or Specifications is not indicated clearly or there is a conflict between the Drawings and Specifications, Contractor will be held to have included in the Lump Sum Price the more expensive material or method of construction and the quantity of material.

Section 3.3.2 If any item or material shown on the Drawings is omitted from the Specifications, or vice versa (except when the Drawings and Specifications clearly exclude such omitted item), and such item or material is required to complete the detail shown or specified, and if additional details or instructions are required to complete the Work, then the Contractor is deemed to have made an allowance in the Lump Sum Price for the completion of the Work, consistent with adjoining or similar details and the best accepted practices of the trade for projects of this type and quality, whichever is more expensive, unless such additional information was not reasonably inferable from the Contract Documents. Without limiting the Contractor's other duties, in the case of a difference among the Contract Documents as to the Contractor's obligations, or an inconsistency in the Contract Documents, the Department will decide which requirement governs; however, the Contractor shall assume that the more expensive material or method of construction and the quantity of material shall be required without a change to the Lump Sum Price.

Section 3.3.3 Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly examined all Contract Documents, including all details, plans, elevations, sections, schedules and diagrams, has visited the site, has become familiar with local conditions under which the Work is to be performed, has correlated personal observations with the requirements of the Contract Documents, and has satisfied himself before executing the Contract as to all matters that can affect the Work and its cost, including: (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 he may require; (6) uncertainties of weather and physical conditions at the site; and in general to have himself 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. The Contractor waives any and all claims against the Department arising from or relating to such contingencies and conditions that are reasonably inferable from the Contract Documents, in light of the required preconstruction review and inspection and the Contractor's expertise in the field of construction.

Section 3.4 **Basis of Lump Sum Price.** The Lump Sum Price is based on the following documents:

Section 3.4.1 **Exhibit A**: List of Drawings, Specifications and other documents on which the Lump Sum Price is based.

Section 3.4.2 **Exhibit B**: Form of Offer Letter

Section 3.4.3 **Exhibit C**: Davis Bacon Wage Rates

Section 3.4.4 **Exhibit D**: Subcontracting Plan

Section 3.4.5 **Exhibit E:** Solicitation Number DCAM-13-CS-0108

Section 3.5 **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.

Section 3.6 **Unsafe Materials and Hazardous Materials**

Section 3.6.1 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 the Contract Documents 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. The Department shall not be responsible under this Section 3.6 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Department shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

Section 3.6.2 The Department shall not be responsible under this Section 3.6 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Department shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances. The Contractor shall indemnify the Department for the cost and expense the Department incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under this Section 3.6.

ARTICLE 4
CONSTRUCTION

Section 4.1 **General.** Construction shall commence when this Agreement is executed by both the Department and the Contractor and the Department issues a Notice to Proceed for Construction Services. The Contractor shall, through Subcontractors or 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 Contract Documents. Without limitation, the Contractor shall provide all of the labor, materials, tools, equipment, temporary services, and facilities necessary to complete the construction and installation of the Project. The Work shall be carried out in a good and workmanlike, first-class manner, and in 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 Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. If required by the Department, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

Section 4.1.1 **Consultation and Analysis.** The parties acknowledge that the Contractor was engaged through a competitive procurement process based on a set of bid documents that are intended to represent a complete set of construction documents (the "Bid Set"). Notwithstanding the characterization of the Bid Set as a complete set of documents, both parties to this Agreement acknowledge and agree that the Bid Set is likely to contain errors, omissions, ambiguities and discrepancies that are typically found in documents of this nature, and it is the intent of the Agreement to transfer the risk associated with such errors, omissions, ambiguities and discrepancies to the Contractor. Based on the preconstruction review of the Bid Set, the Contractor has confirmed the Lump Sum Price set forth herein, and the parties have agreed to liquidated damages if the Substantial Completion Date is not met.

Section 4.1.2 **Project Schedule.** The Project Schedule shall be based on a critical path method of scheduling and includes various activities, the duration of each, and the logical relationships between such activities. All parties to this Agreement understand and agree that the Project Schedule has been agreed to is not a contract document and rather is intended to serve as a management tool. All parties further acknowledge and agree that adjustments will be required to activities, their duration and sequencing in order to accomplish the Project's objectives and end-dates. In furtherance of the foregoing, the Contractor further understands and agrees that it shall only be entitled to an adjustment to the Substantial Completion Date if an Excusable Delay, as such term is defined below, occurs and such delay is promptly brought to DGS' attention. The Contractor further understands and agrees that this Agreement has a "no damages for delay" clause and that the Contractor shall only be entitled to compensation for Excusable Delay as set forth in Article 6 of this Agreement. The Project Schedule shall be maintained and updated during Construction not less frequently than monthly.

Section 4.1.3 **Review of Means and Methods.** If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor has evaluated the jobsite safety thereof during the preconstruction phase and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Department during Construction and shall not proceed with that portion of the Work without further written instructions from the Department. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Department shall be solely responsible for any loss or damage arising solely from those Department-required means, methods, techniques, sequences or procedures.

Section 4.1.4 **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 with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to Department in writing prior to the performance of the work. Once work is started, Contractor assumes the responsibility and costs for the work and the cost of correcting work previously installed.

Section 4.2 **Subcontracting and Administration**

Section 4.2.1 It is understood that the Contractor may, subject to the term of this Agreement, subcontract a portion of the work to a Subcontractor pursuant to written contract with the Contractor; provided, however, that the Contractor shall not be permitted to subcontract all or substantially all of the Work to a single Subcontractor.

Section 4.2.2 The Department may at any time direct the Contractor to terminate any Subcontractor or supplier performing services on the job.

Section 4.2.3 The Department may elect to review the form of any such subcontract or agreement with a material supplier to insure that such contract incorporates the contractual provisions required by this Agreement.

Section 4.2.4 The Contractor shall contract for provision of all services and materials for the Project over $25,000 (other than Self-Performed Work) 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:

Section 4.2.4.1 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 4.2.4.2 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 4.2.4.3 that the Department is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit;

Section 4.24.4 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 4.2.4.5 that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Contractor to suspend or stop work;

Section 4.2.4.6 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 4.2.4.7 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 4.2.4.8 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 4.2.4.9 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 4.2.4.10 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 4.2.4.11 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;

Section 4.2.4.12 a provision requiring that all Subcontractors at all tiers comply with the provisions of Article 11 (Economic Inclusion Goals); provided, however, that the Contractor may, in its reasonable discretion impose a different LSDBE subcontracting goal on some or all of its Subcontractors; provided, further, however, that nothing in this provision shall be deemed to excuse the Contractor from using its best efforts to achieve the LSDBE subcontracting goal on an aggregate basis for the Project;

Section 4.2.4.13 a provision which allows the Contractor to withhold payment from the Subcontractor if the Subcontractor does not meet the requirements of the Subcontract;

Section 4.2.4.14 lien and claim release and waiver provisions substantially identical to those in this Agreement.

Section 4.2.5 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 Contract 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 4.2.6 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 4.2.7 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.

Section 4.3 **Progress Meetings.** The Contractor shall schedule and conduct, at a minimum, bi-weekly progress meetings at which the Department, the COTR, the Contractor and appropriate Subcontractors can discuss the status of the Work. The Contractor shall prepare and promptly distribute meeting minutes.

Section 4.4 **Written Reports.** The Contractor shall provide written reports to the COTR on the progress of the entire Work in accordance at least every other week. The Contractor shall also maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, major equipment on the site, Work accomplished, problems encountered and other similar relevant data as the Department may reasonably require. The log shall be available to the Department, and the COTR. The Contractor and its subcontractors and subconsultants shall be required to use Primavera 6 Prolog as a document management tool for this Project.

Section 4.5 **Cost Control System.** The Contractor shall maintain accurate records of the Cost of the Work. Where Work is being performed on a time and materials bases or to be funding through an allowance in the Lump Sum Price, the Contractor shall identify variances between actual and estimated costs and report the variances to the Department and the COTR at regular intervals.

Section 4.6 **Key Personnel.** Contractor's key personnel shall include (i) the Project Executive; (ii) the Field Superintendent and (iii) the Project Manager. The Contractor's obligation to provide adequate staffing is not limited to providing the key personnel, but is determined by the needs of the Project. The Contractor shall not replace any of the key personnel without the Department's prior written approval, which shall not be unreasonably withheld. If any of the key personnel become unavailable to perform services in connection with the Contract due to death, illness, discharge or resignation, then the Contractor 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.

Section 4.7 **Qualified Personnel/Cooperation.** The Contractor shall employ on the Project only those employees and Subcontractors who will work together in harmony and who will cooperate with one another on the Project. The Contractor shall enforce strict discipline, good order and harmony among its employees and its Subcontractors and shall remove from the site any person who is unfit for the work or fails to conduct himself in a proper and cooperative manner. If the Department requests removal of any person as unfit or as having behaved inappropriately, the Contractor shall promptly comply.

Section 4.8 **Work by Separate Contractors.**

Section 4.8.1 The Department reserves the right to perform construction or operations related to the Project with Department's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site.

Section 4.8.2 Contractor shall afford Department and separate contractor's reasonable opportunity for the introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate Contractor's construction and operations with theirs as Department may reasonably require.

Section 4.8.3 The Contractor shall coordinate its Work with work performed by the Department's own forces or separate contractors. The Contractor shall participate with other separate contractors and the Department in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Department until subsequently revised.

Section 4.8.4 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Department or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Department apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Department's or separate contractors completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

Section 4.8.5 The Contractor shall reimburse the Department for costs the Department incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Department shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

Section 4.8.6 If a dispute arises among the Contractor and separate contractors as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Department may clean up and allocate the cost among those responsible.

Section 4.9 <u>Cutting and Patching.</u> 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, unless otherwise required by the Contract Documents. 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. The Contractor shall not cut or otherwise alter such construction by the Department or a separate contractor except with written consent of the Department and of such separate contractor; such consent shall not be unreasonably withheld.

Section 4.10 <u>Site Safety and Clean-Up.</u>

Section 4.10.1 The Contractor, at no additional cost to the Department, shall provide such safety barricades, enclosures and overhead protection as may reasonably be required by the Department and as may be necessary to safely implement the Work and to remove such at the end of the work and shall leave the site in broom clean condition.

Section 4.10.2 The Contractor shall be responsible for site security and shall employ if necessary, at its own expense, watchpersons to safeguard the site.

Section 4.10.3 The Contractor shall be responsible for the cost of temporary power used during the construction of the Project, including, but not limited to, the cost of installing such temporary wiring as may be required to bring power to the site. The Contractor shall also be responsible for the cost of all temporary construction necessary on the site.

Section 4.10.4 Illumination of the worksite during non-daylight hours is required of the Contractor at the Contractor's expense. The Contractor shall ensure that the extent and intensity of lighting match or exceed existing lighting conditions.

Section 4.10.5 The Contractor shall clean surfaces and remove surface finishes as needed to install new work and finishes and unless otherwise noted the new finish shall match the existing.

Section 4.10.6 The Contractor shall remove abandoned items and items serving no useful purpose, such as abandoned piping, conduit, wiring, electrical devices and any other items. However, before any appurtenance removal the work shall be coordinated with DGS Contracting Officer's Technical Representative (COTR).

Section 4.11 <u>Close-out.</u>

Section 4.11.1 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, etc. at close out so as to assist the Department in operating the building.

Section 4.12 <u>Partial Use or Occupancy.</u>

Section 4.12.1 The Department may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Department and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion Substantially Complete, the Contractor shall prepare and submit a list to the COTR as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Department and Contractor or, if no agreement is reached, by decision of the COTR.

Section 4.12.2 Immediately prior to such partial occupancy or use, the Department, Contractor and COTR shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

Section 4.12.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

Section 4.13 Correction of Work.

Section 4.13.1 The Department shall be at liberty to object and to require the Contractor to remove forthwith from the Project site and the Work and to promptly replace the Superintendent, any foreman, technical assistant, laborer, agent, representative, or other person used by the Contractor in or about the execution or maintenance of the Work, who in the sole opinion of the Department is misconducting himself, or is incompetent or negligent in the proper performance of his duties, or whose performance in the Work is otherwise considered by the Department to be undesirable or unsatisfactory, and such person shall not be again employed upon the Project without the written permission of the Department.

Section 4.13.2 The Contractor shall promptly correct Work rejected by the Department for failing to conform to the requirements of the Contract Documents or applicable law or regulations whether observed before or after Final Completion and whether or not fabricated, installed or completed, and shall correct any Work found to be not in accordance with the requirements of the Contract Documents within a period of one (1) year from the date of Final Completion or by terms of an applicable special warranty required by the Contract Documents. The provisions of this Section 4.13 apply to Work done by Subcontractors as well as to Work done by direct employees of Contractor. Contractor shall bear costs of correcting such Work, including additional testing and inspections and compensation for Department's services and expenses made necessary thereby.

Section 4.13.3 The Department shall have the right, in lieu of terminating this Agreement, to take over a part or all of the Work and complete the Work. For work that is deleted, Contractor shall provide a credit to the Department for work deleted plus its profit for work not performed. However, for any work that is rejected by the Department or COTR, in writing, the Contractor shall have three (3) days from the date of the letter ("Cure Notice") to state whether it intends to cure the work and provide a plan and schedule for correction. If the Contractor agrees to cure the work that is the subject of the cure notice, then it will have five (5) days within which to submit a plan and schedule for the approval of the Department. In the event that the Contractor refuses to respond or the Department rejects the plan, then the Department may take over and complete the Work and all costs plus twenty percent (20%) shall be deducted from any amounts due to the Contractor. If the Department is determined to have wrongfully exercised this right to carry out the Work, the Contractor's sole remedy shall be compensation as provided under Section 14.4.3 of this Agreement for termination by the Department for convenience. If Contractor fails to comply with written directive from the

Department, the failure shall be a material default of this Agreement and the Department's right to complete all or a portion of the Work does not waive this right.

Section 4.13.4 Nothing contained in this Article 4 shall be construed to establish a period of limitation with respect to obligations which Contractor might otherwise have under the Contract Documents or under law.

Section 4.13.5 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. The Contractor shall correct any defects noted by Department. The obligations of Contractor or any Subcontractor under the terms and provisions of the Contract Documents shall not be limited to the payments made by the surety (if any) under the provisions of this Agreement. Ten (10) months following Substantial Completion, Contractor shall accompany Department on an inspection of the Project, and Contractor shall promptly correct any defective Work or non-conforming Work.

Section 4.14 <u>Manufacturers' Warranties.</u>

Section 4.14.1 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 Final Completion of the Project 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 4.14.2 Contractor warrants that the installation of all materials and equipment shall be in strict accordance with the manufacturers' requirements or specifications and Legal Requirements, as applicable, and that the materials and equipment shall function as required by the Contract Documents and be suitable for their intended purpose. Prior to Final Completion, Contractor shall obtain a statement from the manufacturers of the roofing system and major mechanical equipment, systems and/or components approving Contractor's installation of all such equipment, systems and/or components. If the Department seeks to enforce a claim based upon a manufacturer's warranty and such manufacturer asserts a claim of defective installation by Contractor, Department shall be entitled to assert a claim for defective installation against Contractor regardless of any limitations on time.

Section 4.14.3 If the Contractor fails to commence the cure of any breach of this warranty within after the time specified in a written cure notice that Work is defective or not conforming to the Contract Documents, and if the Contractor fails to provide a written plan and schedule to cure within the time specified in a written notice tor requesting a cure plan, and if the Contractor fails to initiate the cure within the time specified in the Department's approval of the plan and schedule to cure, and if the Contractor fails to continue with and complete the cure within the approved schedule (or such longer time as may be mutually agreed in writing and such shorter time as Department may direct in case of emergency), then the Department may, without prejudice to other remedies the Department may have, cure such breach of warranty. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of curing such breach, including compensation for the COTR's additional services and expenses made necessary by such failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, then the Contractor or its surety shall pay the difference to the Department, subject to the right to appeal and obtain a refund from the Department.

Section 4.14.4 Modifications, extensions, attachments to, completion of or repair to systems in the Work by or on behalf of the Department, including without limitation the electrical, HVAC, plumbing, security and sprinkler systems, shall not void the Contractor's warranty so long as the same are done in accordance with the original design and installation standards.

Section 4.14.5 The Contractor assigns, with effect not later than the date of final acceptance of the Work by the Department, all manufacturers' warranties relating to materials and labor used in the Work.

ARTICLE 5
DEPARTMENT'S RESPONSIBILITIES

Section 5.1 Information and Services

Section 5.1.1 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 5.2 Department's Designated Representatives

Section 5.2.1 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 5.2.2 Authorized Changes by the CCO

Section 5.2.2.1 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 5.2.2.2 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 5.2.2.3 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 5.2.3 Contracting Officer's Technical Representative (COTR)

Section 5.2.3.1 The COTR is responsible for general administration of the contract and advising the CCO as to the Contractor's compliance or noncompliance with the contract. The COTR 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 5.2.3.1.1 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 5.2.3.1.2 Coordinating site entry for Contractor personnel, if applicable;

Section 5.2.3.1.3 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 5.2.3.1.4 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 5.2.3.1.5 Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

Section 5.2.3.1.6 The address and telephone number of the COTR is:

Dave Antoine
Project Manager
Department of General Services
Capital Construction Services Division
1250 U Street, N.W. – 3rd Floor
Washington, DC 20009
Telephone: (202) 698-4141
E-mail: Dave.Antoine@dc.gov

Section 5.2.4 The COTR shall NOT have the authority to:

Section 5.2.4.1 Award, agree to, or sign any contract, delivery order or task order. Only the CCO shall make contractual agreements, commitments or modifications;

Section 5.2.4.2 Grant deviations from or waive any of the terms and conditions of the contract;

Section 5.2.4.3 Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,

Section 5.2.4.4 Authorize the expenditure of funds by the Contractor;

Section 5.2.4.5 Change the period of performance; or

Section 5.2.4.6 Authorize the use of District property, except as specified under the contract.

Section 5.2.4.7 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 6
CLAIMS FOR ADDITIONAL TIME

Section 6.1 Time is of the essence of this Contract.

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 6.3, 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. For purposes of this clause, weather shall only be deemed "Excusable" 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 "Excusable";

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.

Section 6.4 In addition to the forgoing, a delay shall be deemed to be an Excusable Delay only to the extent that such delay (i) warrants an extension in the Substantial or Final Completion Date; (ii) has not been caused by the Contractor or any of its employees, agents, Subcontractors or material suppliers; (iii) is on Project's critical path; and (iv) is in addition to a time contingency of twenty-one (21) calendar days that is built into the critical path.

Section 6.5 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.

Section 6.6 In no event shall the Contractor be entitled to an increase in the Lump Sum Price a result of either an Excusable or Non-Excusable Delay.

ARTICLE 7
COMPENSATION

Section 7.1 **Compensation.** The Contractor shall be paid its compensation in a series of progress payments and a final payment. Progress payments shall be based on a schedule of values that is agreed upon by the Parties as well as the COTR'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 which 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 COTR, such detail is necessary to properly track the progress of the Work. The proposed schedule of values shall also include separate line items for labor and material for those elements of the Work where, in the opinion of the COTR, the cost and materials and labor are experienced are incurred at different points in time during the Project. Such elements of work typically include mechanical systems, vertical transport systems, windows, structural steel. The Contractor and the COTR shall meet as necessary to maintain the schedule of values for the Project in a manner acceptable to the COTR. No progress payments shall be made unless the then current Schedule of Values is acceptable to the COTR.

Section 7.3 **Retention.** The Department shall withhold from each progress payment an amount equal to ten percent (10%) of each progress payment until such time as fifty percent

(50%) of the Work has been competed at which point the Department may cease retaining against such item. 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 COTR'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. Each Application for Payment shall include detailed documentation of costs as a condition to approving progress payments, but the Contractor shall nevertheless maintain complete documentation of the costs.

Section 7.5 **Contractor's Certification.** Each Application for Payment shall be accompanied by the Contractor's signed certification that all amounts paid to the Contractor on the previous Application for Payment that were attributable to Subcontractor Work or to materials or equipment being supplied by any supplier has been paid over to the appropriate Subcontractors and suppliers; 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; and that all Work, materials or equipment for which payment is sought is, to the best of the Contractor's knowledge, free from defect and meets all of the Contract requirements. The Contractor shall not include in an Application Payment amounts for Work for which the Contractor does not intend to pay.

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 for the Contractor and all Subcontractors and material suppliers at all tiers who have supplied labor or material or both for which payment is requested, subject only to receipt of payment. If the Department so requests, the Contractor shall also submit unconditional waivers of liens for itself and all Subcontractors and material suppliers at all tiers with respect to Work or materials or equipment for which payment has been previously made, and additional forms of waiver acknowledging receipt of final payment under the Contract, and providing final release of such liens.

Section 7.7 **Warranty of Title.** By submitting an Application for Payment, the Contractor warrants to the Department that title to all Work for which payment is sought will pass to the Department, without liens, claims, or other encumbrances, upon the receipt of payment by the Contractor. The Department may require execution of appropriate documents to confirm passage of clear title. Passage of title shall not operate to pass the risk of loss with respect to the Work in question. Risk of loss remains with the Contractor until Substantial Completion, unless otherwise agreed by the Department, in writing.

Section 7.8 **Submission.** On the twenty-fifth (25th) day of each month the Contractor shall submit to the Department (with a copy to the COTR) an Application for Payment, which Application for Payment shall cover the entire month during which the Application for Payment is submitted. All amounts formally submitted via Application for Payment and not disputed by

the Department shall be due and payable on the last day of the month following submission or, if that is not a business day, on the following business day.

Section 7.9 **Right to Withhold Payments.** The Department will notify the Contractor within fifteen (15) days after receiving any Application for Payment of any defect in the Application for Payment or the Contractor's performance which may result in the Department's declining to pay all or a part of the requested amount. The Department may withhold payment from the Contractor, in whole or part, as appropriate, if:

Section 7.9.1 the Work is defective and such defects have not been remedied; or

Section 7.9.2 the Department has determined that the Contractor's progress has fallen behind the Project Schedule, and the Contractor fails, within ten (10) calendar days of the Department's written demand, to provide the Department with a realistic and acceptable plan to recover the delays; or

Section 7.9.3 the Contractor's monthly schedule update reflects that the Contractor has fallen behind the Project Schedule, and the Contractor fails to include, in the same monthly report, a realistic and acceptable plan to recover the delays; or

Section 7.9.4 the Contractor has failed to provide the monthly report in full compliance with Article 7.9 of this Agreement; or

Section 7.9.5 the Contractor has failed to pay Subcontractors or suppliers promptly or has made false or inaccurate certifications that payments to Subcontractors or suppliers are due or have been made; or

Section 7.9.6 any mechanic's lien has been filed against the Department, the site or any portion thereof or interest therein, or any improvements on the site, even though the Department has paid all undisputed amounts due to the Contractor, and the Contractor, upon notice, has failed to remove the lien, by bonding it off or otherwise, within ten (10) calendar days; or

Section 7.9.7 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 Lump Sum Price would not be adequate to cover actual or liquidated damages arising from the anticipated delay; or

Section 7.9.8 the Department has reasonable evidence that the Work cannot be completed for the unpaid balance of the Lump Sum Price; or

Section 7.9.9 the Contractor is otherwise in substantial breach of this Contract (including, without limitation, failures to comply with CBE Utilization requirements in Article 11).

Section 7.10 **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 Contract, or a waiver of any rights or remedies the Department may have with respect to defective or nonconforming Work.

Section 7.11 **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 7.12 **Final Payment.** Final payment shall be made by the Department to the Contractor when (i) Final Completion has been achieved; and (ii) certification by the Contractor that except for requested final payment, all subcontractors and suppliers have been paid in full and that appropriate partial lien releases have been obtained from such subcontractors and suppliers documenting such payments. The Department may, if it so elects, require that copies of all such lien releases be provided as a condition to making final payment.

Section 7.13 **No Diversion of Funds.** Contractor agrees that the funds it receives for the performance of this Agreement shall be held in trust by Contractor for the benefit of all its Subcontractors, Suppliers, laborers and materialmen, and Contractor shall not itself have any interest in such funds until all these obligations have been satisfied in full. Contractor further agrees that any funds received shall be used exclusively for the prosecution of the Work, and none will be diverted to satisfy other obligations of Contractor. The Department has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Department to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Department shall have the right to contact Subcontractors to ascertain whether they have been properly paid. The Department shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law. The Department reserves the right to issue joint-payee checks, payable to Contractor and its Subcontractors and materialmen of every tier.

Section 7.14 **Interest on Payments.** Payments are due and payable in accordance with Article 7 of this Agreement. Amounts unpaid after the date of which payments due shall bear interest in accordance with the Prompt Payment Act.

ARTICLE 8
CHANGES IN THE WORK

Section 8.1 **Changes Authorized.** The Department may, without invalidating the Contract, and without notice to or approval of any surety, order changes in the Work, including additions, deletions or modifications. Any such change must be conveyed by the Department to the Contractor via written Change Directive or Change Order.

Section 8.2 **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 8.3 **Department-Initiated Changes**

Section 8.3.1 If the Department wishes to make a change in the Work or to accelerate the Work, it will execute and issue to the Contractor a written Change Directive, either directing the Contractor to proceed at once with the changed Work or directing it to not to proceed, but to inform the Department, in writing, of the amount, if any, by which the Contractor believes that Substantial or Final Completion Date and/or the Lump Sum Price should be adjusted to take the Change Order or Change Directive into account.

Section 8.3.2 Within ten (10) days of receiving a Change Directive, the Contractor shall provide the Department with a written statement of all changes in the Contract, including, without limitation, any changes to the Substantial or Final Completion Date or the Lump Sum Price to which it believes it is entitled as a result of the Change Directive. If additional time is sought, a schedule analysis supporting the requested extension should be included. The schedule analysis should include a written narrative explanation. If a change in the Lump Sum Price is sought (or if the Department has requested a deduct change), the statement should include a breakdown, by line item, of the estimated cost changes attributable to the proposed change. The Department may request, and the Contractor shall provide, further cost breakdowns, clarifications, documentation or back-up if the Department reasonably believes such additional information is needed to understand and evaluate the request. The additional information required may include cost and pricing data in accordance with the Department's regulations. Any requested adjustment to the Lump Sum Price shall be limited to increased Cost of the Work due to the Change Directive. The Contractor is not entitled to any markup on any kind of change orders. All deductive Change Orders shall include a corresponding reduction in the overhead and profit shown on the Schedule of Values.

Section 8.3.3 If the Department has not yet directed the Contractor to proceed with the Change described by a Change Directive, the Department may rescind it. If the Department wishes to proceed, or has already directed the Contractor to proceed, the Contractor shall

immediately proceed with the changed Work and, the Department and the Contractor shall use their good faith best efforts to reach an agreement upon the modifications to the Substantial or Final Completion Date, and/or the Lump Sum Price that are justified by the Change Directive. If they reach agreement, the agreement shall be set forth in a Change Order and the Contractor shall also execute it, at which point it will become binding on both parties.

Section 8.3.4 If the parties fail to reach an agreement within sixty (60) days after the Department receives the Contractor's detailed statement pursuant to Subparagraph 8.3.2, and such other documentation as the Department may request, the Contractor may assert a claim in accordance with this Agreement. In such a case, and subject to adjustment via the claims and disputes process, the Department shall unilaterally grant the Contractor such adjustments, if any, to the Substantial or Final Completion Date, and the Lump Sum Price as the Department has judged to be appropriate.

Section 8.4 **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 8.5 **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 8.6 **Changes to the Lump Sum Price.** Subject to the condition precedent that the Contractor have complied with the notice and documentation provisions of this Article, and subject to the limitations stated in this Agreement, the Contractor is entitled to an adjustment to the Lump Sum Price in the following cases:

Section 8.6.1 If the Department issues a Change Directive or Change Order that directs the Contractor to proceed with work which is beyond the scope of Work included within the Lump Sum; or

Section 8.6.2 The Contractor encounters Differing Soil Conditions or Hazardous Materials not identified in the Preconstruction Phase.

Section 8.6.3 For Changes to the Lump Sum Price, the following conditions shall apply:

Section 8.6.3.1 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 8.6.3.2 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 five 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 8.6.3.3 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 8.6.3.4 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 8.6.3.5 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 Five percent (5%) for profit on the deleted work.

Section 8.6.4 If the cost to Department of changed Work is determined by the lump sum method, Contractor warrants that the charge to Department shall not exceed the sum of: (a) any Subcontractor's charge to Contractor for such work; and (b) Contractor's best estimate of the actual cost of Contractor's work plus the permitted markup. If the cost to Department of changed Work is determined on a time and materials basis, Contractor warrants that the cost of any addition represents the true and actual cost, including Contractor's permitted markup, of such addition to Contractor, Subcontractor or Sub-subcontractor or other entity involved in such addition. If the changed Work will result in a reduction in the cost to Department, Contractor warrants that the amount of any deduction shall represent the amount of deduction to Contractor by the appropriate Subcontractor or the amount of Contractor's best estimate where the deduction involves Work which Contractor will perform.

Section 8.7 **Deductive Change Orders.** The Department is likewise entitled to issue deduct Change Orders (reducing the Lump Sum Price) 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 8.8 **Executed Change Orders Final.** The Contractor agrees that any Change Order executed by the Department and Contractor constitutes its full and final adjustment for all costs, delays, disruptions, inefficiencies, accelerations, schedule impacts, or other consequences arising from the change in question, whether a Change Directive, or a Change Event, or from any claimed cumulative effect of changes made to the date of the Change Order, and that no further adjustments in compensation or time shall be sought or made with respect to the Change Directive or the Change Event giving rise to the Change Order.

Section 8.9 **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.

ARTICLE 9
LIQUIDATED DAMAGES

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 of Two Thousand One Hundred Seventy-Five Dollars ($2,175.00) 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 10
INSURANCE AND BONDS

Section 10.1 **Insurance Required by the Project**

Section 10.1.1 The Contractor will be required to maintain the following types of insurance throughout the life of the contract.

Section 10.1.1.1 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 Five Million Dollars ($5,000,000) for liability for bodily injury, death and property damage arising from any one occurrence and Five Million Dollars ($5,000,000) from the aggregate of all occurrences within each policy year. The policy should include completed operations coverage and must be maintained for a period of at least three (3) years after substantial completion occurs.

Section 10.1.1.2 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 10.1.1.3 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 10.1.1.4 Excess Umbrella Liability coverage (on at least a follow form basis) having an aggregate limit of at least Five Million dollars ($5,000,000).

Section 10.1.1.5 Builder'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 10.1.2 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 10.1.3 All such insurance shall contain a waiver of subrogation against the Department and the District of Columbia, and their respective agents.

Section 10.1.4 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.

Section 10.2 **Performance Bond and Payment Bond.** The Contractor 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 Lump Sum Price. Such bond shall remain in full force and effect until Final Completion is achieved and the Department shall be able to draw upon such bond regardless of the amount paid by the Department to the Contractor, even if such amount exceeds the penal value of such bond. Unless otherwise directed by the Department, the Contractor shall require all Subcontractors whose Subcontract prices exceed One Hundred Thousand Dollars ($100,000) to provide payment and performance bonds, with a penal sum equal to one hundred percent (100%) of the subcontract price. 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 State Department of Treasury's Listing of Approved Sureties. All subcontractors' bonds must include a dual obligee rider, naming the Contractor and the Department as dual obligees. If the Lump Sum Price is increased pursuant to the terms of the Contract, the Department may require that the amount of the bonds be increased in the amount of one hundred percent (100%) of the increase, and the Contractor shall promptly comply. The Contractor shall furnish a copy of its bonds to any potential beneficiary of the bonds, or permit that person or company to make a copy. If the bonds provided become unacceptable to the Department, the Contractor shall promptly provide substitute security acceptable to the Department. If the Contractor intends to exercise its rights as dual obligee under any trade Subcontractor's bond, it shall first give the Department twenty (20) days written notice, so that the Department may lodge any objection it may reasonably have to the proposed action.

ARTICLE 11
ECONOMIC INCLUSION REQUIREMENTS

Section 11.1 **LSDBE Utilization.**

Section 11.1.1 For contracts in excess of $250,000.00, at least 35% of the dollar volume shall be subcontracted to certified small business enterprises; provided, however, that the costs of materials, goods, and supplies shall not be counted towards the 35% subcontracting requirement unless such materials, goods, and supplies are purchased from certified small business enterprises.

Section 11.1.2 If there are insufficient qualified small business enterprises to completely fulfill the requirement of paragraph 11.1.1, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any certified business enterprises; provided, however, that all reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.

Section 11.1.3 A prime contractor which is certified as a small, local, or disadvantaged business enterprise shall not be required to comply with the provisions of sections 11.1.1 and

11.1.2.

Section 11.1.4 Neither the Contractor or 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. The Department may condition its approval upon the Contractor developing a plan that is, in the Department's sole and absolute judgment, adequate to maintain the level of LSDBE participation on the Project.

Section 11.2 <u>Equal Employment Opportunity and Hiring of District Residents</u>

Section 11.2.1 The Contractor shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

Section 11.2.2 The Contractor shall ensure that at least fifty-one percent (51%) of the Contractor's Team and every subconsultant's and subcontractor's employees hired after the effective date of the Contract, or after such subconsultant or subcontractor enters into a contract with the Contractor, to work on the Project shall be residents of the District of Columbia. This percentage shall be applied in the aggregate, and not trade by trade.

Section 11.2.3 Thirty five percent (35%) of all apprentice hours worked on the Project shall be worked by District residents.

Section 11.3 <u>Economic Inclusion Reporting Requirements</u>

Section 11.3.1 Upon execution of the Contract, the Contractor and all its member firms, if any, and each of its Subcontractors shall submit to the Department a list of current employees and apprentices that will be assigned to the Contract, the date they were hired and whether or not they live in the District of Columbia.

Section 11.3.2 The Contractor and its constituent entities 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 11.3.3 The Contractor shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

Section 11.3.4 The Contractor shall be responsible for: (i) including the provisions of this Section 11.3 in all subcontracts; (ii) collecting the information required in this Section 11.3 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in the reports required to be submitted by the Contractor pursuant to Section 11.3.

Section 11.4 **Compliance with the Apprenticeship Act.** The Contractor agrees to comply with the requirements of the Apprenticeship Act of 1946, D.C. Code §§ 36-401, *et seq.*

ARTICLE 12
DISPUTE RESOLUTION

Section 12.1 **Notice of Claim.** If the Contractor has complied with all provisions in Section 8 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 12.2 **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 with the Contracts Appeals Board with respect to the claimed items.

Section 12.3 **Procedures.** Unless the parties hereafter otherwise agree, all disputes arising under or in connection with the Contract 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 13
MISCELLANEOUS PROVISIONS

Section 13.1 **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 13.2 **Conformance with Laws.** It shall be the responsibility of the Contractor to perform the Contract in conformance with the Department's Procurement Regulations (27 DCMR § 4700 *et seq.*) and all statutes, laws, codes, ordinances, regulations, rules, requirements and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Contractor to determine the Procurement Regulations, statutes, laws, codes, ordinances, regulations, rules, requirements and orders that apply and their effect on the Contractor's obligations thereunder.

Section 13.3 **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 13.4 **Assignment.** The Department and Contractor respectively bind themselves, their partners, members, joint venturers, constituent entities, successors, assigns and legal representative to the other party hereto and to partners, members, joint venturers, constituent entities, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contact. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

Section 13.5 **Retention of Records and Inspections and Audits**

Section 13.5.1 The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under the Contract in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Contract.

Section 13.5.2 The Contractor shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Department and the required cost submissions in effect on the date of execution of the Department.

Section 13.5.3 The Department, the District of Columbia government, the District of Columbia Financial Responsibility and Management Assistance Office, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Contractor for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection.

Section 13.5.4 The Contractor agrees to include the wording of this Section in all its subcontracts in excess of five thousand dollars ($5,000) that directly relate to Project performance.

Section 13.5.5 Audits conducted pursuant to this Section will be in accordance with generally acceptable auditing principles and established procedures and guidelines of the applicable reviewing or audit agency.

Section 13.5.6 The Contractor agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

Section 13.5.7 The Contractor shall preserve all records described herein from the effective date of the Contract completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

Section 13.6 <u>Inspection For Supplies And Services</u>

Section 13.6.1 To the extent applicable or appropriate, the Department may, in its sole discretion, enter the place of business of the Contractor or the place of business of any Subcontractor in order to inspect or test supplies or services for acceptance by the Department. If inspections and tests are performed at the place of business of the Contractor or any Subcontractor, the inspections and tests shall be performed in a manner so as to not unduly delay the Work. Inspections and tests by the Department shall not relieve the Contractor or any Subcontractor of responsibility for defects or other failures to meet Contract requirements, and shall not constitute or imply acceptance.

Section 13.6.2 Notwithstanding the Department's acceptance of or payment for any product or service delivered by Contractor, the Contractor shall remain liable for latent defects, fraud, gross mistakes amounting to fraud and the Department's rights under any warranty or guarantee.

Section 13.6.3 The Department shall have the right to enter the place of business of the Contractor or the place of business of any Subcontractor in order to investigate any contractor or offeror with respect to a debarment or suspension of the Contractor or any such Subcontractor.

Section 13.7 Laws And Regulations Incorporated by Reference. All federal and District of Columbia laws and regulations, and all Department procedures now or hereafter in effect, whether or not expressly provided for or referred to in the Contract, are incorporated by reference herein and shall be binding upon the Contractor and the Department. It shall be the responsibility of the Contractor to perform the Contract in conformance with the Department's procurement regulations 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. However, if the application of a future law or regulation requires the Contractor to undertake additional work that is materially different in scope than that presently contemplated or required, the Contractor shall be entitled to an equitable adjustment for such additional work.

Section 13.8 Tax Exemption Provision. Any tax exemptions applicable to the District of Columbia, including the gross receipts sales tax exemption for the sale of tangible personal property to the District, codified in D.C. Code § 47-2005, shall apply to the performance of the Contract.

Section 13.9 Anti-Competitive Practices and Anti-kickback Provisions

Section 13.9.1 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 13.9.2 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 13.9.3 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 13.10 Responsibility for Agents and Contractors. At all times and during both the Preconstruction and Construction Phases, the Contractor shall be responsible to the Department for any and all acts and omissions of the Contractor's agents, employees, Subcontractors, Sub-Subcontractors, material suppliers, and laborers, and the agents and employees of the Subcontractors, Sub-Subcontractors, material suppliers, and laborers performing or supplying Work in connection with the Project.

Section 13.11 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.

Section 13.12 Gratuities and Officers Not to Benefit Provisions

Section 13.12.1 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 13.12.2 In the event the Contract is terminated as provided in Section 13.12.1, the Department shall be entitled:

Section 13.12.2.1 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 13.12.2.2 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 13.12.3 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 13.13 <u>Covenant Against Contingent Fees Provisions.</u> 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 13.14 <u>Non-Discrimination in Employment Provisions</u>

Section 13.14.1 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:

Section 13.14.1.1 Employment, upgrading, or transfer;

Section 13.14.1.2 Recruitment or recruitment advertising;

Section 13.14.1.3 Demotion, layoff, or termination;

Section 13.14.1.4 Rates of pay, or other forms of compensation; and

Section 13.14.1.5 Selection for training and apprenticeship.

Section 13.14.2 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.

Section 13.14.3 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.

Section 13.14.4 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.

Section 13.14.5 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.

Section 13.14.6 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.

Section 13.14.7 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.

Section 13.15 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 13.16 Contract Work Hours And Safety Standards Act Provision. The Contractor agrees that the construction work performed under this Contract shall be subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333).

Section 13.17 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 this Project are attached as **Exhibit C**. 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 13.18 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 13.19 Interpretation of Contract. All of the documents comprising the Contract should be read as complementary, so that what is called for by one is called for by all. Ambiguities should be construed in favor of a broader scope of work for the Contractor, as the intent of the Contract is, with specific identified exceptions, to require the Contractor to assume entire responsibility for construction of the Project. If there is any inconsistency among the documents comprising the Contract, the order of precedence among them is as follows, with the first listed document having the highest priority: this Agreement and its Exhibits, the General Conditions, and the Construction Documents released by the Department. Any Change Order issued and executed by the Department shall supersede those portions of earlier dated contract documents to which it pertains.

Section 13.20 Independent Contractor. In carrying out all its obligations under the Contract, the Contractor shall be acting as an independent Contractor, and not as an employee or agent of the Department, or joint venturer or partner with the Department. The Contractor shall have exclusive authority to manage, direct, and control the Work, and shall be responsible for all construction means, methods, techniques, sequences, and procedures, as well as for Project safety.

Section 13.21 Confidential Information. In the course of the Contractor's performance of the Work, the Department may make available to the Contractor information that the Department designates as trade secrets or other confidential engineering, technical and business information. As long as, and to the extent that, such information remains confidential and available to others only with the consent of the Department, or is not generally available to the public from other sources, the Contractor shall maintain such information in strict confidence and shall not disclose any such information to others (including its employees or Subcontractors), except to the extent necessary to enable the Contractor to carry out the Project. The Contractor shall similarly obligate any and all persons to whom such information is necessarily disclosed to maintain the information in strict confidence. The Contractor agrees that, in the event of any breach of this confidentiality obligation, the Department shall be entitled to equitable relief, including injunctive relief or specific performance, in addition to all other rights or remedies otherwise available.

Section 13.22 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 13.23 Media Releases. Neither the Contractor, its employees, agents or Subcontractors or material suppliers shall make any press release or similar media release related to the Project unless such press release have been discussed with the Department prior to its issuance.

Section 13.24 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 13.25 Notices. All notices or communications required or permitted under the Contract 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:

Brian J. Hanlon
Director
Department of General Services
2000 14th St, NW – 8th Floor
Washington, DC 20009

If to the Contractor:

This Paragraph 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 13.26 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 13.27 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 acknowledges that, in entering into the Contract, the Department is relying on the particular qualifications of the Contractor, and the Contractor therefore shall not delegate or assign any of its duties or obligations under the Contract, except in accordance with the Contract's provisions relating to subcontracting, or pursuant to the Department's prior written consent. 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 13.28 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 13.29 **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 13.30 **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 13.31 **Headings/Captions.** The headings or captions used in this Agreement or its table of contents are for convenience only and shall not be deemed to constitute a part of the Contract, nor shall they be used in interpreting the Contract.

Section 13.32 **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 13.33 **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 13.34 **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.**

ARTICLE 14
TERMINATION OR SUSPENSION

Section 14.1 **Cancellation Before Notice to Proceed.** The Department may cancel the Contract at any time before issuance of a Notice to Proceed, in the Department's sole discretion. Such a cancellation shall not be a breach of the Contract, and the Contractor shall not be entitled to any compensation or damages if cancellation occurs.

Section 14.2 **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. In particular, but without limitation, the Department may terminate the Contract if:

Section 14.2.1 the Contractor fails to prosecute 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 Contract; or

Section 14.2.2 the Contractor fails to perform the Work in a good and workmanlike manner or to correct defects in the Work promptly upon notice by the Department; or

Section 14.2.3 the Department reasonably determines that the Contractor has abandoned the Work, or has failed to pay laborers, mechanics, materialmen, Subcontractors or suppliers when payment is due; or

Section 14.2.4 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 has a receiver appointed, or files for dissolution or otherwise is dissolved; or

Section 14.2.5 the Contractor fails to pay its debts in a timely manner or becomes insolvent, or the Department reasonably determines that the Contractor does not have the financial ability to carry out its obligations under the Contract and the Contractor fails to give the Department prompt and reasonable assurances of its ability to perform.

Section 14.2.6 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 14.2.7 If the Department terminates the Contract 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 14.4 <u>Termination for Convenience</u>

Section 14.4.1 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.

Section 14.4.2 After receiving notice of termination for convenience, the Contractor shall (1) stop work on the terminated portion of the Project as of the effective date of the termination and stop placing subcontracts or supply agreements thereunder; (2) consult with the Department regarding the disposition of existing orders and subcontracts, and use its best efforts to terminate them on terms favorable to the Department; (3) consult with the Department to decide what actions should be taken to protect work in place and equipment that has been delivered and not yet installed, and to render the site safe, and proceed to take such actions as may be agreed upon or, absent agreement, as may be reasonable; (4) take necessary or directed action to protect and preserve property in the Contractor's possession in which the Department has or may acquire an interest and, as directed by the termination notice or other order from the Department, deliver the property to the Department; and (5) promptly deliver to the Department all computer files it has prepared relating to the Project. The Contractor shall also promptly notify the Department, in writing, of any legal proceeding arising from any subcontract or supply agreement related to the terminated portion of the Project, and, in consultation with the Department, settle outstanding liabilities arising out of the terminated portion of the Project on the best terms reasonably possible.

Section 14.4.3 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. The Contractor shall not be entitled to recover overhead or profits on unperformed portions of the Work. Further, if it appears to the Department that the cost of completing Work would have exceeded the Lump Sum Price, the Department shall have the right to adjust the settlement figure downward in an appropriate amount. In no case shall the Contractor be entitled to receive an amount in settlement for termination for convenience that would exceed the percentage value of the Work actually performed in accordance with the Contract, multiplied by the Lump Sum Price, and reduced by any damages, liquidated or otherwise, the Contractor may owe the Department.

Section 14.4.4 Payment of such amounts shall be the Contractor's sole remedy for termination for convenience.

Section 14.4.5 The Contractor shall, promptly after termination, submit a proposal for settlement of the amounts due to it as a result of the termination for convenience. The proposal shall be consistent with the requirements of Subparagraphs 14.4.2 through 14.4.4, and shall be accompanied by such documentation of costs as the Department may reasonably require. Such documentation may include cost and price data in accordance with the Department's Regulations.

Section 14.5 **Effect of Wrongful Termination.** Any termination for cause which is later determined to have been improperly effected shall be deemed to have been a termination for convenience pursuant to Paragraph 14.4 and shall be governed by that Paragraph.

Section 14.6 **Continued Responsibility After Termination.** If the Contractor is terminated, either for default or otherwise, the Contractor shall remain responsible for defects or non-conformities in all Work performed to the date of the termination.

Section 14.7 **Suspension**

Section 14.7.1 **Suspension at the Convenience of the Department.** The Department may at any time, with or without cause, suspend, delay, reduce or interrupt performance of all or any portion of the Work for such period or periods as the Department elects by giving the Contractor written notice specifying which portion of the Work is to be suspended and the effective date of such suspension. Such suspension, delay or interruption shall continue until the Department terminates such suspension, delay or interruption by written notice to the Contractor. No such suspension, delay, interruption or reduction by the Department shall constitute a breach or default by the Department under the Contract Documents. The Contractor shall continue to diligently perform any remaining Work that is not suspended, delayed, reduced or interrupted and shall take all actions necessary to maintain and safeguard all materials, equipment, supplies and Work in progress affected by the suspension, delay, reduction or interruption.

Section 14.7.2 **Payment Upon Suspension For Convenience.** In the event of suspension, delay, reduction or interruption for convenience by the Department, the Department shall pay the Contractor and the Lump Sum Price shall be increased by such amounts (subject to the payment and related requirements of the Contract Documents) as follows:

Section 14.7.2.1 Additional Costs of the Work, if any, which are incurred by the Contractor, its Subcontractors and Vendors as a result of continuing to maintain dedicated personnel, materials and equipment at the Site at the Department's request during any suspension, delay or interruption period, including for the purpose of safeguarding all material, equipment, supplies and the Contractor's Work in progress caused solely by such suspension, delay or interruption ordered by the Department for convenience, but the Lump Sum Price shall

be increased only if and to the extent such delay, suspension or interruption exceeds a period of thirty (30) consecutive days following commencement of the Work; and

Section14.7.2.2 Other reasonable and unavoidable Costs of the Work, if any, which are directly related to any subsequent re-mobilization of the suspended, delayed or interrupted the Contractor's Work caused solely by such suspension, delay or interruption ordered by the Department for convenience, but the Lump Sum Price shall be increased only if and to the extent such delay, suspension or interruption exceeds a period of thirty (30) consecutive days following commencement of the Work.

Section 14.7.2.3 Provided, however, that no adjustment shall be made to the extent that performance was otherwise subject to suspension, delay or interruption by another cause for which the Contractor is responsible. Furthermore, the Contractor shall not be entitled to an increase in overhead or profit for a suspension ordered by the Department.

ARTICLE 15
OTHER CONDITIONS AND SERVICES

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

ARTICLE 16
DEFINITIONS

Section 16.1 **Agreement.** The term Agreement shall mean this Agreement consisting of 52 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 sub-subcontracts, subsubsubcontracts, and so on. "Subcontractors" shall include both those who are retained to perform labor only and those who are retained both to perform labor and to supply material or equipment. "Subcontractors" shall also include design professionals who are not the Contractor's employees and to whom the Contractor delegates any part of its responsibilities under the 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.

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, type of legal entity]

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