

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



ATTACHMENT F

FORM OF CONTRACT

[ATTACHMENT WILL APPEAR ON THE FOLLOWING PAGE]

AGREEMENT
FOR
ARCHITECTURAL/ENGINEERING SERVICES
BY AND BETWEEN
THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES
AND
[INSERT A/E]
Services for The Turkey Thicket
Recreation Center ADA Upgrades
AT 1100 Michigan Avenue NE,
Washington, DC

CONTRACT NUMBER: DCAM-22-AE-0003

THIS AGREEMENT (“Agreement” or “Contract”), effective on the date of the last signature of the Parties (“Effective Date”), is made by and between the **DISTRICT OF COLUMBIA GOVERNMENT**, acting by and through its **DEPARTMENT OF GENERAL SERVICES** (“District”, “DGS” or the “Department”) and [Insert A/E] (the “Architect/Engineer”, “A/E” or “Contractor”), duly organized under the laws of the [Insert A/E State of incorporation], and with a place of business at [Insert A/E physical address]. The Department and the A/E are referred to herein as the “Parties” or individually as the “Party”).

WITNESSETH:

WHEREAS, the Department issued a Request for Proposals (“RFP”) dated [Insert Date], 2021 for architectural/engineering services of the Turkey Thicket Recreation Center ADA Upgrades at DCAM-22-AE-0003 (the “Project”);

WHEREAS, the A/E submitted a proposal dated [Insert Date], 2021 in response to the Department’s RFP to provide such services;

WHEREAS, the Department wishes to retain the A/E to provide all necessary design and related services for the Project pursuant to the terms and conditions set forth in this Agreement;

WHEREAS, the Department intends for the A/E to deliver 100% complete construction documents to serve as the basis of a solicitation for Design-Bid-Build contract to renovate the deficiencies identified in the comprehensive facility condition assessment in order to meet the existing and future needs of 1805 Bladensburg Road, Washington, DC.;

WHEREAS, the Department requires that the Project, including the requisite construction, be Substantially Complete by [Insert Date] calendar days from the Notice to Proceed (NTP) (the “Substantial Completion Date”);

WHEREAS, the Parties entered into a Letter Contract dated [Insert Date], 2021 (the “Letter Contract”) pursuant to which the A/E was authorized to provide preliminary services in furtherance of the Project; and

WHEREAS, the Department has retained the services of a Program Manager to advise it concerning the Project.

NOW, THEREFORE, the Department and the A/E, for the consideration set forth herein, mutually agree as follows:

ARTICLE 1 GENERAL PROVISIONS

Section 1.1 The A/E shall be responsible for the professional quality, technical accuracy, and the coordination of all studies, reports, recommendations, and other deliverables furnished by the A/E for the Project under this Agreement. The A/E shall, without additional compensation, correct or revise any non-conforming deliverables that are a result of errors, omissions or both in its deliverables. The A/E shall perform its services consistent with the professional skill and care ordinarily provided by architects and engineers practicing in the same or similar locality under the same or similar circumstances. The A/E shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The A/E shall review all laws, codes, and regulations applicable to the A/E's services. The A/E shall respond to requirements imposed by governmental authorities having jurisdiction over the Project.

Section 1.2 The A/E shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise or conflict the A/E's professional judgment with respect to this Project.

Section 1.3 Relationships of Parties. The A/E accepts the relationship of trust and confidence established with the Department by this Agreement, and contracts with the Department to furnish the A/E's reasonable skill and judgment and to cooperate with the Project Manager in furthering the interests of the Department. The A/E shall use its best efforts to perform the required services 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, A/E, Project Manager, and other persons or entities employed by the Department for the Project.

Section 1.3.1 Project Manager. Project Managers (or "PM") will be assigned to provide certain project management functions. The Project Manager shall, at all times, act solely for the benefit of the Department, not the A/E. Although day-to-day communications with the A/E shall be routed through the Project Manager, only the individual(s) specified as Contracting Officer(s) in Section 1.3.2 shall have the authority to alter the terms of this Contract. Thus, **the A/E hereby acknowledges and agrees that only a duly authorized Contracting Officer has the authority to issue Change Orders, Contract Modifications or Change Directives on the Department's behalf.** Without limiting the generality of the foregoing, it is understood and agreed that the Project Manager shall not have the authority to alter or modify the terms of the Contract, including but not limited to increasing the fee or the not-to-exceed amount established under this Contract. The Project Manager for the Project under this Contract is:

David R Kelly
Senior Project Manager
Contractor for Department of
General Services
1250 U Street, NW 4th Floor
Washington, DC 20009
Mobile: (614) 452-2708
Email: david.kelly@dc.gov

Section 1.3.2 Contracting Officer(s). The Contracting Officer(s) (“CO(s)”) for this Contract is/are:

Pamela Ford Dickerson
Contracting Officer
Department of General Services
2000 14th Street, NW 4th Floor
Washington, DC 20009
Office: 202.576.5596
Email: Pamela.dickerson@dc.gov

George Lewis
Chief, Contracts and Procurement
DGS’ Chief Procurement Officer
2000 14th Street, NW, 4th Floor
Washington, DC 20009
Email: george.lewis@dc.gov

Section 1.4 Project Description. ADA is committed to renovate this facility to ensure that all systems function properly for the intended purpose, and so ADA’s maintenance staff has adequate system access, control, monitoring capabilities, documentation and training to properly monitor, manage and maintain the facility. The proposed improvements will meet the existing and future needs of the department.

Section 1.5 All deliverables are subject to review and approval by the PM. The A/E shall prepare, modify, and correct all such non-conforming deliverables in sufficient detail to obtain final approval under the Contract.

Section 1.6 Neither the District’s review, approval or acceptance of, nor payment for, any of the services required under this Contract shall be construed as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract and the A/E shall be and remain liable to the District in accordance with applicable law for all damages to the District caused by the A/E's negligent performance of any of the services furnished under this Contract.

Section 1.7 The rights and remedies of the District provided for under this Contract is in addition to any other rights and remedies provided by law.

Section 1.8 During the performance of work under this Contract, the A/E shall submit a monthly progress report, completely and clearly stating the current status of the A/E's work under this Contract. The proposed form of this report shall be submitted for review and approval prior to the first invoice for partial payment.

Section 1.9 During the performance of work under this Contract, the A/E shall take notes and minutes of any meeting attended in connection with the Project, recording any decision altering, expanding, or deleting any provision which may affect the contractual obligation, and submit two (2) copies to the PM.

Section 1.10 Key Personnel. The following individuals shall be considered key personnel: (i) the Design Principal; (ii) the Project Architect; (iii) the Project Designer; (iv) the Civil Engineer; (v) the MEP Engineer; and (vi) the Structural Engineer as identified in **Exhibit H**. The A/E will not be permitted to reassign any of the key personnel unless the Department approves the proposed reassignment and the proposed replacement. In the event that any of the key personnel become unavailable to work on this Project for reasons beyond the control of the A/E or its principal consultants (i.e. due to retirement, resignation, termination, etc.), the A/E shall propose a substitute for any such individual and obtain the Department's consent to such substitute.

Section 1.11 Schedule. A schedule for the Project is set forth in **Exhibit F**. The A/E shall provide the services required hereunder in accordance with this schedule.

ARTICLE 2 SCOPE OF SERVICES

Section 2.1 The A/E shall perform the Scope of Work in accordance with the Scope of Work Title I Services and Title II Services (**Exhibit A**) and the A/E's Technical Proposal (**Exhibit B**).

Section 2.2 General Requirements. The work under this contract shall be performed and documented in a professional manner.

2.2.1 The A/E shall coordinate all work through the Project Manager including but not limited to all site surveys and other field investigations germane to the work.

2.2.2 The A/E shall check all drawings and specifications for accuracy and detailed coordination. At the 100% submission, the A/E shall meet with all the appropriate regulatory agencies to discuss and review the drawings with them for compliance, if required. Upon complying with the aforementioned requirements, the A/E shall submit the final documents for peer review by DGS.

2.2.3 A/E shall apply for and obtain a building permit from DCRA, if required, prior to releasing the Final documents for bids. All costs associated with the work of obtaining the permit shall be included in this proposal. The actual cost of the permit is not to be included your proposal. The District may require the A/E to pay the actual cost of the permit and the District will reimburse the same from the Owner's allowance specified in **Section 3.5** upon submitting the paid invoice.

2.2.4 A/E shall validate and submit to DGS the general contractor's final as-built drawings both in hard copies and soft copies. The soft copies shall be in pdf and AutoCAD format. The District shall reserve the right to re-use the AutoCAD format drawing submitted. Two (2) CD copies each of pdf and AutoCAD submittals shall be submitted to DGS. Two (2) hard copies shall also be submitted.

2.2.5 The A/E may be held financially responsible for all errors and omissions resulting in a deficient design or changes, including funds spent by the Department to correct the documents or redesign and complete construction exercise.

2.2.6 The Department will provide the A/E access to the DGS Prolog Project Management software. The A/E shall be responsible for using Prolog to execute selected contract document requirements in coordination with DGS PM to include communication with the general contractor during the construction phase.

Section 2.3 Meeting Minutes. The A/E shall be responsible for acting as recorder for all meetings with the Government Agencies that he attends. The minutes shall clearly indicate the meeting number and date, numbering of each issue discussed, including description of the issue, who is responsible to address, by what date, and date completed. Minutes shall also record all open items, and will note the schedule of the contract, how far through the contract we are (including how far over schedule, if applicable), and the financial status of the contract and payments and a list of open Change Orders and Requests for Information. Memorandum for the Record of such meetings shall be typewritten and submitted to the Project Manager within five (5) calendar days from the date of the meeting, for review and approval and for such distribution as may be required. A/E compensation for performing these services shall be included as part of the Title I and Title II Services, as applicable.

Section 2.4 Licensing, Accreditation and Registration. The A/E and all of its subcontractors and sub-consultants (regardless of tier) shall comply with all applicable District of Columbia, state, and federal licensing, accreditation, and registration requirements and standards necessary for the performance of the contract. Without limiting the generality of the foregoing, all drawings shall be signed and sealed by a professional architect or engineer licensed in the District of Columbia.

ARTICLE 3 TYPE OF AGREEMENT, TERM OF AGREEMENT AND COMPENSATION

Section 3.1 Type of Agreement. This is a firm fixed price type of agreement.

Section 3.2 Term of Agreement. The term of this Agreement shall commence on the date of execution of the Letter Contract and Notice to Proceed (“NTP”) by the Department, if applicable, or on the Effective Date, as defined in this Agreement, and such term shall continue to be in effect through the Substantial Completion Date, as achieved by the General Contractor.

Section 3.3 Administrative Term. The Agreement shall have an Administrative Term that runs from the Substantial Completion Date through the earlier of the following: (i) the Final Completion Date; or (ii) the date the A/E executes and submits a Final release of Liens and Claims in the form and format required by the Contracting Officer. The Administrative Term is established for the sole purpose of permitting the District’s Office of the Chief Financial Officer to process payments in the event any payments become due. Notwithstanding the foregoing, nothing herein shall be construed to: extend the Project Schedule or deliverable due dates; extend the Substantial Completion Date; extend the Final Completion Date; and, limit the Department’s ability to assess liquidated damages thereon

Section 3.4 Deliverables. Title 1 services shall be completed by 360 days from NTP or the date of execution of this Contract. The Title II services shall continue until the construction project achieves Substantial Completion (“Substantial Completion Date”) by the General Contractor.

Section 3.5 Value of Agreement. The value of this Agreement is \$[INSERT] (“Design Fee”). This amount includes Program of Requirements (“POR”), Schematic Design fee of \$[INSERT]; Design Development fee of \$[INSERT]; Construction Documents and Specifications fee of \$[INSERT]; Bidding fee of \$[INSERT]; Construction Administration fee of \$[INSERT]; and an Owner’s Allowance of \$100,000.00 for reimbursable costs as set forth in Section 3.5 of this Agreement, all in accordance with the A/E’s Price Proposal included as **Exhibit B**.

Section 3.5.1 Not-to-Exceed (“NTE”) Amount. Notwithstanding Section 3.5 above, the A/E will be paid an amount NTE \$[INSERT] at this time. In no event shall the A/E be paid more than this amount unless the A/E is authorized to exceed this limit in advance and in writing by a DGS Contracting Officer. Any future increases to the NTE amount shall be authorized via a modification to this Agreement.

Section 3.6 Compensation for Reimbursable Expenses. Reimbursable expenses are in addition to compensation for Design Phase Services and Construction Document and Construction Phase Services and include expenses incurred by the A/E and the A/E’s consultants directly related to the Project. An allowance in the amount of \$100,000.00 is established for such reimbursable expenses. In the event that the reimbursable expenses reach the limit of this allowance, the A/E shall notify the District and shall not incur any additional reimbursable expense unless the Department’s CO provides written authorization of an increase in the reimbursable expenses allowance. Reimbursable expenses shall include the following:

- 1 Permits;
- 2 Transportation and authorized out-of-town travel and subsistence, provided, however, that local transportation costs (i.e. taxis, parking, etc.) shall not be reimbursable;
- 3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- 4 Reproductions, plots, standard form documents;
- 5 Postage, handling and delivery;
- 6 Expense of overtime work requiring higher than regular rates, if authorized in advance in writing by the Department, provided, however, that such expenses shall only be reimbursable to the extent that they were caused by the failure of the Department to act within timeframes agreed to by the Parties in advance and in writing; and
- 7 Additional renderings, models, and mock-ups requested by the Department.

Section 3.7 Use of ProjectTeam. The Contractor shall utilize the Department’s ProjectTeam system to submit any and all documentation required to be provided by the Contractor for the Project, including, but not limited to, (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) proposed Changes; (v) certified payrolls (and at DGS’ option to upload via

DOES LCP Tracker software which the District will make available to the Contractor); (vi) Drawings and Specifications; (vii) punch list; (viii) invoices/applications for payment (full package including all forms required by DGS); and (ix) other documents as may be designated by the Department.

Section 3.7.1 Invoice Submittal. The A/E shall create and submit payment requests in an electronic format through the DC Vendor Portal, <https://vendorportal.dc.gov>. The A/E shall submit proper invoices on a monthly basis. To constitute a proper invoice, the A/E shall enter all required information into the Portal after selecting the applicable purchase order number which is listed on the A/E's profile.

Section 3.8 Payment Disputes. Disputes or questions regarding a portion of an invoice shall not be cause for withholding payment for the remaining portion of the invoice. Time is of the essence in the performance of the A/E's obligations under this Agreement.

ARTICLE 4 INSURANCE

Section 4.1 General Requirements. For purposes of Article 4, the term Contractor shall mean the A/E.

Section 4.1.1 The Contractor at its sole expense shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A- / VII or higher. Should the Contractor decide to engage a subcontractor for segments of the work under this contract and wish to propose different insurance requirements than outlined below, then, prior to commencement of work by the subcontractor, the Contractor shall submit in writing the name and brief description of work to be performed by the subcontractor on the Subcontractors Insurance Requirement Template provided by the CA, to the Office of Risk Management (ORM). ORM will determine the insurance requirements applicable to the subcontractor and promptly deliver such requirements in writing to the Contractor and the CA. The Contractor must provide proof of the subcontractor's required insurance prior to commencement of work by the subcontractor. If the Contractor decides to engage a subcontractor without requesting from ORM specific insurance requirements for the subcontractor, such subcontractor shall have the same insurance requirements as the Contractor.

Section 4.1.2 All required policies shall contain a waiver of subrogation provision in favor of the Government of the District of Columbia.

Section 4.1.3 The Government of the District of Columbia shall be included in all policies

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

Section 4.1.4 If the Contractor and/or its subcontractors maintain broader coverage and/or higher limits than the minimums shown below, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Grantee and subcontractors.

Section 4.2 Commercial General Liability Insurance ("CGL"). The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. ("ISO") form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor, including ongoing and completed operations under all subcontracts, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$1,000,000 each occurrence, a \$2,000,000 general aggregate (including a per location or per project aggregate limit endorsement, if applicable) limit, a \$1,000,000 personal and advertising injury limit, and a \$2,000,000 products-completed operations aggregate.

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

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

Section 4.3 Automobile Liability Insurance. The Contractor shall provide evidence satisfactory to the CO of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the CO in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Contractor, with minimum per accident limits equal to the greater of (i) the limits set forth in the Contractor's commercial automobile liability policy or (ii) \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

Section 4.4 Workers' Compensation Insurance. The Contractor shall provide evidence satisfactory to the CO of Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

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

All insurance required by this paragraph 3 shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.

Section 4.5 Cyber Liability Insurance. The Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. Limits may not be shared with other lines of coverage. A copy of the cyber liability policy must be submitted to the Office of Risk Management (ORM) for compliance review.

Section 4.6 Professional Liability Insurance (Errors & Omissions) - The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of \$1,000,000 per claim or per occurrence for each wrongful act and \$2,000,000 annual aggregate. The Contractor warrants that any applicable retroactive date precedes the date the Contractor first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services. Limits may not be shared with other lines of coverage.

Section 4.7 Commercial Umbrella or Excess Liability - The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits equal to the greater of (i) the limits set forth in the Contractor's umbrella or excess liability policy or (ii) \$5,000,000 per occurrence and \$5,000,000 in the annual aggregate, following the form and in excess of all liability policies. All liability coverages must be scheduled under the

umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the “other insurance” provision must be amended in accordance with this requirement and principles of vertical exhaustion.

Section 4.9 PRIMARY AND NONCONTRIBUTORY INSURANCE - The insurance required herein shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the Government of the District of Columbia.

Section 4.10 DURATION. The Contractor shall carry all required insurance until all contract work is accepted by the District of Columbia and shall carry listed coverages for ten years for construction projects following final acceptance of the work performed under this contract and two years for non-construction related contracts.

Section 4.11 LIABILITIES. These are the required minimum insurance requirements established by the District of Columbia. **HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE WILL NOT IN ANY WAY LIMIT THE CONTRACTOR’S LIABILITY UNDER THIS CONTRACT.**

Section 4.12 CONTRACTOR (A/E)’S PROPERTY. Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.

Section 4.13 MEASURE OF PAYMENT. The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.

Section 4.14 NOTIFICATIONS. The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. The Contractor will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract.

Section 4.15 CERTIFICATES OF INSURANCE. The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Certificates of insurance must reference the corresponding contract number. Evidence of insurance shall be submitted to:

The Government of the District of Columbia

And mailed to the attention of:
Pamela Ford Dickerson
Contracting Officer

Department of General Services
2000 14th Street, NW, 4th Floor
202.576.5596
Pamela.dickerson@dc.gov

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

Section 4.16 DISCLOSURES OF INFORMATION. The Contractor agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.

Section 4.17 CARRIER RATINGS. All Contractors' and its subcontractors' insurance required in connection with this contract shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A- VII (or the equivalent by any other rating agency) and licensed in the in the District.

ARTICLE 5 OWNERSHIP OF DOCUMENTS

Section 5.1 Ownership of Documents. Regardless of whether the Project is completed, any design documents, specifications, reports, studies, and other work prepared by the A/E and the A/E's subconsultants engaged by the A/E, and all other documents created in association with the Project shall become the sole property of the Department upon full payment of A/E's fees then due under this Agreement, and shall not to be used by the A/E its sub-consultants on other projects, or for additions to this Project outside the Scope of Work, without the specific written consent of the Department. However, the Department expressly acknowledges and agrees that the documents to be provided by the A/E under this Agreement may contain design details, features and concepts including some from the A/E's library, which collectively form part of the design for the project, but which separately are and shall remain the sole and exclusive property of the AA/E. These details are repetitive in nature, not Project specific, function rather than form-oriented, and were not developed for or identifiable with the Project. Nothing herein shall be construed as a limitation on the A/E's absolute right to re-use such component design details, features and concepts on other projects, in other contexts or for other clients.

The Department shall be under no obligation to account to the A/E for any profits obtained by the Department as a result of the Project, or the use of such drawings, specifications and other documents in connection with the Project. In the event that the Agreement is terminated prior to completion of the Project or the A/E is unable to complete this Project for any reason, the

Department shall have the right to use without the A/E's consent, and the A/E shall deliver to the Department and/or its designee within two (2) calendar days after such termination or inability, all such drawings, specifications and other documents as well as design concepts and details in connection with the Project or necessary for the Department's completion of this Project (including subsequent phases thereof), so long as the Department has paid the A/E all fees then owed to the A/E under this Agreement. The Department's rights hereunder shall extend to its successors and assigns and the A/E's obligation to deliver such drawings, specifications, and documents. Any use of the documents without the A/E or the A/E's consultants' involvement shall be at the Department's sole risk and without liability to the A/E or the A/E's consultants. Unless Department fails hereunder to pay A/E therefor, the Department shall be deemed the owner of such drawings, specifications, and other documents and shall have and retain all rights therein. In the event Department is adjudged to have failed hereunder to pay A/E for such drawings, specifications or other documents, ownership thereof, and all rights therein, shall revert to the A/E. This provision shall survive termination of this Agreement.

ARTICLE 6 CLAIMS AND DISPUTES

Section 6.1 All claims or disputes arising out of or under this Agreement shall be governed by the terms of the Standard Contract Provisions, Article 9 as specified in **Exhibit E**.

ARTICLE 7 ECONOMIC INCLUSION PROVISIONS

Section 7.1 CBE Utilization

Section 7.1.1 If the A/E subcontracts any part of its work under this Agreement, the A/E shall subcontract at least 35% of the dollar volume to certified small business enterprises; provided, however, that the costs of materials, goods and supplies shall not be counted towards the 35% subcontracting requirements unless such materials, goods and supplies are purchased from the certified small business enterprises.

Section 7.2 Mandatory Subcontracting Plan and Requirements. The mandatory subcontracting requirements are as follows:

- (a) Unless the Director of the Department of Small and Local Business Development (DSLBD) has approved a waiver in writing in accordance with D.C. Official Code § 2-218.51, for all contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted to qualified small business enterprises (SBEs).
- (b) If there are insufficient SBEs to completely fulfill the requirement of paragraph (a), then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.

- (c) A prime contractor that is certified by DSLBD as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections (a) and (b) above.
- (d) Except as provided in (e) and (f) below, a prime contractor that is a CBE and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- (e) A prime contractor that is a certified joint venture and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A certified joint venture prime contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- (f) Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.
- (g) A prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the on-site work with its own organization and resources if the contract is \$1 million or less.

Section 7.3 Subcontracting Plan.

The A/E's Subcontracting Plan is provided in **Exhibit J**. The plan shall only be amended with the prior written approval of the CO and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the plan shall inure to the benefit of the District.

Section 7.4 Copies of Subcontracts. Within twenty-one (21) days of the date of award, the Contractor shall provide fully executed copies of all subcontracts identified in the subcontracting plan (**Exhibit J**) to the Contracting Officer (CO), City Administrator (CA), District of Columbia Auditor and the Director of DSLBD.

Section 7.5 Subcontracting Plan Compliance Reporting. If the A/E has a subcontracting plan required by law for this Contract, the A/E shall submit a quarterly report to the CO, City Administrator (CA), District of Columbia Auditor and the Director of DSLBD. The quarterly report shall include the following information for each subcontract identified in the subcontracting plan:

- (a) The price that the prime contractor will pay each subcontractor under the subcontract;
- (b) A description of the goods procured or the services subcontracted for;
- (c) The amount paid by the prime contractor under the subcontract; and

- (d) A copy of the fully executed subcontract, if it was not provided with an earlier quarterly report.

Section 7.6 If the fully executed subcontract is not provided with the quarterly report, the prime contractor will not receive credit toward its subcontracting requirements for that subcontract.

Section 7.7 Annual Meetings. Upon at least 30-days written notice provided by DSLBD, the Contractor shall meet annually with the CO, CA, District of Columbia Auditor and the Director of DSLBD to provide an update on its subcontracting plan.

Section 7.8 DSLBD Notices. The A/E shall provide written notice to the DSLBD and the District of Columbia Auditor upon commencement of the Agreement and when the Agreement is completed.

Section 7.9 Enforcement and Penalties for Breach of Subcontracting Plan.

Section 7.9.1 The A/E shall be deemed to have breached a subcontracting plan required by law, if the A/E (i) fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information in a reasonably timely manner; (ii) submits a monitoring or compliance report or other required subcontracting information containing a materially false statement; or (iii) fails to meet its subcontracting requirements.

Section 7.9.2 A contractor that is found to have breached its subcontracting plan for utilization of CBEs in the performance of a Contract shall be subject to the imposition of penalties, including monetary fines in accordance with D.C. Official Code § 2-218.63.

Section 7.9.3 If the CO determines the A/E's failure to be a material breach of the Contract, the CO shall have cause to terminate the Contract for default pursuant to the terms set forth in the Standard Contract Provisions, **in clause 8 of the SCP, Default.**

Section 7.9.4 Neither the A/E nor its subconsultant may remove a subcontractor or tier-subcontractor if such subcontractor or tier-subcontractor is certified as an LSDBE company unless the Department approves of such removal, in writing. The Department may condition its approval upon the A/E 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 7.10 Equal Employment Opportunity and Hiring of District Residents

Section 7.10.1 The A/E shall comply with applicable laws, regulations and special requirements of the contract documents regarding equal employment opportunity and affirmative action programs. In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985, the forms for completion of the equal Employment Opportunity Information Report are incorporated herein as **Exhibit I**. A contract award cannot be made to any contractor that has not satisfied the equal employment requirements.

Section 7.10.2 The A/E shall ensure that at least fifty-one percent (51%) of the A/E's

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

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

Section 7.10.3 Thirty five percent (35%) of all apprentice hours worked on the Project shall be worked by District residents.

Section 7.11 Economic Inclusion Reporting Requirements

Section 7.11.1 Upon execution of the Agreement, the A/E and all its member firms, if any, and each of its Subcontractors shall submit to the Department a list of current employees and apprentices that will be assigned to the Agreement, the date they were hired and whether or not they live in the District of Columbia.

Section 7.11.2 The A/E and its constituent entities shall comply with subchapter X of Chapter II Title 2, and subchapter II of Chapter 11 of Title 1 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The A/E 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 7.11.3 The A/E shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

Section 7.11.4 The A/E shall be responsible for: (i) including the provisions of this Section 7.11 in all subcontracts; (ii) collecting the information required in this Section 7.11 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in any reports required to be submitted by the A/E pursuant to this Section 7.11.

Section 7.11.5 Service Contract Act Provision. The A/E agrees that the work performed under this Agreement shall be subject to the Service Contract Act Wage Determination in effect on the date this Agreement is effective. Service Contract Wage Schedules are available at wdol.gov, **Exhibit G**. Notwithstanding the terms of the Standard Contract Provisions, the Davis-Bacon Act is not applicable to this Agreement.

Section 7.11.6 Living Wage Act. In addition to the requirements set forth in the First Source Employment Agreement, the A/E shall comply with all applicable provisions of the Living Wage Act of 2006, **Exhibit D**, as amended (codified at D.C. Official Code §§ 2-220.01 et seq.) and its implementing regulations.

Section 7.11.7 Apprenticeship Act. The D.C. Apprenticeship Act of D.C. Law 2-156, (as amended, the Act) as amended shall apply to this Project. All subcontractors selected to perform work on the Project on a craft-by-craft basis shall be required to comply with the Act. All terms and conditions of the D.C. Apprenticeship Council Rules and Regulations shall be implemented. The Contractor shall be liable for any subcontractor non-compliance.

Section 7.12. Special Provisions Related to the COVID-19 Emergency

- (a) Notwithstanding Sections 7.1 and 7.2 Mandatory Subcontracting Plan and Requirements, for all contracts in excess of \$250,000 that are unrelated to the District's response to the COVID-19 emergency but entered into during the COVID-19 emergency, absent a waiver pursuant to D.C. Official Code § 2-218.51, **at least 50% of the dollar volume ("CBE minimum expenditure") of the contract shall be subcontracted to SBEs.**
- (b) If there are insufficient qualified SBEs to meet the requirement of paragraph (a), the subcontracting requirement may be satisfied by subcontracting the CBE minimum expenditure to any qualified CBE; provided, that best efforts shall be made to ensure that qualified SBEs are significant participants in the overall subcontracting work.
- (c) For every dollar expended by the Contractor with a resident-owned business (ROB), as defined in D.C. Official Code § 2-218.02(15), the Contractor shall receive a credit for \$1.10 against the CBE minimum expenditure.
- (d) For every dollar expended by the Contractor with a disadvantaged business enterprise (DBE), as defined in D.C. Official Code § 2-218.33, the Contractor shall receive a credit for \$1.25 against the CBE minimum expenditure.
- (e) For every dollar expended by the Contractor that uses a company designated as both a DBE and as a ROB, the Contractor shall receive a credit for \$1.30 against the CBE minimum expenditure.
- (f) "COVID-19 emergency" means the emergencies declared in the Declaration of Public Emergency (Mayor's Order 2020-045) together with the Declaration of Public Health Emergency (Mayor's Order 2020-046), declared on March 11, 2020, including any extension of those declared emergencies.
- (g) This special provision shall apply to all option periods exercised under those contracts.

- (h) Except as provided in this Section 7.12, the requirements of Section 7.2 shall remain in effect.

ARTICLE 8 MISCELLANEOUS PROVISIONS

Section 8.1 Conformance with Laws. It shall be the responsibility of the A/E to perform under the Contract in conformance with the Department's Procurement Regulations and all applicable District and federal statutes, laws, codes, ordinances, regulations, rules, requirements, orders, and policies of governmental bodies. This Agreement shall be governed by the laws of the District of Columbia.

Section 8.2 The Department and A/E, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns of such other party with respect to all covenants of this Agreement. The A/E shall not assign this Agreement without the written consent of the Department.

Section 8.3 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Department or AA/E.

Section 8.4 Unless otherwise required in this Agreement, the A/E shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at a Project site.

Section 8.5 The A/E shall have the right to include photographic or artistic representations of the Project among the A/E's promotional and professional materials. If applicable, the A/E shall be given reasonable access to the completed Project to make such representations. However, the A/E's materials shall not include the Department's confidential or proprietary information if the Department has previously advised the A/E in writing of the specific information considered by the Department to be confidential or proprietary. The Department shall provide professional credit for the A/E in the Department's promotional materials for the Project.

Section 8.6 In accordance with Section 8.10 below, if the A/E or Department receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

Section 8.7 The A/E agrees to indemnify and hold the Department, the Department's Representative and the Department's officers, agents and employees harmless from and against all claims, liabilities, demands, losses, damages, judgments, costs, or expenses, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are

caused by the negligent acts or omissions of the A/E, its employees and its consultants in the performance of professional services pursuant to this Agreement.

Section 8.8 The A/E agrees to indemnify and hold the Department and the Department's Representative harmless from and against any and all claims, liabilities, demands, losses, damages, costs, or expenses arising from the A/E's failure to perform its obligations pursuant to agreements with third parties, including, but not limited to, subconsultants, made in order to provide the services required of the A/E under this Agreement.

Section 8.9 The A/E shall pay for and defend all such suits or claims arising out of the Work for infringement of any patent rights or copyrights and hold the Department and Department's Representative harmless from loss on account thereof.

Section 8.10 Confidentiality. The A/E shall maintain the confidentiality of information specifically designated as confidential by the Department, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the A/E from establishing a claim or defense in an adjudicatory proceeding. The A/E shall require of the A/E's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Department.

Section 8.11 Extent of Agreement. This Agreement, which includes the terms set forth in the RFP, the Exhibits hereto, and other documents incorporated herein by reference, represents the entire and integrated agreement between the Department and the A/E and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Department's CO and the A/E.

Section 8.12 Non-Discrimination in Employment Provisions

Section 8.12.1 The A/E 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 8.12.1.1 Employment, upgrading, or transfer;

Section 8.12.1.2 Recruitment or recruitment advertising;

Section 8.12.1.3 Demotion, layoff, or termination;

Section 8.12.1.4 Rates of pay, or other forms of compensation; and

Section 8.12.1.5 Selection for training and apprenticeship.

Section 8.12.2 Unless otherwise permitted by law and directed by the Department, the A/E 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 8.12.3 The A/E shall, in all solicitations or advertisements for employees placed by or on behalf of the A/E; state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in this Section.

Section 8.12.4 The A/E 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 A/E's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

Section 8.12.5 The A/E 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 8.12.6 The A/E shall include in every subcontract the equal opportunity clauses of this Section so that such provisions shall be binding upon each Sub A/E or vendor.

Section 8.12.7 The A/E shall take such action with respect to any Sub A/E as the CO may direct as a means of enforcing these provisions, including sanctions for non-compliance.

Section 8.13 False Claims Act. A/E 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 Official Code §§ 2-308.14 and 22-2405.

Section 8.14 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 A/E, as the intent of the Contract is, with specific identified exceptions, to require the A/E 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 8.15 Independent Contractor. In carrying out all its obligations under the Contract, the A/E shall be acting as an independent Contractor, and not as an employee or agent of the Department, or joint venture or partner with the Department. The A/E 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 8.16 Terms in this Agreement shall have the same meaning as construed under District law.

Section 8.17 Confidential Information. In the course of the A/E's performance of the Work, the Department may make available to the A/E 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 A/E 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 A/E to carry out the Project. The A/E shall similarly obligate any and all persons to whom such information is necessarily disclosed to maintain the information in strict confidence. The A/E 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 8.18 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 8.19 Media Releases. Neither the A/E, 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 8.20 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 8.21 Notices. All notices or communications required or permitted under the Contract shall be in writing and shall be hand delivered or sent by tele-copier 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 tele-copier, on confirmation of successful transmission, and if sent by recognized overnight carrier, the next business day.

If to the Department:

If to the A/E:

Pamela Ford Dickerson
Contracting Officer
Department of General Services
2000 14th Street, NW, 4th Floor
Washington, DC 20009

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 8.22 Limitations. The A/E 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 8.23 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 A/E acknowledges that, in entering into the Contract, the Department is relying on the particular qualifications of the A/E, and the A/E 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 A/E 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 8.24 Survival. All agreements warranties, and representations of the A/E contained in the Contract or in any certificate or document furnished pursuant to the Contract shall survive termination or expiration of the Contract.

Section 8.25 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 8.26 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 A/E or any other person or entity.

Section 8.27 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 8.28 The Quick Payment Act

Section 8.28.1 Interest Penalties to Contractors

Section 8.28.1.1 The District will pay interest penalties on amounts due to the A/E under the Quick Payment Act, D.C. Official Code §2-221.01 *et seq.*, for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before:

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

Section 8.28.1.2 Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

Section 8.28.2 Payments to subcontractors

Section 8.28.2.1 The A/E must take one of the following actions within seven (7) days of receipt of any amount paid to the A/E by the District for work performed by any subcontractor under this Agreement:

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

Section 8.28.2.2 The A/E must pay any subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before:

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

Section 8.28.2.3 Any amount of an interest penalty which remains unpaid by the A/E at the end of any 30-day period shall be added to the principal amount of the debt to the subcontractor and thereafter interest penalties shall accrue on the added amount.

Section 8.28.2.4 A dispute between the A/E and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District of Columbia is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

Section 8.28.3 Subcontract flow-down requirements

Section 8.28.3.1 The A/E shall include in each subcontract under this Contract a provision requiring the subcontractor to include in its contract with any lower-tier subcontractor or supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code §2-221.02(d).

Section 8.28.4 Requirements for Change Order Payments

Section 8.28.4.1 The Department and the A/E are prohibited from requiring a prime contractor (the A/E in this Agreement) or a subcontractor to undertake any work that is determined to be beyond the original scope of the prime contractor's or a subcontractor's contract or subcontract, including work under a District-issued change order, when the additional work increases the contract price beyond the not-to-exceed price or negotiated maximum price of the underlying contract, unless the CO:

(i) Agrees with the prime contractor and, if applicable, the subcontractor on a price for the additional work;

(ii) Obtains a certification from the Chief Financial Officer that there are sufficient funds to compensate the prime contractor and, if applicable, the subcontractor for the additional work;

(iii) Has made a written, binding commitment with the prime contractor to pay for the additional work within 30 days after the prime contractor submits a proper invoice for the additional work to the CO; and

(iv) Gives written notice of the funding certification from the Chief Financial Officer to the prime contractor;

Section 8.28.4.2 The A/E is required to include in its subcontracts a clause that requires the prime contractor to:

(i) Within 5 business days of receipt of the notice required under subparagraph (A)(iv) of this paragraph, provide the subcontractor with notice of the approved amount to be paid to the subcontractor based on the portion of the additional work to be completed by the subcontractor;

(ii) Pay the subcontractor any undisputed amount to which the subcontractor is entitled for any additional work within 10 days of receipt of payment for the additional work from the District; and

(iii) If the prime contractor withholds payment from a subcontractor, notify the subcontractor in writing and state the reason why payment is being withheld and provide a copy of the notice to the CO; and

Section 8.28.4.3 The Department, A/E, prime contractor, or a subcontractor are prohibited from declaring another party to the contract to be in default or assessing, claiming, or pursuing

damages for delays in the completion of the construction due to the inability of the parties to agree on a price for the additional work.

Section 8.29 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 A/E, unless otherwise expressly provided to the contrary in the Contract.

Section 8.30 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.

ARTICLE 9 GOVERNMENTAL PROVISIONS

Section 9.1 Buy American Act Provision. The A/E shall not design or specify a proprietary product that does not comply with the provisions of the Buy American Act (41 U.S.C. § 10a). The Trade Agreements Act and the North American Free Trade Agreement (NAFTA) provide that designated country (as defined in FAR 25.401) and NAFTA country construction materials are exempted from application of the Buy American Act and are therefore acceptable hereunder.

Section 9.1.1 In accordance with the Buy American Act (41 U.S.C. § 10a-10d), and Executive Order 10582, December 17, 1954 (3 CFR, 1954-58 Comp., p. 230), as amended by Executive Order 11051, September 27, 1962 (3 CFR, 1059—63 Comp., p. 635), the A/E agrees that only domestic construction material will be specified in the performance of the Agreement, except for non-domestic material listed in the Agreement.

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

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

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

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

The A/E shall specify only domestic end products, except those:

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

Section 9.1.2 Domestic Construction Material. “Construction material” means any article, material or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a “domestic construction material” if it has been mined or produced in the United States. A manufactured construction material is a “domestic construction material” if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. “Component” means any article, material, or supply directly incorporated in a construction material.

Section 9.1.3 Domestic Component. A component shall be considered to have been “mined, produced, or manufactured in the United States” regardless of its source, in fact, if the article, material or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

Section 9.1.4 Foreign Material. When steel materials are used in a project a minimal use of foreign steel is permitted. The cost of such materials cannot exceed one-tenth of one percent of the total project cost, or \$2,500,000, whichever is greater.

Section 9.2 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 A/E and the Department. It shall be the responsibility of the A/E 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 A/E to determine the procurement regulations, statutes, laws, codes, ordinances, regulations, rules, requirements, and orders that apply and their effect on the A/E ’s obligations thereunder. However, if the application

of a future law or regulation requires the A/E to undertake additional work that is materially different in scope than that presently contemplated or required, the A/E shall be entitled to an equitable adjustment for such additional work.

Section 9.3 Retention of Records: Inspections and Audits. The A/E shall maintain books, records, documents and other evidence directly pertinent to performance under the Agreement in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Agreement.

Section 9.3.1 The A/E 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 9.3.2 The Department, the District of Columbia government, 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 A/E for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the A/E. The A/E shall provide proper facilities for such access and inspection.

Section 9.3.3 The A/E agrees to include the wording of this Section 9.3 in all its subcontracts in excess of five thousand dollars (\$5,000.00) that directly relate to Project performance.

Section 9.3.4 Audits conducted pursuant to this Section will be in accordance with generally accepted auditing standards with the results prepared in accordance with generally accepted accounting principles and established procedures and guidelines of the applicable reviewing or audit agency.

Section 9.3.5 The A/E 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 A/E, the auditing agency will afford the A/E 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 9.3.6 The A/E shall preserve all records described herein from the effective date of the Agreement 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 9.4 Gratuities and Owners Not to Benefit Provisions. If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the A/E, or any agent or

representative of the A/E, to any official, employee or agent of the Department or the District with a view toward securing the Agreement or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the A/E, terminate the right of the A/E to proceed under the Agreement and may pursue such other rights and remedies provided by law and under the Contract.

Section 9.4.1 In the event the Agreement is terminated as provided in Section 9.4, the Department shall be entitled:

- .1 to pursue the same remedies against the A/E as it could pursue in the event of a breach of the Agreement by the A/E; and
- .2 as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Department) which shall be not less than ten times the costs incurred by the A/E in providing any such gratuities to any such Department or employee.

Section 9.4.2 No member of, nor delegate to Congress, Mayor or City Council Member, nor contractor nor employee of the District, nor contractor nor employee of the Department shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom, and all agreements entered into by the Contracting Office of the Department in which he or any contractor 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 contractor 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 contractor 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 contractor or employee of the District is de Minimis.

Section 9.5 Ethical Standards For Department's Employees And Former Employees. The Department expects the A/E 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 A/E, nor any person associated with the A/E, 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 A/E 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 A/E may not assign to any former contractor or District employee or agent who has joined the A/E's firm any matter on which the former employee, while employed by the Department, had material or substantial involvement in the matter. The A/E may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The A/E shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each A/E or vendor.

Section 9.6 Anti-Deficiency Act. The obligations of the Department to fulfill financial obligations pursuant to this Agreement, or any subsequent agreement entered into pursuant to this Agreement or referenced herein (to which the Department is a party), are and shall remain subject

to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 1511-1519 (2004) (the “**Federal ADA**”), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2001); (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (2004 Supp.) (the “**D.C. ADA**” and (i) and (ii) collectively, as amended from time to time, the “**Anti-Deficiency Acts**”); and (iii) Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2001). Pursuant to the Anti-Deficiency Acts, nothing in this Agreement shall create an obligation of the Department in anticipation of an appropriation by Congress for such purpose, and the Department’s legal liability for payments and other charges under this Agreement shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress.

Section 9.6.1 The Department agrees to exercise all lawful authority available to it to satisfy the financial obligations of the Department that may arise under this Agreement. During the term of this Agreement, the Mayor of the District of Columbia or other appropriate official shall, for each fiscal period, include in the budget application submitted to the Council of the District of Columbia the amount necessary to fund the Department’s known potential financial obligations under this Agreement for such fiscal period. In the event that a request for such appropriations is excluded from the budget approved by the Council and submitted to Congress by the President for the applicable fiscal year or if no appropriation is made by Congress to pay any amounts due under this Agreement for any period after the fiscal year for which appropriations have been made, and in the event appropriated funds for such purposes are not otherwise lawfully available, the Department will not be liable to make any payment under this Agreement upon the expiration of any then-existing appropriation, the Department shall promptly notify the A/E, and this Agreement shall immediately terminate upon the expiration of any then-existing appropriation.

Section 9.6.2 Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of the District or Department shall have any personal liability in connection with the breach of the provisions of this Section or in the event of non-payment by the Department under this Agreement.

Section 9.6.3 This Agreement shall not constitute an indebtedness of the District and/or 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 District has levied or pledged any form of taxation. No District of Columbia Official or employee is authorized to obligate or expend any amount under this Agreement unless such amount has been appropriated by Act of Congress and is lawfully available.

Section 9.7 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 9.8 Covenant Against Contingent Fees Provisions. The A/E 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

A/E 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.

**ARTICLE 10
TERMINATION OR SUSPENSION**

Section 10.1 Any terminations or suspensions arising out of or under this Agreement shall be governed by the terms of the Standard Contract Provisions, Article 8, (**Exhibit E**).

**ARTICLE 11
OTHER CONDITIONS AND SERVICES**

Section 11 General Conditions. To the extent that this Agreement is silent on an action or requirement of the A/E, and current as of the date of this Agreement, the Department's Standard Contract Provisions for A&E Services Contracts (**Exhibit E**) shall govern the A/E's obligations with respect to such action or requirement under this Agreement.

IN WITNESS WHEREOF, the Parties' duly authorized representatives have executed this Agreement (DCAM-21-AE-0016) as of the dates written below.

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

By: _____
Name: Pamela Ford Dickerson
Title: Contracting Officer
Date: _____

[Insert A/E]

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