# DESIGN-BUILD AGREEMENT FOR TAKOMA AQUATIC HVAC AND ROOF UPGRADES

**BY AND BETWEEN**

**THE DEPARTMENT OF GENERAL SERVICES**

**AND**

**[DESIGN-BUILDER]**

**CONTRACT NUMBER: DCAM-20-CS-RFP-0004**

## PROJECT INFORMATION

**A.** PROJECT SUMMARY

| | | |
|---|---|---|
| 1. | **Project Name:** | DESIGN-BUILD SERVICES HVAC AND ROOF UPGRADES OF TAKOMA AQUATIC CENTER |
| 2. | **Project Address:** | 300 Van Buren St., NW, Washington, DC 20012 |
| 3. | **Agreement Type:** | Design-Build with Guaranteed Maximum Price |
| 4. | **Client Agency:** | District Department of Parks and Recreation ("DPR") |
| 5. | **Design-Builder:** | |
| 6. | **Agreement Amounts:** | [redacted] |
| i. | **Initial NTE:** | TBD |
| ii. | **Project Budget:** | $4.0 million |
| 7. | **Design-Builder Compensation:** | [redacted] |
| i. | **Design Fee:** | |
| ii. | **Design-Build Fee:**<br>**Preconstruction fee (15% of the Design-Build Fee):** | |

| | | |
|---|---|---|
| iii. | **Maximum Cost of General Conditions:** | |
| iv. | **Contingency:** | To be determined at GMP |
| v. | **Allowances:** | To be determined at GMP |
| 8. | **Liquidated Damages:** | |
| i. | **Failure to Submit Deliverables** | $1,000.00 plus $500.00/day |
| ii. | **Delay in Substantial Completion:** | $1,500.00/day |
| 9. | **Key Personnel Replacement Fee:** | $25,000.00 |
| 10. | **GMP Amendment Executed By:** | [TBD] |
| 11. | **Substantial Completion Date:** | March 23, 2022 |
| 12. | **Final Completion Date:** | April 23, 2022 |
| 13. | **Administrative Term Expiration Date:** | June 15, 2022 |
| 14. | **Letter Contract:** | |
| i. | **Period of Performance** | [Date of Letter Contract through Execution of Contract] |
| ii. | **NTE Amount:** | [TBD] |
| 15. | **GMP Basis Documents Design Progression** | Permit Set of Construction Documents |

**DESIGN-BUILD AGREEMENT**

**TAKOMA AQUATIC CENTE HVAC AND ROOF UPGRADES**

**DCAM-20-CS-RFP-0004**

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

## RECITALS

**WHEREAS**, the Department issued a Request for Proposals ("RFP") dated February 14, 2020 (the "RFP") to engage a design-builder to prepare a design for and to complete work at the existing Takoma Aquatic Center ("Takoma") located at 300 Van Buren St. NW, Washington, DC 20012 (the "Project");

**WHEREAS**, the Department desires that the Project be completed no later than March 21, 2022 ("Substantial Completion Date");

**WHEREAS**, the Design-Builder submitted a proposal entitled [TITLE OF PROPOSAL dated DATE OF PROPOSAL] to provide design-build services for the Project;

**WHEREAS**, the Department wishes to retain the Design-Builder to provide design-build services for the Project; and, the Project is to include utility investigation, design, pre-construction services, demolition services and construction services;

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

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

**WHEREAS**, the Department has established a budget for the Project, including all design

fees, hard construction costs, loose furnishings, and fees and general conditions of the Design-Builder (such budget, the "Project Budget"); and

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

**NOW, THEREFORE**, the Department and Design-Builder, for the consideration set forth herein, mutually agree as follows.

## Article 1 DEFINITIONS

### Section 1.1. Administrative Term.

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

### Section 1.2. Agreement.

The term "Agreement" shall mean this entire, integrated agreement between the Department and the Design-Builder with respect to the Project, consisting of this document and the Exhibits thereto, including but not limited to the Standard Contract Provisions, the Construction Documents released for the Design-Builder's use and any Change Orders, Contract Modifications or Change Directives that have been executed by the Department**.**

### Section 1.3. Client Agency.

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

**Section 1.4. Construction Documents.**

The final Drawings and Specifications, as prepared, sealed by the Architect's design professional in accordance with the law, and issued by the Design-Builder for the purpose of obtaining bids from potential trade subcontractors and material suppliers for use in constructing the Project.

**Section 1.5. Construction Phase Services.**

Services provided throughout the construction phase during which the Design-Builder shall carry out the bulk of the construction and manage the completion of the design for the Project.

**Section 1.6. Cost of General Conditions.**

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

**Section 1.7. Contract Documents.**

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

**Section 1.8. Design & Preconstruction Phase Services.**

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

**Section 1.9. Drawings.**

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

**Section 1.10. Final Completion.**

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

**Section 1.11. Final Completion Date.**

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

**Section 1.12. Fully Complete.**

To undertake all of the Work necessary to fully construct and complete the Project and execute all tasks necessary to obtain the final certificate of occupancy for the Project from the District of Columbia; submit final lien releases from the Design-Builder and Subcontractors and material suppliers; complete all 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 Agreement.

**Section 1.13. Guaranteed Maximum Price or GMP.**

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

**Section 1.14. Hazardous Material.**

Any toxic substance or hazardous chemical defined or regulated pursuant to federal, state or local laws relating to pollution, treatment, storage or disposal of waste, or protection of human health or the environment. Such laws include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act and laws relating to emission, spills, leaks, discharges, releases or threatened releases of toxic material. The term Hazardous Materials shall also include petroleum and petroleum bi-products.

**Section 1.15. Notice to Proceed.**

A written notice to proceed, signed by the Department, directing the Design-Builder to proceed with the Project or any portion of the Project ("Notice to Proceed" or "NTP").

**Section 1.16. Project Schedule.**

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

**Section 1.17. Self-Performed Work.**

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

**Section 1.18. Services.**

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

**Section 1.19. Specifications.**

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

**Section 1.20. Standard Contract Provisions.**

The District of Columbia Department of General Services Standard Contract Provisions, General Provisions (Construction Contract), as amended, are attached hereto as **Exhibit J1** and incorporated herein. The District of Columbia Department of General Services Standard Contract Provisions, General Provisions (Architectural & Engineering Services Contract), as amended, are attached hereto as **Exhibit J2** and incorporated herein.

**Section 1.21. Subcontractor.**

Any person, natural or legal, to whom the Design-Builder delegates performance of any portion of the Work required by the Agreement. The term "Subcontractor," used without a qualifier, shall mean a subcontractor in direct privity with the Design-Builder. "Subcontractors at all tiers" shall mean not only those Subcontractors in direct privity with the Design-Builder, but also those performing Work pursuant to sub-subcontracts, 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 Design-Builder's employees and to whom the Design-Builder delegates any part of its responsibilities under the Agreement, except that references to "trade Subcontractors" shall exclude design professionals.

**Section 1.22. Substantial Completion.**

Substantial Completion shall mean that all of the following have occurred: (1) the construction and installation work have been completed with only minor punch list items remaining to be completed; (2) a temporary certificate of occupancy and all other required permits or approvals have been obtained; (3) draft copies of all operating and maintenance manuals, training videotapes and warranties required by the Agreement have been delivered to the Department and the Client Agency; (4) any supplemental training session required by the Agreement for operating or maintenance personnel have been scheduled; (5) all clean-up required by the Agreement has been completed; (6) the Project is ready for the Department and Client Agency to use it for its intended purpose; and (7) all equipment, supplies, materials and items to be installed have been installed in accordance with the manufacturer's specifications and industry standards and have undergone and passed the requisite testing and inspections. "Minor punch list items" are defined for this purpose as items that, in the aggregate, can be completed within thirty (30) days without interfering with the Department or Client Agency's normal use of the Project.

**Section 1.23. Substantial Completion Date.**

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

**Section 1.24. Work.**

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

**Section 1.25. Protection of Existing Elements.**

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

**Section 1.26. Site Cleanliness**

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

## Article 2 GENERAL PROVISIONS

### Section 2.1. Letter Contract

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

### Section 2.2. Term and Termination

The period of performance under this Agreement shall commence from the date of execution of the Letter Contract by the Department and shall terminate upon the expiration of the Administrative Term or upon termination by the Department pursuant to Articles 5 and 6 of the Standard Contract Provisions (Construction) and Article 8 of the Standard Contract Provisions (Architectural & Engineering Services Contract).

### Section 2.3. Relationship of Parties.

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

### Section 2.4. Confidentiality of Information

The Design-Builder shall assure and keep all information and data obtained throughout the performance of the Project whether related to the Agreement, the Work in all of its aspects, the

Department and the Department's employees confidential, during and following the term of the Agreement, and shall not use the information in connection with any other matters; nor shall it disclose any such information to any other person, firm or corporation, unless disclosure is required pursuant to court order, subpoena or other regulatory authority. The Design-Builder shall not be divulged of confidential information without the individual's and the Department's written consent and only in accordance with the District's or Federal's laws, codes and regulations. The Design-Builder and any Subcontractors who utilize, access, or store personally identifiable information as part of the performance of this Agreement are required to safeguard this information and immediately notify the Department of any breach or suspected breach in the security of such information. The Design-Builder and all Subcontractors shall allow the Department to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. The Design-Builder, Subcontractors and their respective employees working on this Project may be required to sign a confidentiality statement.

**Section 2.5. Project Description.**

The Takoma Aquatic Center is located at 300 Van Buren Street, NW, Washington, DC 20012 (the "Property" or "Takoma") in the Takoma neighborhood. The Property contains a masonry and steel-framed building that was constructed in 2004. The Aquatic Center is a one story building plus a clerestory for an overall floor to ceiling height (at center) of 22 feet. The approximately 76,000 square foot building contains a 50-meter x 25-meter indoor pool on the main floor, with an observation deck on the mezzanine above.

The Takoma Community Center, and Takoma Aquatic Facility, and the Takoma Recreation Center Field House consist of three separate buildings situated amidst a sprawling grassy site. The community center and aquatic facilities are two steel and masonry-framed buildings, immediately adjacent to one another separated by a short paved walkway. The community center is a single story brick building that consists of front lobby, restrooms, and various other multi-purpose rooms and classroom, and is approximately 6,400 square feet. The aquatic center consists primarily of a large indoor pool with spectating balcony, and multiple levels of mechanical, and pump rooms, locker rooms, a weight room and various staff rooms. It is approximately 76,000 square feet. The three buildings that make up the Takoma recreation complex are in various conditions. The community center was originally constructed in the 1940s and renovated as recently as 2004.

The site adjacent to the community center and aquatic facility is approximately 900,000 square feet, and consists of several tennis courts, a baseball field, a football field, a parking lot, and a wooded park area. Across Van Buren Street on the north of the site is the Takoma Recreation Center Field House, an approximately 1,800 square foot masonry, and wood framed building situated on a 186,000 square foot site with two playground facilities, a basketball court, a

community garden and large sports field. The field house appears to have been originally constructed in the 1940s and is currently in poor condition.

The project site is approximately 900,000 square feet, and is bordered to the south by Coolidge High School. The site is bordered to the west by 5th St., NW and residential properties; to the east by 3rd St., NW and residential properties; and to the north by the Takoma Recreation Center and Van Buren St., NW.

**The Aquatic Center:** The Aquatic Center's exterior of the building, all along the foundation at the east, south, and west walls, soil erosion has exposed the water barrier, and insulation at the base of the building. These materials and the flashing has been damaged due to contact with lawn maintenance equipment. The Aquatic Center' interior, the pool facility appears in fair to good condition, with some noticeable issues. In the lower level women's locker room, water leaks into a wall adjacent to the shower area. Via access through a wall panel, an audible and continuous drip sound could be heard within the wall cavity. The conditions in the women's locker room are very humid, due to the leak and mold apparent on the gypsum ceiling. In the pool area of the facility, many of the metal surfaces have rusted from constant exposure to moisture. The egress doors on the east and west ends of the pool area have faded signage, difficult to read from a distance during an emergency and have disconnected closers attached to the doors.

**The Field House:** The metal roof is rusted, there are no ADA accessible entrances to the facility, and the exterior doors to the men's and women's restrooms do not close entirely or cannot be locked. The equipment in the kitchen area appear to be in disrepair, and the assessment team found debris and clutter throughout the facility. Many of the ceiling tiles are missing and others are water damaged and/or warping. Glass in the windows is cloudy, and one of the wooden window frames on the eastern side of the building is damaged and appears to be rotting.

**The Community Center:** The Community Center's exterior front entrance window mullions and door frames have pealing, chipping paint. Metal beneath paint is rusting. Shear cracks on south wall in brick near building base. South wall exterior windows have rust, appear bent and warped in multiple locations. Signs of water damage. South wall has missing brick roughly 10 feet above ground behind bushes. There are signs of water damage below gap in bricks. Moss growing on north wall. Paint around gutters pealing at multiple locations. Missing cap on fire department hydrant connection, next to building entrance. Bare patches across 15-25% of grass lawn around site. Chipping paint across wall at one end of tennis courts. Broken metal base at lamppost near street in front of Community Center entrance. The Interior multiple rooms consist of uneven flooring. Men's room has mold. Leaks at faucets. Kitchen consist of broken garbage disposal, water stains on acoustical ceiling tile. Computer room consist of water stains on acoustical ceiling tile, follows fire sprinkler line. Classroom 155

consists of wood board at exterior AC unit in place of window, and water stains on acoustical ceiling tile.

The three (3) buildings will require the design, modification, construction and renovation to include but not be limited to the roof replacement, HVAC replacement, and related improvements to comply with the American Disabilities Act (ADA). The Project will include work sufficient for new, fully functioning roof and HVAC/mechanical systems for the building and pool. Without limiting the generality of foregoing, the Design Builder shall be required to provide all management, personnel, design services, labor, materials and equipment necessary to complete the Project.

The goal of this project is to improve the functions of both programmed and service spaces via roof replacement and HVAC/mechanical improvements, to renovate areas that were damaged as a result of aging roof and HVAC systems, and to thereby enhance the overall recreational experience for the community. The major goals for the Aquatic Center include: replace the entire existing roofing system for the center; and provide new HVAC and other mechanical equipment for the building and the pool, renovation of damaged building components such as drywall, tile flooring, toilet partitions, and sprinkler heads.

**Section 2.6. Program Manager.**

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

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

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

a) To confirm the design and construction of the Project in accordance with the RFP Documents.
b) To provide all design services and construction management services necessary to implement the goals of the Project inclusive of, but not limited to, the following: civil, architectural, electrical, structural, and mechanical design services as required for the Project; construction

management services inclusive of budgeting, value engineering ("Value Engineering"), scheduling, project administration, management and coordination of subcontractors.

c) To conduct subsurface investigation work if and as required for the Project.

d) To furnish and provide all materials, management, personnel, equipment, hazardous material abatement, supervision, labor and other services necessary to complete the Project.

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

The Design-Builder will be required to work with the Department and Project stakeholders through a collaborative design process to develop a concept design for the Project in accordance with the available budget. The Design-Builder will be required to engage in extensive pre-design and preconstruction efforts to ensure that the design is developed in a manner consistent with the Department's goals for the Project (e.g., programmatic, budgetary, schedule and quality); to solicit competitive trade bids for the construction work and to develop an acceptable guaranteed maximum price and corresponding scope and schedule for the work; and to implement the requisite construction and other work necessary no later than the Substantial Completion Date. The Design-Builder will be required to provide a "turn-key" Project ready for its intended use and shall be responsible for all items of cost except for those items set forth in Section 9.7 of this Agreement.

## Section 2.8. Warranties and Representations

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

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

Builder's construction or design experience and qualifications, claims or litigation history or financial condition, is materially inaccurate, that shall constitute a material breach of the Agreement, entitling the Department to any and all available remedies.

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

**Section 2.9. Responsibility for Agents and Contractors.**

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

## Article 3 DESIGN-BUILDER'S DESIGN & PRECONSTRUCTION SERVICES

**Section 3.1. Preconstruction Services.**

During the Design & Preconstruction Phase, the Design-Builder shall provide such design and preconstruction services as are necessary to properly advance the Project. Without limiting the generality of the foregoing, during the Preconstruction Phase, the Design-Builder shall: (i) work with its Architect and any design consultants to advance the design for the Project in consultation with Client Agency, the Department and its Program Manager; (ii) obtain bids from trade subcontractors to perform the work described in the Design Development Documents and provide bid tabulations to the Department; (iii) engage in any value engineering and scoping exercises necessary to return the cost of the work to the Project Budget; (iv) engage in preconstruction activities, including identifying any long-lead items; (v) develop a GMP proposal for the Project; and (vi) enter into a GMP for the Project. Throughout the Design & Preconstruction Phase, the Design-Builder shall schedule and attend regular meetings with the Department, the Program Manager and the Architect. A list of preconstruction deliverables is set forth in **Exhibit C**.

**Section 3.1.1 Initial Deliverables**

The Design-Builder's initial task will be to develop a concept design and budget for the Project. As part of this effort, the Design-Builder shall prepare and provide the following initial deliverables:

**Section 3.1.1.1 Building System Assessment.** If requested by the Department, within fourteen (14) days after the Preconstruction NTP is issued, the Design-Builder shall conduct an assessment report of the building systems and submit a written report to the Department that assesses whether the existing building systems can be repaired or whether such systems should be replaced. Such report shall take into consideration the nature of this Project. This report shall assess all of the buildings key systems, including, but not limited to, HVAC, kitchens, roof, windows, electrical, lighting, Audio Visual Equipment, intercom, fire alarms, and plumbing.

**Section 3.1.1.2 Baseline Schedule.** Within twenty-one (21) days after the Preconstruction NTP is issued, the Design-Builder shall prepare and submit a Baseline Schedule for the Project (the "Baseline Schedule"). The Baseline Schedule shall be subject to review and approval by the Department and the Design Builder shall incorporate such adjustments to the Baseline Schedule as may be reasonably requested by the Department. The Baseline Schedule shall be prepared in a critical path method ("CPM") in a sufficient level of detail to permit the Department and the Design-Builder and any other affected parties to properly plan the Project. The Baseline Schedule shall show: (i) key design milestones and bid packages; (ii) release dates for long lead items; (iii) release dates for key subcontractors; and (iv) Substantial and Final Completion Dates. The Baseline Schedule shall include durations and logic ties for those building systems that the Design-Builder is recommending for replacement. The Baseline Schedule must also be submitted in Primavera 6 native format and shall be updated by the Design Builder, at a minimum, on a bi-weekly basis.

**Section 3.1.1.3 Concept Design.** The first phase of the project will include the preparation of a concept design and program development. No later than six (6) weeks after the Preconstruction NTP is issued, the Design-Builder shall prepare and submit a proposed concept design for the Project. The concept design shall contain at least the level of detail contemplated in standard industry practice and shall contain such detail as is typically required for a concept design under standard industry practice. The Department shall have the right to disapprove the concept design submittal for any reason. Following review of the concept design submission by DPR and the Department, the Design-Builder shall make revisions to the concept design submission as necessary to incorporate comments, feedback and other direction provided by DPR and the Department. The Design-Builder's pricing shall assume that such revisions will be required, and such revisions shall not entitle the

Design-Builder to additional compensation. The concept design services shall include but are not limited to the following:

a. Conduct meetings with the DGS representatives to verify facility requirements on a space-by-space basis.
b. Conduct community meetings to provide information on the progress of the work and solicit input.
c. Conduct life safety/building code analysis to verify compliance of design with all current applicable codes recently adopted and/or adopted by Washington, DC, including the 2013 District of Columbia Building Code, the 2013 District of Columbia Green Construction Code, the 2013 District of Columbia Energy Conservation Code, the 2013 District of Columbia Fire Code, the 2013 District of Columbia Mechanical Code, and the 2013 District of Columbia Plumbing Code.
d. Participate in Value Engineering workshops, as required, with the DGS representatives.
e. Prepare and submit Environmental Impact Screening Form ("EISF")
f. Survey existing facility to confirm locations and types of hazardous materials to be abated or mitigated.
g. Conduct a complete survey of the site as required to successfully renovate the aquatic center building. At a minimum, the survey shall include existing condition of the building and documentation of existing condition. Design-Builder shall be responsible for the collection, assessment, and verification of existing conditions. Design-Builder shall, with prior approval from the Department, perform selective demolition to verify existing conditions. Design-Builder shall be responsible for returning all disturbed elements to their original condition. Design-Builder shall include a Selective Demolition Allowance of $25,000 for limited demolition and restoration in their Design Fee. Costs for selective demolition shall be reimbursed at cost, without markup of any kind, and only costs from non-design subcontractors shall be eligible for reimbursement; costs from the architects, engineers and other design consultants shall be paid out of the Design Fee.
h. Request and receive hydrant flow test.
i. Review mechanical systems evaluation and recommend selection.
j. Confer with mechanical systems personnel from DGS to ensure that recommendations meet their requirements.
k. Confer with the Department's IT representatives/consultants to verify technological requirements for the Project.

l. Renovation and new construction should be designed to qualify for LEED Silver certification.

**Section 3.1.1.4 Preliminary Budget Estimate.** Concurrently with the delivery of the concept design, the Design-Builder shall submit a detailed cost estimate of the proposed design (such estimate, the "Preliminary Budget Estimate"). With regard to building systems (i.e. roofs, doors, HVAC, security, IT, etc.), the Preliminary Budget Estimate shall be prepared on a "system" basis that identifies the key building systems or functions and allocates an estimated cost for each such system. The Design-Build Fee, the cost of general conditions, and contingencies shall be broken out in separate line items. The primary purpose of the Preliminary Budget Estimate is to aid the Department and DPR in understanding the costs associated with key elements of the Project to better prioritize and manage the use of the funding allocated to this Project.

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

**Section 3.1.1.6 Construction Management Plan.** The Design-Builder shall submit a draft of its construction management plan ("Construction Management Plan") within fourteen (14) days after the Preconstruction NTP is issued to include, but is not limited to, noise control, hours for construction and deliveries, truck routes, trash and debris removal plan, traffic and parking control, communications procedures, emergency procedures, quality control procedures, dust control, public street cleaning and repair, planned occupancy of public ways, erosion control, tree protection plan, vibration monitoring, temporary fire protection measures, project signage, pest control, construction staging plan, and construction logistics plan.

**Section 3.1.1.7 Additional Preconstruction Services.** In addition to those items enumerated above, the Design-Builder shall provide such preconstruction

services as are necessary to properly advance the Project. These services shall include, but are not limited to, scheduling, estimating, shop-drawings, the ordering of long-lead materials, condition assessments, conservator studies, archeological studies, recommended testing, additional geotechnical testing, and monitoring of historic assets.

**Section 3.1.1.8 Deliverables Liquidated Damages.** The Design-Builder acknowledges that the Department is engaging the Design-Builder to provide an extensive level of preconstruction support services to minimize the potential for cost overruns, schedule delays or the need for extensive Value Engineering/redesign late in the Project and that the deliverables required under this **Section 3.1.1** are key to identify the value of such services. In the event the Design-Builder fails to deliver any of the deliverables required in **Section 3.1.1** (and unless such failure is the result of any event of Force Majeure), the Design-Builder shall be subject to liquidated damages in an amount of One Thousand Dollars ($1,000.00) plus Five Hundred Dollars ($500.00) per day after receiving written notice from either the COTR or the Contracting Officer of failure to submit such deliverables.

**Section 3.1.1.9 Design & Preconstruction Phase Deliverables.** The deliverables set forth in **Exhibit C** are required during the Design & Preconstruction Phase. In the event that the Design-Builder fails to provide any deliverable so listed, and unless such failure is the result of any event of Force Majeure, the Design-Builder shall pay to the Department liquidated damages for each deliverable that is not timely submitted as set forth in **Article 13** after receiving written notice from either the COTR or the Contracting Officer of failure to submit such report.

**Section 3.2 Design Management**

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

**Section 3.2.1 Schematic Design.** The Design-Builder shall prepare a schematic design that is a logical development of the approved concept design and is consistent with the Department's schedule, budget (i.e. designed to budget of $4 Million) and programmatic requirements. The schematic design shall contain at least the level of detail contemplated in standard industry practice and shall contain such detail as is typically required for a schematic design under standard industry practice. The design submittal shall specifically identify any deviations from the approved concept design and shall explain the rationale, cost and time implications associated with such deviation. The Department shall have the right to disapprove the schematic design submittal for any reason. Following review of the schematic design submission by DPR and the Department, the Design-Builder shall make revisions to the schematic design submission as necessary to incorporate comments, feedback and other direction provided by DPR and the Department. The Design-Builder's pricing shall assume that such revisions will be required, and such revisions shall not entitle the Design-Builder to additional compensation.

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

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

**Section 3.2.2 Schematic Budget Update.** Concurrent with submission of the schematic design, the Design-Builder shall submit a budget update. The

budget update shall be submitted in the same format as the Preliminary Budget Estimate and shall show variations from Preliminary Budget Estimate. To the extent the budget update shows an overrun from the approved budget, the Design-Builder shall submit Value Engineering suggestions that would return the Project to budget. Only the Department shall have the authority to increase the Project budget, and absent such direction, the Deign-Builder shall proceed on the assumption that the budget remains as originally directed by the Department.

**Section 3.2.3 Constructability/Sole Source/Long-Lead Time Memorandum.** Concurrently with the Schematic Design Budget Estimate, the Design-Builder shall prepare a memorandum identifying key construction concerns related to the Project. Such memorandum shall: (i) assess the constructability issues related to the Project, including site logistics; (ii) identify any items where the design is predicated on a single manufacturer and, if so, identify at least two (2) comparable products; and (iii) identify any long-lead delivery items that could adversely affect the schedule contemplated in this RFP. To the extent any such long-lead items are identified, the memorandum shall make recommendations for addressing such items.

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

The specific services required during this phase are:

a. Select and draft outline specifications for materials, systems, equipment.
b. Develop detailed and dimensioned plans, wall sections, building section, and schedules.
c. Complete code compliance analysis and drawing.

d. Confirm space-by-space equipment layouts with representatives from DGS.
e. Conduct follow up meetings with agencies as required.
f. Coordinate furniture, fixtures, and equipment requirements ("FFE"). Design documents should be sufficient to provide for the purchase and installation of FFE as required.
g. Present the design to CFA, HPO, Office of Planning, and other regulatory agencies as required.
h. Contractor is responsible for coordinating with sub-consultants for storm water management, and other specialized work, as necessary.
i. Renovation and new construction should be designed to qualify for LEED Silver certification.

The Design-Builder shall determine if it is necessary to present the overall project design to the Commission of Fine Arts (CFA) for reviews and approvals prior to any work commencing.

**Section 3.2.5 Permits.** The Design-Builder shall be responsible for preparing and submitting all of the required permit applications that are necessary to complete the Project, including trade permits. The Design-Builder shall develop a list of the required permits and shall track the progress of all such permits through the review process. The Design-Builder shall update the Department with the status of each permit that is required for the Project. The Design-Builder shall engage such permit expediters as the Design-Builder deems necessary or appropriate in light of the Project's schedule.

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

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

Design-Builder shall prepare and submit a progress printing to the Department for its review and comment.

**Section 3.2.8 Construction Document Review & Coordination.**

The Design Builder shall complete each of the Construction Documents packages in a manner that addresses the concerns raised by the Department during the review contemplated in **Section 5.3.1** for such package. The Design-Builder shall issue one or more set of permit documents to the Department for its review and approval ("Permit Set"). The Permit Set shall represent the further progression of the approved DDs together with any value engineering strategies approved by the Department. The Permit Set shall be Construction Documents progressed to approximately 90% completion of those required in a traditional Design/Build delivery method. With regard to each such set, the Design-Builder shall highlight (or bubble) any aspect of the design that represents a material deviation from the approved Design Development Documents and shall address in a narrative format the impact, if any, such departure shall have on the Project's aesthetics, functionality or performance. The Department shall have the right to disapprove the Construction Documents for any reason. If the Department disapproves the Construction Documents, the Design-Builder will not be entitled to any additional compensation. If, however, the Department disapproves a Construction Document that is a logical extension of the approved Design Development Documents, the Design-Builder will be entitled to an adjustment to the GMP and/or the Agreement schedule unless such a package departs from the Scope of Work fairly reflected in the GMP Drawings and Specifications and in such event the Design-Builder shall be required to prepare a revised design that complies with the GMP drawings and specifications ("Drawings and Specifications") and without any entitlement to an increase in the GMP or an adjustment of the Agreement schedule**.** In the event the Department does not approve a document within fourteen (14) days after issuance, such document shall be deemed approved unless the Department advises that such document is still under review. In the event the Department's review takes longer than fourteen (14) days, such additional review shall be deemed a change event.

During the Permit Set phase, the Design-Builder shall complete the following tasks:

a. Continue to prepare detailed and coordinated drawings and specifications.
b. Prepare application and submit documents for building permit.

c. Work with the Department's third-party plan reviewer to review the documents for permit document submission.
d. Upload all documents to DCRA's permit document review website in accordance with their instructions.
e. Prepare and submit early-release excavation, foundations, concrete and steel packages, if needed.
f. Prepare and submit DC Water permit application packages (all permit types that may be required) and DOEE Storm Water Management and Green Area Ratio packages for review and approval.
g. Prepare DDOT public space modifications package for submission to and approval by DDOT Public Space Committee, participate in Committee meetings as necessary.
h. Prepare all traffic control plans required to obtain relevant DDOT permit approvals at all stages of the project, as required.
i. Renovation and new construction should be designed to qualify for LEED Silver certification.

In addition, the Design-Builder shall be required to (a) define, clarify, or complete the concepts and information contained in the Permit Set; (b) correct design errors or omissions, ambiguities, and inconsistencies in the Permit Set (whether found prior to or during the course of construction); and (c) correct any failure of the Architect to follow written instructions of the Department during any phase of design services or the construction of the Project provided they are compatible with industry standards.

**Section 3.2.9 Code Review.** The Design-Builder shall submit the Permit Set to the Department of Consumer and Regulatory Affairs in order to obtain the necessary building permits for the Project. The Design-Builder shall monitor the permit process and shall incorporate any changes or adjustments required by the Code Official. The Design-Builder shall also issue any such changes to the Department for its review and approval. In this submittal, the Architect shall highlight (or bubble) any aspect of the design that represents a material deviation from the permit set documents and shall address in a narrative format the impact, if any, such departure shall have on the Project's aesthetics, functionality or performance. Subsequent to obtaining the necessary building permits, the Design-Builder shall prepare one or more sets of "issued for construction documents" (the "IFC Set(s)").

**Section 3.2.10 Design Changes.** If it should become necessary to amend any of the approved IFC Set(s), the Design-Builder shall prepare an amendment to the drawings and shall submit such amendment to the Department for its review and approval. In this submittal, the Design-Builder shall highlight (or bubble) any aspect of the design that represents a material deviation from the permit set documents and shall address in a narrative format the impact, if any, such departure shall have on the Project's aesthetics, functionality or performance. In the event the Department does not approve such document within ten (10) business days after issuance, unless otherwise denied, such document shall be deemed approved, provided however that the Department has not advised that such document is still under review.

**Section 3.2.11 Third Party Contractors.** The Department will hire third party contractors for plan review and for testing and material inspections. The Design-Builder shall coordinate and work with the Project Manager and third party plan reviewer during the building permit process.

**Section 3.3 Building Information Modeling.** DGS is implementing Building Information Modeling ("BIM") as a standard on the Takoma project. DGS's BIM plan will facilitate more informed decision making, design-intent, communication, project coordination across various phases; enhance project delivery schedule and budget management, post construction asset and facility management, and building automation. This will be accomplished through the real time collaboration and utilization of a common data environment.

The Department uses BIM and, as such, will require a BIM process to be followed for the Takoma project.

This process will include the following additional tasks and deliverables:

a. An initial meeting dedicated to reviewing the BIM process and requirements for all parties as well as periodic BIM status meetings.
b. BIM (Revit) models created during design that conform to DGS' modeling requirements and LOD standards
c. BIM models used during pre-construction to facilitate coordination of trades.
d. BIM (Revit) models during pre-construction that conform to DGS' modeling requirements and LOD standards and will allow for efficient transfer of FM data as well as to be used as backgrounds for future renovation work.

DGS will require the following Autodesk software for the design and construction phase of the Project.

### Section 3.3.1 Software and Hardware Procurement

DGS will require the following Autodesk software for the design and construction of this Project.

a) Design Phase – Subscriptions provided by the Design-Builder
    a. Autodesk Revit 2018 or higher
    b. Autodesk Collaboration for Revit (BIM 360) Design
    c. Autodesk Navisworks Manage 2018 or higher
b) Construction Phase – Subscriptions provided by the Design-Builder.
    a. Autodesk Revit 2018 or higher
    b. BIM 360 Field
    c. BIM 360 Glue
    d. BIM 360 Docs

DGS will require five (5) Dell Semi-Tough Tablets for use by the owner's representatives. Accessories should include keyboards (5 total) and stylus pens (5 total).

Purchase of the software can be done on behalf of the agency and added to DGS's master Autodesk contract (Provided at the time of purchase). All Autodesk software/subscription ownership rights will be turned over to the agency DGS.

By following this BIM standard, DGS and chosen contractors will use industry standard technology from Autodesk. It is DGS' intent to benefit from project data ownership, greater project insight, design intent communication, project coordination across various phases, enhanced project delivery schedule and budget management and to realize greater post-construction asset and facility management benefits throughout the lifecycle of the building.

## Article 4 FORMATION OF GMP PROPOSAL

### Section 4.1. General.

During the Design & Preconstruction Phase, the Design-Builder shall cause the Architect to prepare the GMP Basis Documents. Based upon the GMP Basis Documents, the Design-Builder shall propose a GMP (referred to as the "GMP Proposal") which shall be submitted in accordance with this Article. The Design-Builder acknowledges and understands that the GMP Basis Documents will be incomplete at the time it submits its GMP Proposal. Although complete construction documents will not be available and many details will not be shown on GMP Basis

Documents or will otherwise need to be adjusted, the GMP proposed in the Design-Builder's GMP Proposal shall be intended to represent the Design-Builder's offer for the Final Completion the Project. If the Design-Builder's GMP Proposal is acceptable to the Department, it shall be memorialized in form of an amendment to this Agreement (such amendment, the "GMP Amendment"). Such amendment shall be in the form of **Exhibit L** attached hereto.

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

**Section 4.2. Review of GMP Basis Documents.**

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

**Section 4.3. Contingency.**

The Cost of the Work shall include a contingency, which shall be a sum established by the Department and the Design-Builder to cover, among other things costs necessary to address scope expansion that is a logical development of the design, issues arising from or as a result of deficiencies in the GMP Basis Documents and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order, such as costs that were not reasonably foreseeable as of the effective date of this Agreement, including such items as emergencies, unforeseeable changes in market conditions for materials or labor, or subsurface, soils or site conditions that were neither known nor reasonably discoverable as of the effective date of the Agreement (the "Contingency"). During the Construction Phase, the Design-Builder shall keep the Program Manager informed as to the status of the Contingency and shall, at a minimum: (i) advise the

Program Manager or any significant draws upon the Contingency in a timely manner; and (ii) provide the Program Manager with running status of the Contingency balance at least once every two (2) weeks.

**Section 4.4. Trade Bids.**

**Section 4.4.1. Subcontractors and Suppliers; Bidding Procedures.** During the Design & Preconstruction Phase, the Design-Builder shall seek to develop subcontractor interest in the Project. Within fifteen (15) days after the completion of the schematic design, the Design-Builder shall provide to the Department for its review and approval a written submission on the proposed bidding procedures. Such procedures shall include: (i) a list of proposed trades packages; (ii) a list of trade subcontractors that will be invited to bid on each such package; and (iii) a narrative description of the process. At least three (3) potential subcontractors shall be identified for each trade package. In addition to the information normally required in such bids, the Design-Builder shall also require subcontractors to provide an estimate of the percentage of labor hours performed in completing the subcontracted work that will be performed by District residents. A copy of this deliverable must be submitted to both the COTR and the Contracting Officer. In the event the Department does not approve the proposed bidding procedures within fifteen (15) days after its receipt, such procedures shall be deemed approved unless the Department advises that such is still under review.

**Section 4.4.2. Bidding.** Following the Department's approval of the design development documents, the Design-Builder shall manage the trade bidding process in accordance with the approved bidding procedures and shall use commercially reasonable best efforts to solicit at least three (3) qualified and bona fide bids for each trade package that has an expected value in excess of One Hundred Thousand Dollars ($100,000.00). Trade packages shall not be parceled, split or divided to avoid the $100,000.00 threshold. In addition to the information normally required in such bids, the Design-Builder shall also require subcontractors to provide an estimate of the percentage of labor hours performed in completing the subcontracted work which will be performed by District residents. The Design-Builder shall carefully document its procedures for making available bid packages to potential

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

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

**Section 4.5. Value Engineering.**

Based on the trade bids received, the Design-Builder shall prepared a written report of suggested value engineering strategies necessary to reconcile the costs of constructing the Project budget, if necessary. The Design-Builder shall meet with the Department's representatives to discuss any value engineering and changes in scope necessary to ensure that the Department's schedule and programmatic requirements are met and that the budget is not exceeded. The Design Builder shall cause the Architect to implement and price any approved value engineering strategies.

**Section 4.6. Basis of Guaranteed Maximum Price.**

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

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

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

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

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

**4.6.5.** An update to the Project's schedule to which the Design-Builder will agree to be bound. This update shall be prepared in the same level of detail and in the same manner as the Baseline Schedule.

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

**Section 4.7. Department Review of GMP Proposal.**

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

**Section 4.8. Department Acceptance of GMP Proposal.**

The Department and the Design-Builder shall meet to negotiate the terms of the GMP Proposal. If the GMP Proposal is acceptable to the Department, the Department shall submit the resulting GMP amendment to the Council for the District of Columbia. The GMP shall be subject to review and approval by the Council for the District of Columbia in the event it exceeds the previously approved Contract value by more than $1 million. In such event, the GMP shall not be effective until so approved. In the event that the Department and the Design-Builder are unable to agree upon the GMP or the schedule for the Project, the Department shall have the right to terminate the Agreement and assume any trade subcontracts held by the Design-Builder. In such an event, the Design-Builder shall only be entitled to Fifty percent (50%) of the Preconstruction Fee.

**Section 4.9. GMP Amendment.**

In the event an acceptable GMP Proposal is not developed and a GMP Amendment is not executed, the Agreement will be terminated. In the event the Agreement is terminated pursuant to this Section, the Department shall be free to use any of the documents and information developed through the date of termination to retain a new contractor to complete the Project.

**Section 4.10. Assignment Upon Failure to Reach GMP.**

In the event that the Department and the Design-Builder are unable to agree upon a GMP, the Department shall have the right to terminate this Agreement, and if requested by the Department, the Design-Builder shall assign any trade Subcontracts and its agreement with the Architect to the Department upon such terms and conditions and at the time requested by the Department. In such event, the Design-Builder shall only be entitled to earn fifty percent (50%) of the Preconstruction Fee.

**Section 4.11. Certification.**

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

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

**Section 4.12 Early Release/Abatement & Demolition**

**Section 4.12.1 Abatement & Selective Demolition.** Once the schematic design has been approved, the Department may release the Design-Builder to commence hazardous material abatement and interior demolition, or other early activities, as applicable. It is envisioned that this work may be released in advance of the GMP.

**Section 4.12.2 Long Lead Materials.** The Department will release funding for long-lead items once the Design Development Documents have been approved. If the Design-Builder believes an earlier release is required in order to meet the Project schedule, it shall advise the Department and make a recommendation as to the requested release date. Any decision to authorize an early release shall be made by the Department in its sole and absolute discretion.

**Section 4.13 Unsafe Materials and Hazardous Materials**

**Section 4.13.1** The Design-Builder shall not bring, spill or release onto the site asbestos, PCBs, or any other Hazardous Material that is not customarily used in a facility of the type and similar to the Project, and shall bring to the Department's attention any specification of such Hazardous Materials in the design documents. If the Design Builder believes that anything in the Agreement would require that it use or bring onto the site asbestos, PCBs, or any Hazardous Material that is not customarily used in a facility of the type and similar to the Project, it shall immediately inform the Department and seek direction before proceeding.

**Section 4.13.2** The Design-Builder shall abate and remove Hazardous Materials on or within the site as necessary to complete the Work contemplated by this Agreement. The Design-Builder shall comply with all laws, including, without limitation, the requirements of the EPA and all jurisdictional agencies as well as all laws relating to safety, health welfare, and protection of the environment, in removing, treating, encapsulating, passivating, and/or disposing of Hazardous

Materials, including, but not limited to, removal, treatment, encapsulation, passivation, and/or disposal of the Hazardous Materials. If any notices to governmental authorities are required, the Design Builder shall also give those notices at the appropriate times. The Design-Builder shall ensure abatement subcontractors and disposal sites are appropriately licensed and qualified.

**Section 4.13.3** The Design-Builder shall be entitled to submit a Change Request in accordance with Article 4 of the Standard Contract Provisions in the event the Design Builder encounters Hazardous Materials beyond those contemplated in the Contract Documents.

**Section 4.13.4** The Design-Builder shall keep detailed records documenting Work done so that the Department may independently verify compliance with all laws, the number of units actually removed, treated, and/or disposed of, and the appropriate unit price(s) applicable to the Work.

## Article 4 CONSTRUCTION PHASE

**Section 5.1. General.**

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

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

a) Manage all aspects of the renovation and construction of the project.

b) Manage bi-weekly progress meetings. Site visits are included in base fee. Hourly-not to-exceed allowance is included for consultant site visits.
c) Review and process shop drawing submissions, RFI's, etc.
d) Prepare meeting notes and records of decisions/changes made.
e) Conduct pre-closeout inspections.
f) Review closeout documents for completeness, such as As-Built Drawings based on the Contractor's red line drawings and/or coordinated set developed during the subcontractor coordination process. As-Built Drawings should be transmitted to DGS in hard copy, PDF, and CAD formats.

Based on the approved plans and specifications, the Design-Builder shall construct the Project. During the Construction Phase, the Design-Builder shall be required to cause the Work to be completed in a manner consistent with the design documents approved by the Department and shall provide all labor, materials, insurance, bonds and equipment necessary to fully complete the Project in accordance with the drawings, specifications, schedule and budget that are issued for the Project. The Design-Builder shall be responsible for paying for and obtaining all necessary permits and to pay all necessary fees for utility connections and the like. The Work shall be accomplished in accordance with the following:

**Section 5.1.1 Drawings & Specifications.** All of the Work shall be constructed in strict compliance and in accordance with the final Construction Documents issued for and approved by the Department.

**Section 5.2 Unrenovated Portions of the Structure.**

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

**Section 5.3 Subcontracting and Administration**

**5.3.1** It is contemplated that all or substantially all of the construction of the Project will be carried out by trade Subcontractors and that those trade subcontracts will be awarded through the competitive bid process

contemplated in Section 4.4. The Design-Builder shall enter into a written agreement with each subcontractor. The trade subcontractors will be under written contract with the Design-Builder. All subcontracts and agreements for the supply of equipment or materials awarded for the Project shall be fixed-price contracts unless otherwise expressly authorized by the Department, in writing. It is understood and agreed, however, that certain trade packages (such as the mechanical and electrical packages) may be awarded on a design-assist or design-build basis and that such trade packages may be awarded on such other basis subject to the Department's consent as to the bidding procedures and economic structure with regard to those packages. The Design-Builder and its affiliates may not carry out trade work with its own forces without the Department's written permission, which permission may be withheld or conditioned by the Department in its sole and absolute judgment.

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

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

**5.3.4** The Design-Builder shall carefully document its procedures for making available bid packages to potential bidders, the contents of each bid package, discussions with bidders at any pre-bid meetings, bidders' compliance with bid requirements, all bids received, the Design-Builder's evaluations of all bids, and the basis for the Design Builder's recommendation as to which bidders should be chosen. The Department shall be afforded access to all such records at all reasonable times so that, among other things, it may independently confirm the Design-Builder's adherence to all requirements set forth

in the Agreement including, without limitation, affirmative action requirements and subcontracting requirements.

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

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

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

**5.3.8** The Design-Builder must contract for provision of all services and materials for the Project (other than Self-Performed Work which must be authorized in advance and in writing by the Department) via written subcontracts or, for contracts requiring provision of materials or equipment only, and not labor, via written supply agreements. All subcontracts and supply agreements shall include the following provisions:

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

**5.3.8.2** that the Subcontractor or supplier is not in privity with the Department and shall not seek compensation directly from the Department on any third-party beneficiary, quantum

meruit, or unjust enrichment claim, or otherwise, except as may be permitted by any applicable mechanic's lien law;

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

**5.3.8.4** that the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Design-Builder is terminated for default;

**5.3.8.5** that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Design-Builder to suspend or stop work;

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

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

**5.3.8.8** that, if the Department terminates the Agreement for convenience, the Design-Builder may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) days' written notice to the Subcontractor or supplier, and that the Subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in Article 6 of the Standard Contract Provisions;

**5.3.8.9** that the Department shall have the right to enter into a contract with the Subcontractor or supplier for the same

price as its subcontract or supply agreement price less amounts already paid, if the Design-Builder files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;

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

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

**5.3.8.12** a provision requiring that all Subcontractors at all tiers comply with the provisions of Article 13 (Economic Inclusion Goals); provided, however, that the Design Builder may, in its reasonable discretion impose a different LSDBE subcontracting goal on some or all of its Subcontractors; provided, further, however, that nothing in this provision shall be deemed to excuse the Design-Builder from using its best efforts to achieve the LSDBE subcontracting goal on an aggregate basis for the Project;

**5.3.8.13** a provision which allows the Design-Builder to withhold payment from the Subcontractor if the Subcontractor does not meet the requirements of the Subcontract;

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

**5.3.9** Within seven (7) calendar days of receiving any payment from the Department that includes amounts attributable to Work performed or materials or equipment supplied by a Subcontractor or supplier, the

Design-Builder shall either pay the Subcontractor or supplier for its proportionate share of the amount paid to the Design-Builder for the Subcontractor's or supplier's Work or materials or equipment, or notify the Department and the Subcontractor or supplier, in writing, of the Design-Builder's intention to withhold all or part of the payment and state the reason for the withholding. All monies paid to the Design-Builder under the Agreement shall be used first to pay amounts due to Subcontractors or suppliers supplying labor or materials for the Project and only money remaining after such payments are made may be used for other items such as the Design Build Fee. Monies paid by joint check shall be deemed to have been paid fully to the Subcontractor or supplier named as a joint payee, unless the Department agrees otherwise in writing. Any interest paid to Subcontractors or suppliers because the Design-Builder has failed to pay them in timely fashion shall not be reimbursable as part of the Cost of the Work.

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

**5.3.11** The Design-Builder shall not substitute or replace any Subcontractor or supplier approved by the Department without the Department's prior written consent.

**5.3.12** The Department has the right to contact Subcontractors or suppliers at all tiers, or material or equipment suppliers directly to confirm amounts due and owing to them or amounts paid to them for Work on the Project, and to ascertain from the Subcontractors or suppliers at all tiers their projections of the cost to complete their work or to supply their material or equipment, or the existence of any claims or disputes. In doing so the Department shall not issue any directions to Subcontractors or Suppliers at any tier.

**5.3.13** If it comes to the Department's attention that a Subcontractor or supplier has not been paid in timely fashion (other than for disputed amounts), and if the Design-Builder fails to cure the problem within five (5) calendar days after the Department gives it written notice of

the failure to pay, the Department may make payments to the Subcontractor or supplier and Design-Builder by joint check.

**5.3.14** The Design-Builder shall be required to provide an evaluation of each of its subcontractors' performance by completing and submitting to the Department the Subcontractor Performance Evaluation Form set forth as **Exhibit O**, as follows:

**(a)** Within ninety (90) days of initiating the Construction Phase; and

**(b)** Within thirty (30) days after Final Completion of the Project.

**Section 5.4 Weekly Progress Meetings & Schedule Updates.**

The Design-Builder shall schedule and conduct, at a minimum, weekly progress meetings at which the Department, the Architect, the Program Manager, the Design-Builder and appropriate Subcontractors can discuss the status of the Work. The Design-Builder shall prepare and promptly distribute meeting minutes. In addition, the Design-Builder shall submit bi-weekly Schedule updates which shall reflect actual conditions of Project progress as of the date of the update. The update shall reflect the actual progress of construction, identify any developing delays, regardless of their cause, and reflect the Design-Builder's best projection of the actual date by which Substantial Completion and Final Completion of the Project will be achieved. Via a narrative statement (not merely a critical path method schedule), the Design-Builder shall identify the causes of any potential delay and state what, in the Design-Builder's judgment, must be done to avoid or reduce that delay. The Design-Builder shall point out, in its narrative, changes that have occurred since the last update, including those related to major changes in the scope of work, activities modified since the last update, revised projections of durations, progress and completion, revisions to the schedule logic or assumptions, and other relevant changes. Any significant variance from the previous schedule or update shall also be identified in a narrative, together with the reasons for the variance and its impact on Project completion. All Schedule updates shall be in a native format reasonably acceptable to the Department (e.g., Primavera). The Department may make reasonable requests during the Project for changes to the format or for further explanation of information provided. Submission of updates showing that Substantial Completion or Final Completion of the Project will be achieved later than the applicable scheduled completion date shall not constitute requests for extension of time and shall not operate to change the scheduled completion date(s). The Department's receipt of, and lack of objection to, any schedule update showing Substantial Completion or Final Completion later than the dates agreed upon in the Project Schedule shall not be regarded as the Department's agreement that the Design-Builder may have an extension of time, or as a waiver of any of the Department's rights, but merely as the Design-

Builder's representation that, as a matter of fact, Substantial Completion or Final Completion of the Project may not be completed by the agreed upon date in the Project Schedule. Changes to the scheduled completion dates may be made only in the circumstances and only by the methods set forth in this Agreement.

**Section 5.5 Written Reports.**

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

**5.5.1** **Construction Progress Update.** The Design-Builder shall provide written reports to the Department, on the progress of the entire Work at least monthly from Preconstruction NTP until Final Completion of the Project. The monthly report shall include: (i) an updated schedule analysis, including any plans to correct defective or deficient work or recover delays; (ii) an updated cost report; (iii) a monthly review of cash flow; (iv) a quality control report; and (v) progress photos. Each monthly update shall contain a narrative description of the Project progress and a critical path method schedule in Primavera format, including any plans to correct defective or deficient work or for time lost due to delays.

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

right to enforce the Guaranteed Maximum Price. If the report reflects budget overruns, it must also include a recovery plan.

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

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

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

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

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

**Section 5.6 Cost Control System.**

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

**Section 5.7 Key Personnel.**

**5.7.1** To carry out its duties, the Design-Builder shall provide at least the key personnel identified in **Exhibit F** to this Agreement ("Key Personnel"), who shall carry out the functions identified in **Exhibit F**. The Key Personnel shall include (i) the Project Executive; (ii) the Field Superintendent; (iii) the Project manager who will supervise the interior design and Work; (iv) the Project Manager who will supervise the Mechanical, Electrical, and Plumbing ("MEP") work; and (v) the individual that will manage quality control and interact with the Department's quality control representative. The Design-Builder's obligation to provide adequate staffing is not limited to providing the Key Personnel, but is determined by the needs of the Project. The Design-Builder shall not replace any of the Key Personnel without the Department's prior written approval, which shall not be unreasonably withheld. If any of the Key Personnel become unavailable to perform services in connection with the Agreement due to death, disability or separation from the employment of the Design-Builder or any affiliate of the Design-Builder, then the Design-Builder shall promptly appoint a replacement acceptable to the Department. The Department shall be entitled to complete information on each such replacement, including a current resume of his or her qualifications and experience.

**5.7.2** Certain members of the Design-Builder's Key Personnel shall be subject to a removal or replacement fee for their removal or reassignment by the Design-Builder. Those members of the Design Builder's Key Personnel subject to such fee in 0 shall be identified in **Exhibit F** as subject to the fee provisions herein. In the event there is no delineation in **Exhibit F** of those members of the Design-Builder's Key Personnel subject to the fee provisions of this Agreement, then

all of the Key Personnel shall be subject to the fee provisions of this Agreement.

**5.7.3** In addition, the Department shall have the right, to be exercised in its sole discretion, to remove, replace or to reduce the scope of services of the Design-Builder in the event that a member of the Key Personnel has been removed or replaced by the Design-Builder without the prior written consent of the Department. In the event the Department exercises the right to remove, replace or to reduce the scope of services of the Design-Builder, the Department shall have the right to enforce the terms of this Agreement and to keep-in-place those members of the Design-Builder's team not removed or replaced and the remaining members shall complete the services required under this Agreement in conjunction with the new members of the Design Builder's team approved by the Department.

**5.7.4** Removal or Replacement of Key Personnel

**5.7.5** Subject to the terms of this 5.7, in each instance where the Design Builder removes or reassigns one of the key personnel listed in Exhibit F as being subject to the key personnel replacement fee, other than (a) for reasons where such personnel become unavailable due to death, disability or separation from the employment of the Design-Builder or any affiliate of the Design-Builder or any affiliate of the Design Builder, or (b) with the prior written consent of the Department, then the Design-Builder shall pay to the Department the amount set forth in the Project Information Section of this Agreement as a replacement fee and not a penalty, to reimburse the Department for its administrative costs arising from the Design-Builder's failure to provide the Key Personnel. The foregoing replacement fee amount shall not bar recovery of any other damages, costs or expenses other than the Department's internal administrative costs.

**Section 5.8 Qualified Personnel/Cooperation.**

The Design-Builder shall employ on the Project only those employees and Subcontractors who will work together in harmony and who will cooperate with one another on the Project. The Design-Builder shall enforce strict discipline, good order and harmony among its employees and its Subcontractors and shall remove from the site any person who is unfit for the

work or fails to conduct herself or himself in a proper and cooperative manner. If the Department requests removal of any person as unfit or as having behaved inappropriately, the Design-Builder shall promptly comply.

**Section 5.9 Warranty.**

The Design-Builder warrants to the Department that materials and equipment furnished under the Contract Documents will be of good quality and new unless otherwise required or permitted by the Contract Documents, that for the one (1) year period following the Substantial Completion Date the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. The Design-Builder's warranty excludes remedies for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear from normal usage. The Design-Builder shall use commercially reasonable efforts to schedule a joint inspection of the Project during the eleventh month after Substantial Completion is achieved. During such inspection, the Design-Builder and a representative of the Department shall walk the Project to identify any necessary warranty work.

**Section 5.10 Open Book Reporting.**

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

**Section 5.11 Claims for Additional Time**

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

**5.11.2** The Design-Builder will perform the Work so that it shall achieve Substantial Completion by the Substantial Completion Date. Unless the failure to achieve Substantial Completion by the Substantial Completion Date is a result of an Excusable Delay, as defined in

Section 5.11.3, the delay shall be deemed Non-Excusable and the Design-Builder shall not be entitled to an extension of time. Without limiting the generality of the foregoing, delays for the following reasons shall be regarded as Non-Excusable and shall not entitle the Design-Builder to an extension of time:

**5.11.2.1** Delays due to job site labor disputes, work stoppages, or suspensions of work;

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

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

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

**5.11.3** The Design-Builder shall be entitled to an adjustment in the Substantial Completion Date due to an Excusable Delay. The term "Excusable Delay" shall mean:

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

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

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

**5.11.3.4** Delays due to suspensions of work;

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

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

**5.11.4** If the Design-Builder wishes to make a claim for an adjustment in time allotted per the Project Schedule, written notice as provided

herein shall be given. The Design-Builder's claim shall include an estimate of the cost and of the probable effect of delay on the progress of the Work. In the case of continuing delay, only one claim is necessary.

**5.11.5** In no event shall the Design-Builder be entitled to an increase in the GMP or the Design-Build Fee as a result of either an Excusable or Non-Excusable Delay; provided, however, that to the extent that a delay is: (i) an Excusable Delay; (ii) of unreasonable duration; (iii) caused solely by the Department; and (iv) not concurrent with any other delay, then the Design-Builder shall be entitled to receive its actual costs, including all direct and indirect costs, bonds and insurances resulting from such extended duration. It is understood that the Design-Builder shall not be entitled to any profit or home office overhead, including, but not limited to, an increase in the Design-Build Fee, on any amounts to which the Design-Builder may be entitled pursuant to the preceding sentence.

**Section 5.12 Site Safety and Clean-Up.**

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

**5.12.2** **Safety Plan.** Prior to the start of construction activities, the Design Builder shall prepare a safety plan for the construction phase conforming to OSHA 29 CFR 1926 (such plan, the "Safety Plan"). This Safety Plan developed by the Design-Builder shall describe the proposed separation and the specific nature of the safety measures to be taken including fences and barriers that will be used as well as the site security details. The Safety Plan will be submitted to the Department and Client Agency for their review and approval prior to the commencement of construction. Once the Safety Plan has been approved, the Design-Builder shall comply with it at all times during construction. The Design-Builder shall be required to revise the

Safety Plan as may be requested by the Department or Client Agency. The cost of revising and complying with the plan shall not entitle the Design-Builder to an increase in the GMP. In the event the Design-Builder fails to provide the Safety Plan, the Design-Builder will not be permitted to commence the Construction Phase until the Safety Plan is submitted and in no event shall any resulting delay constitute an Excusable Delay. Additionally, the Design-Builder shall comply with the requirements of Article 27, Section A of the Standard Contract Provisions.

**5.12.3** **Safety Barriers/Fences.** As part of its responsibility for Project safety, the Design-Builder shall install such fences and barriers as may be necessary to separate the construction areas of the site from those areas that are then being used by Client Agency for educational purposes. The Design-Builder shall describe in the Safety Plan the proposed separation and the specific nature of the fences and barriers that will be used.

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

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

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

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

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

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

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

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

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

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

**Section 5.14 Close-out & FF&E.**

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

**5.14.2** **Punchlist.** Promptly after the Project reaches Substantial Completion, the Design-Builder shall cause the Architect to develop a punchlist. Once the punchlist is prepared, the Design-Builder shall inspect the work along with representatives from the Department. The punchlist

shall be revised to reflect additional work items that are discovered during such inspection. The Design-Builder shall correct all punchlist items no later than ninety (90) days after Substantial Completion is achieved.

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

The Design-Builder shall prepare an "as-built" plan of the site including all the modifications performed during construction, within 30 days of completion. The Design-Builder shall also submit warranty information on all design requirements within 30 days of completion.

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

**5.14.5** **Training.** The Design-Builder shall provide training to Client Agency staff on all of the building systems. The Design-Builder shall be required to schedule such training sessions and shall use commercially reasonable efforts to ensure all such training occurs prior to Final Completion Date.

**5.14.6** The Design-Builder shall assist Client Agency in relocating FF&E and other items as necessary within the renovated building, as well as for

cleaning and other move-in services as directed by the Department. The GMP shall include an allowance and scope of work for these activities. This allowance is in addition to cleaning services that would otherwise be required by the Design-Builder, including, but not limited to, the obligation to deliver a broom clean building at the end of construction.

**Section 5.15 Salvaged and Stored Items.**

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

**Section 5.16 Sediment and Erosion Control.**

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

**Section 5.17 Quality Control.**

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

**5.17.2** **Quality Control Plan.** Within forty five (45) days after the design development documents are approved, the Design-Builder shall develop a quality control plan for the Project (the "Quality Control Plan"). A draft of the Quality Control Plan shall be submitted to the Department and shall be subject to the Department's review and approval. The Quality Control Plan shall be tailored to the specific products/type of construction activities contemplated by the GMP Basis Documents, and in general, shall include a table of contents,

quality control team organization, duties/responsibilities of quality control personnel, submittal procedures, inspection procedures, deficiency correction procedures, documentation process, and a list of any other specific actions or procedures that will be required for key elements of the Work.

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

**Section 5.18 Acceleration.**

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

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

Given the nature of the Project and the fact that there is a fixed date upon which the Client Agency plans to occupy the building, the Design-Builder hereby: (i) acknowledges that this

provision is a material inducement upon which the Department has relied in entering into this Agreement; and (ii) represents and warrants that it has included sufficient funding in the GMP in order to comply with the requirements of this Section.

**Section 5.19 Corrective Action Plan.**

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

**Section 5.20 Prolog.**

The Design-Builder shall utilize the Department's Prolog system to submit any and all documentation required to be provided by the Design-Builder for the Project, including, but not limited to: (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) invoices/applications for payment (full package including all forms required by DGS); (v) certified payrolls (in addition to upload via LCP Tracker); (vi) drawings and specifications; (vii) punchlist; and (viii) other documents as may be designated by the Department. The Design-Builder also shall require all subcontractors and subconsultants to utilize Prolog for the Project.

The Design-Builder shall submit to the Project Manager for review and approval all shop drawings, material data and samples provided by Design-Builder, vendors and/or manufacturers. The Department's Program Manager shall review and approve or reject submittals within seven (7) business days of receipt.

**Section 5.21 Conformance with Laws.**

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

**Section 5.22 Licensing, Accreditation and Registration**

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

**Section 5.23 Construction Phase Deliverables.**

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

**Section 5.24 Close-Out Deliverables.**

The deliverables set forth in **Exhibit N** are required during the Project's Close-Out and prior to Final Payment, as set forth in 10.12.

## Article 6 DESIGNATED REPRESENTATIVES

**Section 6.1 Department's Designated Representative.**

The Department designates the individual(s) identified in **Exhibit I** as its representative with express authority to bind the Department with respect to all matters requiring the Department's approval or authorization. Subject to the limitations on their authority specified in **Exhibit I**, these representative(s) shall have the exclusive authority to make decisions on behalf of the Department concerning estimates and schedules, construction budgets, changes in the Work, and execution of Change Orders, Contract Modifications or Change Directives, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or performance of the Work of the Design-Builder. In order for the Department to

effectively manage the Project and assure that the Design-Builder does not receive conflicting instructions regarding the Work, the Design-Builder shall promptly notify the Department's representative upon receiving any instructions or other communication in connection with the Design-Builder's Work from any employee of the Department or other purported agent of the Department other than the Department's designated representative.

**Section 6.2 Design-Builder's Designated Representative.**

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

## Article 7 COMPENSATION AND PAYMENTS FOR DESIGN & PRECONSTRUCTION PHASE SERVICES

**Section 7.1 Compensation**

**7.1.1** The Department shall compensate and make payments to the Design-Builder for Design & Preconstruction Services in accordance with this 7and 0. For Preconstruction Services, the Design-Builder's compensation shall be as set forth in the Project Information Section of this Agreement (the "Preconstruction Fee"). The Preconstruction Fee shall be the Design-Builder's sole compensation for Preconstruction Phase Services. The Preconstruction Fee shall include, but not be limited to, amounts necessary to compensate the Design-Builder for:

- Profit
- Home Office Overhead
- Cost of preconstruction staff

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

**7.1.2** The Department shall compensate and make payments to the Design-Builder for design services in accordance with this Article 7 and Article 10. For design services, the Design-Builder's compensation shall not exceed the amount set forth in the Project Information Section of this Agreement (the "Design Fee").

**Section 7.2 Payment**

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

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

## Article 8 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

**Section 8.1 Compensation.**

The Department shall compensate and make payments to the Design-Builder for Construction Phase Services in accordance with this Section 8. For the Construction Phase Services, the Design-Builder's compensation shall be as set forth in the Project Information Section of this Agreement (the "Design-Build Fee"). Design-Build Fee shall be billed in accordance with **Section 10.1 Progress Payments** to be paid in equal monthly installments over the anticipated duration of the Construction Phase. To the extent that the duration of the Agreement is extended, the then remaining amounts of the Design-Build Fee will be re-allocated such that the then existing portion of the Design-Build Fee shall be evenly spread over the then remaining duration of the Construction Phase.

**Section 8.2 Maximum Cost of General Conditions.**

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

**Section 8.3 Initial Not-to-Exceed Amount.**

Unless and until the GMP Amendment is executed and approved by the Council for the District of Columbia, this Agreement shall have an initial not-to-exceed amount as set forth in the Project Information Section of this Agreement (the "Initial NTE"). In no event shall the Design Builder be entitled to recover more than the Initial NTE unless the Design-Builder is authorized to exceed the Initial NTE by the Department in advance and in writing. Prior to expending or committing any portion of the Initial NTE, the Design-Builder shall obtain the Department's written approval of such expenditure or commitment, as well as a determination as to whether the

work will qualify as a "capital" expense under the Department's financial guidelines. In making such a request, the Design-Builder shall submit an itemized breakdown of the work that the Design-Builder seeks to release using funds from the Initial NTE as well as the associated costs of such work.

**Section 8.4 Project Budget.**

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

**Section 8.5 No Adjustments to Fee.**

It is the Department's intent to engage the Design-Builder to develop a GMP that meets the programmatic requirements set forth in **Exhibit A** by the Client Agency and the Project Budget as set forth herein (*i.e.* designed to budget), to allow for Substantial Completion of the Work to be achieved no later than the Substantial Completion Date. The Design-Builder shall be entitled to an adjustment to the Design-Build Fee at the time the GMP is established to the extent, and only to the extent, that: (i) the Department makes additions to the scope that, when measured relative to the program, cause the GMP to exceed the Design-Builder's original concept estimate by more than five percent (5%); or (ii) the Department makes additions to the scope provided for herein which (other than for punchlist or warranty work) which requires the Design-Builder's services at the Project to extend 30 days or more beyond the Substantial Completion Date. With regard to Change Orders issued after the GMP is established, the Design-Builder shall be entitled to an increase in the Design-Build Fee to the extent, and only to the extent, that: (i) the Department has added a new programmatic element to the Project; or (ii) the Department made additions to the GMP scope which (other than punchlist or warranty work) require the Design-Builder's services at the Project to extend 30 days or more beyond the Substantial Completion Date.

**Section 8.6 Markup on Trade Work.**

The maximum markup for change order work shall be as follows:

**8.6.1.1** For Work performed by a Subcontractor with its own forces, the Subcontractor shall be entitled to a mark-up of not more than fifteen percent (15%) (covering home office

overhead, the cost of insurance and bonds, field supervision, general conditions and profit) on the Direct Costs of the Work. For Work that the Department permits the Design-Builder to self-perform, the Design Builder shall also be entitled to a markup of not more than fifteen percent (15%) of the Direct Cost of the Work. With regard to any such Work that is self-performed by the Design-Builder, the markup contemplated in this Section shall be the Design-Builder's exclusive compensation and it shall not be entitled to the markup contemplated in Section 8.6.1.3 ;

**8.6.1.2** Intervening tier Subcontractors shall be entitled to a markup of five percent (5%) (covering home office overhead, the cost of insurance and bonds, field supervision, general conditions and profit) on Work performed by lower-tier Subcontractors;

**8.6.1.3** In no event shall the maximum mark-up on the Direct Cost of the Work exceed twenty five percent (25%). Direct Cost of the Work shall mean labor, material and other costs reasonably and necessarily incurred in the proper performance of the Work as approved by the Department and shall include, but not be limited to: (Direct Cost of the Work does not, however, include home office overhead, field supervision, general conditions or profit of either the Subcontractor or the Design-Builder. No personnel above the level of a working foreman shall be considered a Direct Cost of the Work).

(a) Labor. Payment will be made for direct labor cost plus indirect labor cost such as insurance, taxes, fringe benefits and welfare provided such costs are considered reasonable. Indirect costs shall be itemized and verified by receipted invoices. If verification is not possible, up to eighteen percent (18%) of direct labor costs may be allowed.

(b) Rented Equipment. Payment for required equipment rented from an outside company that is neither an affiliate

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

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

(d) Materials. Incorporated and unincorporated materials as permitted under Section 9.1.

**Section 8.7 Direct Cost of Work**

"Direct Cost of the Work" shall mean labor, material and other costs reasonably and necessarily incurred in the proper performance of the Work as approved by the Department and shall include, but not be limited to:

**8.7.1** **Labor**. Payment will be made for direct labor cost plus indirect labor cost such as insurance, taxes, fringe benefits and welfare provided such costs are considered reasonable. Indirect costs shall be itemized and verified by receipted invoices. If verification is not possible, up to eighteen percent (18%) of direct labor costs may be allowed.

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

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

**8.7.4 Materials.** Incorporated and unincorporated materials as permitted under **Section 8.7 Direct Cost of Work**.

**8.7.5** Direct Cost of the Work do not, however, include home office overhead, field supervision, general conditions or profit of either the Subcontractor or the Design-Builder. No personnel above the level of a working foreman shall be considered a Direct Cost of the Work.

## Article 9 COST OF THE WORK FOR CONSTRUCTION PHASE

**Section 9.1 Cost of the Work.**

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

**9.1.1** Payments made by the Design-Builder to Subcontractors and suppliers, other than design subconsultants, but only in accordance with the subcontracts and supply agreements;

**9.1.2** The Cost of General Conditions as defined below in Section 9.2) subject however to the Maximum Cost of General Conditions;

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

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

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

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

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

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

**9.1.6** All performance and payment bonds and general liability insurance. The Department may, in its sole discretion, allow the Design-Builder to recover the costs of subcontractor default insurance at a mutually agreed upon rate in lieu of trade level bonds, provided that such insurance be approved by the Department in advance and after being presented with a cost-benefit analysis of such use;

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

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

**9.1.9** The Cost of General Conditions, subject however to the Maximum Cost of General Conditions; and

**9.1.10** Cost of the Architect/Engineer's contract reimbursed at cost and without markup; provided, however, that such costs shall not exceed the Design Budget set forth in the Offeror's Proposal. Any amounts in excess of the Design Budget shall not be reimbursable as a Cost of Work.

**Section 9.2 Cost of General Conditions.**

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

**9.2.1** The cost of "construction staff". The term construction staff shall mean the Project Executive, project managers and superintendents assigned to the Project, administrative and professional staff performing scheduling, cost estimating and accounting services assigned on a full-time basis to the Project site;

**9.2.2** Fringe Benefits associated with construction staff;

**9.2.3** Payroll taxes and payroll insurance associated with construction staff;

**9.2.4** Staff costs associated with obtaining permits and approvals; 9.2.5 Out-of-house consultants;

**9.2.6** Field office for the Design-Builder including but not limited to: (i) trailer purchase and/or rent; (ii) field office installation, relocation and removal; (iii) utility connections and charges during the Construction Phase; (iv) furniture; and (v) office supplies;

**9.2.7** Office equipment including but not limited to: (i) computer hardware and software; (ii) fax machines; (iii) copying machines; (iv) telephone installation, system and use charges; and (v) job radios;

**9.2.8** Local delivery and overnight delivery costs; and

**9.2.9** First aid facility.

**Section 9.3 Costs Not to Be Reimbursed.**

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

**9.2.5** Any personnel or labor costs other than those provided for in Section 9.2.1;

**9.2.6** Fees for any permits or licenses the Design-Builder requires to conduct its general business operations;

**9.2.7** Capital expenses and interest on capital employed for the Work;

**9.2.8** The cost of home or regional offices, it being understood that compensation for such costs included in the Design-Build Fee and Award Fee.

**9.2.9** Sales or use taxes, unless the Design-Builder establishes that applicable law required payment of such taxes;

**9.2.10** Costs due to the errors or omissions of the Design-Builder or its Subcontractors or suppliers at all tiers, negligent or otherwise;

**9.2.11** Costs dues to breach of the Agreement by the Design Builder or its Subcontractors or material suppliers at all tiers, including, without limitation, costs arising from defective or damaged Work or its correction, disposal of materials or equipment erroneously supplied, and repairs to property damaged by the Design-Builder or its Subcontractors or material suppliers at all tiers;

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

**9.2.13** Direct or indirect costs of any kind, except those expressly included in Section 9.1.

**9.3 Discounts, Rebates And Refunds.**

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

**9.3.2** Amounts that accrue to the Department in accordance with the provisions of Section 0 shall be credited to the Department as a deduction from the Cost of the Work.

**Section 9.4 Facilitating Tax Exempt Purchases.**

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

**Section 9.5 Accounting Records.**

The Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Agreement. The Design-Builder's accounting and control systems shall be satisfactory to the Department. The Department, its representatives, and the Department's accountants shall be afforded access to the Design-Builder's records, books, correspondence, instruction, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Design-Builder shall preserve such documentation relating to the Project for a period of three years after final payment, or for such longer period as may be required by law.

**Section 9.6 Excluded Cost Elements.**

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

**.1** 3rd Party Material Testing;

**.2** 3rd Party Commissioning;

**.3** 3rd Party Inspections;

**.4** 3rd Party Plan Review; and

**.5** Costs of active DPR equipment.

## Article 10 CONSTRUCTION PHASE PAYMENTS

**Section 10.1 Progress Payments.**

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

The Cost of Work completed to date

Plus Cost of Work for Pay Period x portion of Design-Build Fee not at risk

Current approved estimated

Cost of Work through Final Completion

Plus Any subset of the At Risk Portion of the Design-Build Fee to which the Department has determined the Design-Builder to be Entitled

Minus Applicable retainage

Minus Amounts previously paid by the Department

**Section 10.2 Retention.**

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

**Section 10.3 Documents Required with Application for Payment.**

Each Application for Payment shall be accompanied by the Design-Builder's job cost ledgers in a form satisfactory to the Department, the Subcontractors' and Suppliers' Applications for Payment on AIA Documents G702 and G703 or other form acceptable to the Department, and such other supporting documentation as the Department may reasonably request. Each Application for Payment shall include detailed documentation of costs as a condition to approving progress payments, but the Design-Builder shall nevertheless maintain complete documentation of the costs.

An executed Release of Liens and Claims in the format required by the Contracting Officer must accompany each Application for Payment.

**Section 10.4 Stored Materials.**

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

**Section 10.5 Design-Builder's Certification.**

Each Application for Payment shall be accompanied by the Design-Builder's signed certification that:

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

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

**Section 10.5.3.** that all Work, materials or equipment for which payment is sought is, to the best of the Design-Builder's knowledge, free from defect and meets all of the requirements set forth in the Agreement: and that

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

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

**Section 10.6 Lien Waivers.**

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

**Section 10.7 Warranty of Title.**

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

**Section 10.8 Submission.**

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

**Section 10.9 Right to Withhold Payments.**

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

**10.9.1** the Work is defective and such defects have not been remedied; or

**10.9.2** the Department has determined that the Design-Builder's progress has fallen behind the Project Schedule, and the Design-Builder fails, within ten (10) calendar days of the Department's written demand, to provide the Department with a realistic and acceptable Recovery Plan in accordance with 5.18; or

**10.9.3** the Design-Builder's monthly schedule update reflects that the Design-Builder has fallen behind the Project Schedule, and the Design-Builder fails to include, in the same monthly report, a realistic and acceptable Recovery Plan in accordance with 5.18; or

**10.9.4** the Design-Builder has failed to provide reports in full compliance with 5.5 of this Agreement; or

**10.9.5** the Design-Builder has failed to pay Subcontractors or suppliers promptly or has made false or inaccurate certifications that payments to Subcontractors or suppliers are due or have been made; or

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

**10.9.7** the Department has reasonable evidence that the Work will not be completed by the Substantial Completion Date, as required, that the unpaid balance of the GMP would not be adequate to cover actual or liquidated damages arising from the anticipated delay; or

**10.9.8** the Department has reasonable evidence that the Work cannot be completed for the unpaid balance of the GMP; or

**10.9.9** the Design-Builder is otherwise in substantial breach of this Agreement (including, without limitation, failures to comply with LSDBE Utilization requirements.

**10.9.10**the Application for Payment is incomplete, unsubstantiated and/or does not contain sufficient documentation for evaluation by the Contracting Officer.

**Section 10.10 Payment Not Acceptance.**

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

**Section 10.11 Department Not Obligated to Others.**

The Department shall have no obligation to pay or be responsible in any way for payments to a consultant or subcontractor performing portions of the Work.

**Section 10.12 Final Payment.**

A final payment ("Final Payment") shall be made by the Department to the Design-Builder when: (i) Final Completion has been achieved; (ii) all deliverables set forth in 5.14, and **Exhibit N** have been delivered to and are accepted by the Department; (iii) the Design-Builder provides the Department a complete set of product manuals (O&M), training videos, and warranties, as applicable; and (iv) a complete final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Design-Builder and reviewed by the Department and, to the extent the Department determines appropriate, the Department's accountants. The Department

shall make Final Payment not more than thirty (30) days after the Department verifies the amount of the final payment set forth in a complete final Application for Payment.

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

**10.12.1.1** Take the sum of the Cost of the Work substantiated by the Design-Builder's final accounting and the Design-Build Fee; but not more than the GMP.

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

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

**10.12.1.4** The Final Payment shall take into account any savings accruing to the Department or the Design-Builder.

**10.12.2** The Department will review and report in writing on the Design-Builder's final accounting within 30 days after delivery of the final accounting to the Department by the Design-Builder. Based upon Department's determination of the Cost of the Work, and provided the other conditions

of Section 13.1 have been met, the Department will, within fifteen (15) days after the Department's determination, notify the Design-Builder of any amount that the Department will withhold and the reasons therefor. The time periods stated in this Paragraph 10.12 supersede those for typical progress payments.

**10.12.3** If the Department determines that the Cost of the Work is than claimed by the Design-Builder, the Design-Builder shall be entitled to proceed in accordance with Article 3 of the Standard Contract Provisions. Pending a final

resolution of the disputed amount, the Department shall pay the Design-Builder the amount that the Department determines to be appropriate.

## Article 11 - INSURANCE

### Section 11.1 Insurance Required by the Project

**11.1.1 General Requirements.** The Design-Builder ("Contractor" for purposes of this Article 11) 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. The Contractor shall require all of its subcontractors to carry the same insurance required herein.

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

**11.1.1.2** 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.

**11.1.1.3** 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.

**11.1.1.4 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 $1,000,000.00 each occurrence, a $2,000,000.00 general aggregate (including a per location or per project aggregate limit endorsement, if applicable) limit, a $1,000,000.00 personal and advertising injury limit, and a $2,000,000.00 products-completed operations aggregate limit.

**11.1.1.5 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) $1,000,000.00 per occurrence combined single limit for bodily injury and property damage.

**11.1.1.6 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.

**11.1.1.7 Employer's Liability Insurance** - Employer's Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of employer's liability insurance as follows: $500,000.00 per accident for injury; $500,000.00 per employee for disease; and $500,000.00 for policy disease limit.

**11.1.1.8 Crime Insurance (3rd Party Indemnity)** - The Contractor shall provide a Crime policy including 3rd party fidelity to cover the dishonest acts of Contractor's, its employees and/or volunteers which result in a loss to the District. The

Government of the District of Columbia shall be included as loss payee. The policy shall provide a limit of $10,000.00 per occurrence.

**11.1.1.9 Cyber Liability Insurance** - The Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, with limits not less than $2,000,000.00 per occurrence or claim, $2,000,000.00 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. This insurance requirement will be considered met if the general liability insurance includes an affirmative cyber endorsement for the required amounts and coverages.

**11.1.1.10 Environmental Liability Insurance** - The Contractor shall provide evidence satisfactory to the CO of pollution legal liability insurance covering losses caused by pollution conditions that arise from the ongoing or completed operations of the Contractor. Completed operations coverage shall remain in effect for at least ten (10) years after completion of the work. Such insurance shall apply to bodily injury, property damage (including loss of use of damaged property or of property that has been physically injured), cleanup costs, liability and cleanup costs while in transit, and defense (including costs and expenses incurred in the investigation, defense and settlement of claims). There shall be neither an exclusion nor a sublimit for mold-related claims. The minimum limits required under this paragraph shall be equal to the greater of (i) the limits set forth in the Contractor's pollution legal liability policy or (ii) $2,000,000.00 per occurrence and

$2,000,000.00 in the annual aggregate. If such coverage is written on a claimsmade basis, the Contractor warrants that any retroactive date applicable to coverages under the policy precedes the Contractor's performance of any work under the Contract and that continuous coverage will be maintained or an extended reporting period will be exercised for at least ten (10) years after completion. The Contractor also must furnish to the Owner certificates of insurance evidencing pollution legal liability insurance maintained by the transportation and disposal site operators(s) used by the Contractor for losses arising from facility(ies) accepting, storing or disposing hazardous materials or other waste as a result of the Contractor's operations. Such coverages must be maintained with limits of at least the amounts set forth above.

**11.1.1.11 Installation-Floater Insurance** - For projects not involving structures, the contractor shall provide an installation floater policy with a limit equal to the full contract value. The policy shall cover property while located at the project site, at temporary locations, or in transit; deductibles will be the sole responsibility of the contractor

**11.1.1.12 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 $1,000,000.00 per claim or per occurrence for each wrongful act and $2,000,000.00 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.

**11.1.1.13 Sexual/Physical Abuse & Molestation.** The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the services performed that it carries $1,000,000.00 per occurrence limits; $2,000,000.00 aggregate of affirmative abuse and molestation liability coverage. This insurance requirement will be considered met if the general liability insurance includes an affirmative sexual abuse and molestation endorsement for the required amounts. So called "silent" coverage under a commercial general liability or professional liability policy will not be acceptable

**11.1.1.14 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) $5,000,000.00 per occurrence and $5,000,000.00 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, selfinsurance or reinsurance maintained by the District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.

**11.1.1.13 Builders Risk** –The District shall purchase and maintain builders risk insurance at 100% replacement cost upon the entire Work at the site and portions of the Work stored off the site with the District's approval, and contingent transit coverage for portions of the Work in transit. This insurance shall include the interests of the District, the Contractor and the Subcontractors in the Work and shall insure against all risk of physical damage subject to standard exclusions. Losses not covered by the District's insurance or Contractor's insurance shall be borne pursuant to the provisions of the Contract. The builders risk policy will have a deductible of not more than $25,000.00. Losses within the deductible will be paid by the Contractor or the

responsible Subcontractor. If not covered under the builders risk insurance or otherwise provided in the Contract Documents, the Contractor shall effect and maintain similar property insurance on portions of the Work stored off the site or in transit

**11.1.2 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.

**11.1.3 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 nonconstruction related contracts.

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

**11.1.5 DESIGN-BUILDER'S PROPERTY.** Design-Builder 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.

**11.1.6 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

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

**11.1.8 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:**
**Franklin Austin CPPB, CPM/Contracting & Procurement Division**
**1250 U Street, NW, 3rd Floor**
**Washington, DC 20009**
**Desk: 202-727-7128**
**Franklin.Austin@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).

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

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

## Article 12 BONDS

### Section 12.1 Performance Bond and Payment Bond.

The Design-Builder shall, before commencing the Construction Phase, provide to the Department a payment bond and performance bond, each with a penal sum equal to the full value of the GMP. In addition to the delivery of the performance and payment bonds, the Design-Builder must deliver to the Contracting Officer a copy of the executed Agreement of Indemnity under which the bonds were issued. Such bond shall remain in full force and effect until Final Completion is achieved and the Department shall be able to draw upon such bond regardless of the amount paid by the Department to the Design-Builder, even if such amount exceeds the penal value of such bond. Unless otherwise directed by the Department, the Design-Builder shall require all Subcontractors whose Subcontract prices exceed One Hundred Thousand Dollars ($100,000.00) to provide payment and performance bonds, with a penal sum equal to one hundred percent (100%) of the subcontract price. Further, the Design-Builder must deliver to the Contracting Officer copies of its subcontractor's Agreements of Indemnity. All bonds must be in a form acceptable to the Department, its lenders or bond trustee, and issued by a surety authorized to do business in the District of Columbia and bonding company listed on the United States Department of Treasury's Listing of Approved Sureties. All subcontractors' bonds must include a dual obligee rider, naming the Design-Builder and the Department as dual obligees. If the Guaranteed Maximum Price is increased pursuant to the terms of the Agreement, the Department may require that the amount of the bonds be increased in the amount of one hundred percent (100%) of the increase, and the

Design-Builder shall promptly comply. The Design-Builder shall furnish a copy of its bonds to any potential beneficiary of the bonds, or permit that person or company to make a copy. If the bonds provided become unacceptable to the Department, the Design-Builder shall promptly provide substitute security acceptable to the Department. If the Design-Builder intends to exercise its rights as dual obligee under any trade Subcontractor's bond, it shall first give the Department twenty (20) days written notice, so that the Department may lodge any objection it may reasonably have to the proposed action.

## Article 13 ECONOMIC INCLUSION REQUIREMENTS

### Section 13.1 LSDBE Utilization.

**Section 13.1.1** If the Design-Builder is not a certified business entity (CBE), the Design Builder shall subcontract 35% of the Contract effort to small business enterprises (SBEs). For subcontracted work, pass through entities will not count toward this goal. In order to count toward the subcontracting requirement, the SBE must perform at least thirty five percent (35%) of the work that is being counted toward the goal with its own forces. The LSDBE certification shall be, in each case, as of the effective date of the applicable subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal. The Design-Builder has developed a Subcontracting Plan that is attached hereto as **Exhibit D**. The Design-Builder shall comply with the terms of the SBE Subcontracting Plan in making purchases and administering its subcontracts and supply agreements.

**Section 13.1.2 Mandatory Subcontracting Plan and Requirements.**

**Section 13.1.2.1** Unless the Director of the Department of Small and Local Business Development (DSLBD) has approved a waiver in writing in accordance with D.C. Official Code § 2-218.51, for all contracts in excess of $250,000, for all contracts in excess of $250,000, at least 35% of the dollar volume of the contract shall be subcontracted to SBEs.

**Section 13.1.2.2** If there are insufficient SBEs to completely fulfill the requirement of paragraph 13.1.2.1, then the subcontracting may

be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.

**Section 13.1.2.3** A prime contractor that is certified by DSLBD as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections 13.1.2.1 and 13.1.2.2.

**Section 13.1.2.4** Except as provided in 13.1.2.5 and 13.1.2.6, a prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

**Section 13.1.2.5** A prime contractor that is a certified joint venture and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A certified joint venture prime contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code§ 2-218.63.

**Section 13.1.2.6** Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.

**Section 13.1.2.7** A prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at

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

**Section 13.1.2.8 Subcontracting Plan**

If the Design-Builder is required by law to subcontract under this Contract, it must submit a Subcontracting Plan in accordance with D.C. Official Code § 2-218.46 (d). The Subcontracting Plan may only be amended with the prior written approval of the Contracting Officer (CO) and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the Subcontracting Plan shall inure to the benefit of the District. The Subcontracting Plan shall include the following:

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

**Section 13.1.2.9 Copies of Subcontracts**

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

**Section 13.1.2.10 Subcontracting Plan Compliance Reporting**

**Section 13.1.2.10.1** If the Design-Builder has a subcontracting plan required by law for this contract, the Contractor shall submit a quarterly report to the CO, CA, District of Columbia Auditor and the Director of DSLBD. The quarterly report shall include the following information for each subcontract identified in the subcontracting plan:

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

**Section 13.1.2.10.2** If the fully executed subcontract is not provided with the quarterly report, the prime contractor will not receive credit toward its subcontracting requirements for that subcontract.

**Section 13.1.2.11 Annual Meetings**

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

**Section 13.1.2.12 DSLBD Notices**

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

**Section 13.1.2.13 Enforcement and Penalties for Breach of Subcontracting Plan**

**Section 13.1.2.13.1** A contractor shall be deemed to have breached a subcontracting plan required by law, if the contractor (i) fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information in a reasonably timely manner; (ii) submits a monitoring or compliance report or other required subcontracting information containing

a materially false statement; or (iii) fails to meet its subcontracting requirements.

**Section 13.1.2.13.2** A contractor that is found to have breached its subcontracting plan for utilization of CBEs in the performance of a contract shall be subject to the imposition of penalties, including monetary fines in accordance with D.C. Official Code § 2-218.63.

**Section 13.1.2.14** If the CO determines the Contractor's failure to be a material breach of the contract, the CO shall have cause to terminate the contract under the default provisions in clause 8 of the SCP, Default.

**Section 13.1.2.15** Neither the Design-Builder nor a Subcontractor may remove a Subcontractor or tier-Subcontractor if such Subcontractor or tier-Subcontractor is certified as an LSDBE company unless the Department approves of such removal, in writing. The Department may condition its approval upon the Design-Builder developing a plan that is, in the Department's sole and absolute judgment, adequate to maintain the level of LSDBE participation on the Project.

**Section 13.2 Equal Employment Opportunity and Hiring of District Residents**

**Section 13.2.1** The Design-Builder 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 E**. A contract award cannot be made to any contractor that has not satisfied the equal employment requirements.

**Section 13.2.2** The Design-Builder shall ensure that at least fifty-one percent (51%) of the Design-Builder's team and every subconsultant's and subcontractor's employees hired after the effective date of the Agreement,

or after such subconsultant or subcontractor enters into a contract with the Design-Builder, to work on the Project shall be residents of the District of Columbia. This percentage shall be applied in the aggregate, and not trade by trade. In addition, the Design-Builder 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 13.2.3** intentionally omitted

**Section 13.2.4** Thirty five percent (35%) of all apprentice hours worked on the Project shall be worked by District residents.

**Section 13.3 <u>Economic Inclusion Reporting Requirements</u>**

**Section 13.3.1** Upon execution of the Agreement, the Design-Builder and all its member firms, if any, and each of its Subcontractors shall submit to the Department a list of current employees and apprentices that will be assigned to the Agreement, the date they were hired and whether or not they live in the District of Columbia.

**Section 13.3.2** The Design-Builder and its constituent entities shall comply with subchapter X of Chapter II Title 2, and subchapter II of Chapter 11 of Title 1 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The Design Builder and all member firms and

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

**Section 13.3.3** The Design-Builder shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

**Section 13.3.4** The Design-Builder shall be responsible for: (i) including the provisions of Section 11.3 in all subcontracts; (ii) collecting the information required in Section 11.3 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in the reports required to be submitted by the Design-Builder pursuant to Section 11.3.

**Section 13.4 Compliance with the Apprenticeship Act.**

The Design-Builder agrees to comply with the requirements of the Apprenticeship Act of 1946, D.C. Code §§ 32-1401, *et seq*., as amended.

## Article 14 LIQUIDATED DAMAGES

**Section 14.1 Delay in Submission of Deliverables**

Subject to the terms set forth in **Section 3.1.1.8 Deliverables Liquidated Damages**, if the Design-Builder fails to provide any of the deliverables set forth in **Exhibit C**, the Design-Builder shall pay to the Department liquidated damages in the amount set forth in the Project Information Section of this Agreement for each such deliverable that is not timely submitted.

**Section 14.2 RESERVED**

**Section 14.3 Delay in Substantial Completion.**

If the Design-Builder fails to achieve Substantial Completion of the Project by the Substantial Completion Date, the Parties acknowledge and agree that the actual damage to the Department for the delay will be impossible to determine, and in lieu thereof, the Design-Builder shall pay to the Department, as fixed, agreed and liquidated delay damages in the amount set forth

in the Project Information Section of this Agreement per day for each calendar day of delay for failure to meet the applicable Substantial Completion Date.

The Design-Builder and the Department agree that the liquidated damages set forth in this Article do not constitute, and shall not be deemed, a penalty but represent a reasonable approximation of the damages to the Department associated with a delay in the Project. These damages shall not apply if the delay is the result of force majeure and the Design-Builder otherwise complies with the provisions set forth in the Standard Contract Provisions. In the event the Design Builder fails to meet the Substantial Completion Date for more than sixty days, the Design-Builder consents to a Termination for Default.

**Section 14.4 Early Completion.**

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

## Article 15 MISCELLANEOUS PROVISIONS

**Section 15.1 Ownership and Use of Documents.**

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

**Section 15.2 Assignment.**

The Department and Design-Builder respectively bind themselves, their partners, members, joint venturers, constituent entities, successors, assigns and legal representative to the other party hereto and to partners, members, joint venturers, constituent entities, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Agreement. Neither party to the Agreement shall assign the Agreement or its rights and obligations under the Agreement, without written consent of the other

party. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement.

**Section 15.3 Buy American Act Provision.**

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

**Section 15.3.1** In accordance with the Buy American Act (41 U.S.C. § l0a l0d), 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, l059— 63 Comp., p. 635), the Design-Builder agrees that only domestic construction material will be specified in the performance of the Agreement, except for non-domestic material listed in the Agreement.

**Section 15.3.2** "Components" as used in this Section, means those articles, materials and supplies incorporated directly into the end products.

**Section 15.3.3** "Domestic end product", as used in this section, means, (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States, exceeds 50 percent of the cost of all its components.

**Section 15.3.4** Components of foreign origin of the same class or kind as the products shall be treated as domestic. Scrap generated, collected, and prepared for processing in the Unites States is considered domestic.

**Section 15.3.5** "End Products", as used in this Section, means those articles, materials, and supplies to be acquired for public use under this Contract.

**Section 15.3.6** The Design-Builder shall specify only domestic end products, except those:

i. For use outside the United States;

ii. That the District determines are not mined, produced, or manufactured in the Unites States in sufficient and reasonably available commercial quantities of a satisfactory quality;

iii. For which the District determines that domestic preference would be inconsistent with the public interest; or

iv. For which the District determines the cost to be unreasonable.

**Section 15.3.7 Domestic Construction Material.** "Construction material" means any article, material or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a "domestic construction material" if it has been mined or produced in the United States. A manufactured construction material is a "domestic construction material" if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. "Component" means any article, material, or supply directly incorporated in a construction material.

**Section 15.3.8 Domestic Component.** A component shall be considered to have been "mined, produced, or manufactured in the United States" regardless of its source, in fact, if the article, material or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

**Section 15.3.9 Foreign Material.** When steel materials are used in a project a minimal use of foreign steel is permitted. The cost of such materials cannot exceed on-tenth of one percent of the total project cost, or $2,500,000, whichever is greater.

**Section 15.4 Davis-Bacon Act Provision.**

The Design-Builder agrees that the construction work performed under this Agreement shall be subject to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-7). The wage rates applicable to this Project are attached as **Exhibit G**. The Design-Builder further agrees that it and all of its subcontractors shall comply with the regulations implementing the Davis-Bacon Act and such regulations are hereby incorporated by reference.

**Section 15.5 The Quick Payment Clause**

**Section 15.5.1 Interest Penalties to Contractors**

**Section 15.5.1.1** The District will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code §2-221.01 *et seq*., for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before:

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

**Section 15.5.1.2** Any amount of an interest penalty which remains unpaid at the end of any 30day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

**Section 15.5.2 Payments to Subcontractors**

**Section 15.5.2.1** The Contractor must take one of the following actions within seven (7) days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under this contract:

a) Pay the subcontractor for the proportionate share of the total payment received from the District that is attributable to the subcontractor for work performed under the contract; or

b) Notify the District and the subcontractor, in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

**Section 15.5.2.2** The Contractor must pay any subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before:

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

**Section 15.5.2.3** Any amount of an interest penalty which remains unpaid by the Contractor at the end of any 30-day period shall be added to the principal amount of the debt to the subcontractor and thereafter interest penalties shall accrue on the added amount.

**Section 15.5.2.4** A dispute between the Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District of Columbia is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

**Section 15.5.3 Subcontract flow-down requirements**

**Section 15.5.3.1** The Contractor shall include in each subcontract under this contract a provision requiring the subcontractor to include in its contract with any lower-tier subcontractor or

supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code §2-221.02(d).

**Section 15.5.4 Requirements for Change Order payments**

**Section 15.5.4.1** The Department and the Contractor are prohibited from requiring a prime contractor or a subcontractor to undertake any work that is determined to be beyond the original scope of the prime contractor's or a subcontractor's contract or subcontract, including work under a District-issued change order, when the additional work increases the contract price beyond the not-to-exceed price or negotiated maximum price of the underlying contract, unless the Contracting Officer:

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

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

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

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

**Section 15.5.4.2** The Contractor is required to include in its subcontracts a clause that requires the prime contractor to:

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

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

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

**Section 15.5.4.3** The Department, Contractor, prime contractor, or a subcontractor are prohibited from declaring another party to the contract to be in default or assessing, claiming, or pursuing damages for delays in the completion of the construction due to the inability of the parties to agree on a price for the additional work.

**Section 15.6 Contract Work Hours And Safety Standards Act Provision.**

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

**Section 15.7 False Claims Act.**

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

**Section 15.8 Interpretation of Contract and Order of Precedence.**

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

This Agreement and its Modifications, Change Orders, Change Directives and any Exhibits thereto;

**1.** The Department's Standard Contract Provisions (Construction Services), as amended, and any missing term in this Agreement shall be addressed in accordance with the Standard Contract Provisions; and

**2.** The Construction Documents released or approved by the Department.

**Section 15.9 Independent Contractor.**

In carrying out all its obligations under the Agreement, the Design-Builder shall be acting as an independent contractor, and not as an employee or agent of the Department, or Joint Venture or partner with the Department. The Design-Builder shall have exclusive authority to manage, direct, and control the Work, and shall be responsible for all construction means, methods, techniques, sequences, and procedures, as well as for the Project safety.

**Section 15.10 No Third-Party Beneficiary Rights.**

Nothing in this Agreement shall be construed as creating third-party beneficiary rights in any person or entity, except as otherwise expressly provided in this Agreement.

**Section 15.11 Media Releases.**

Neither the Design-Builder, its employees, agents or Subcontractors or material suppliers shall make any press release or similar media release related to the Project unless such press release have been discussed with the Department prior to its issuance.

**Section 15.12 Construction.**

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

**Section 15.13 Notices.**

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

If to the Department: If to the Design-Builder:

George Lewis, Associate Director
and Chief Contracting Officer
Department of General Services
2000 14th Street, NW, 8th Floor
Washington, DC 20009

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

**Section 15.14 Limitations.**

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

**Section 15.15 Survival.**

All agreements warranties, and representations of the Design-Builder contained in the Agreement or in any certificate or document furnished pursuant to the Agreement shall survive termination or expiration of the Agreement.

**Section 15.16 No Waiver.**

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

**Section 15.17 Remedies Cumulative.**

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

**Section 15.18 Headings/Captions**.

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

**Section 15.19 Entire Agreement; Modification**.

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

**Section 15.20 Severability**.

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

**Section 15.21 Anti-Deficiency Act**.

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

**Section 15.22 Time.**

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

**Section 15.23 Service Contract Act Provision**.

The Design-Builder agrees that work performed under this Agreement shall be subject to the Service Contract Act Wage Determination, as applicable, in effect on the date this Agreement is executed. Service Contract Wage Schedules are available at wdol.gov, **Exhibit R**. Notwithstanding the terms of the Standard Contract Provisions for Architectural and Engineering services, the Davis-Bacon Act is not applicable to this Agreement.

**Section 15.24 Living Wage Act**.

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

## Article 16 TERMINATION OR SUSPENSION

**Section 16.1 All terminations or suspensions arising out of or under this Agreement shall be in accordance with the terms of the Standard Contract Provisions** (Construction Contracts and Architectural/Engineering Services Contracts).

**Section 16.2 Failure to Agree Upon GMP.**

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

**Section 16.3 Termination for Default.**

The Department may terminate the Agreement for default if the Design-Builder fails to perform any of its duties or obligations under the Agreement. In particular, but without limitation, the Department may terminate the Agreement if:

**1.** The Design-Builder fails to perform the Work diligently, in accordance with the Project Schedule or to make such progress in the Work as the Department reasonably believes is necessary to complete the Project within the time required by the Agreement; or

**2.** The Design-Builder fails to perform the Work in a good and workmanlike manner or to correct defects in the Work promptly upon notice by the Department; or

**3.** The Department reasonably determines that the Design-Builder has abandoned the Work, or has failed to pay laborers, mechanics, materialmen, Subcontractors or suppliers when payment is due; or

**4.** The Design Builder becomes insolvent, makes an assignment for the benefit of creditors, files a voluntary petition under any chapter of the Bankruptcy Code or has an involuntary petition filed against it under any chapter of the Bankruptcy Code, or the Design Builder has a receiver appointed, or files for dissolution or otherwise is dissolved; or

**5.** The Design-Builder fails to pay its debts in a timely manner or becomes insolvent, the Department reasonably determines that the Design-Builder does not have the financial ability to carry out its obligations under the Agreement and the Design Builder fails to give the Department prompt and reasonable assurances of its ability to perform.

**Section 16.3.1** The Department shall provide the Design-Builder with written notice of its intent to terminate the Agreement, under this Section 16.2, seven (7) calendar days before actually putting the termination into effect. If the Design-Builder has begun its corrective action and has made progress satisfactory to the Department within the seven days, the Department may so notify the Design-Builder and the termination will not take effect. Otherwise, the termination shall take effect after seven days without further notice or opportunity to cure.

**Section 16.3.2** If the Department terminates the Agreement for default, the Department will have the right to take over the Work, to accept assignment of some or all Subcontracts or agreements with material suppliers, to take possession of the Project, to take and use all tools, equipment and supplies then being used in connection with the Work, and to finish the Project by whatever method it deems expedient, including accepting assignment of all outstanding Subcontracts and Supply Agreements.

**Section 16.4 Termination for Convenience.**

The Department may, upon seven (7) calendar days written notice to the Design-Builder, terminate the Contract in whole or specified part, for its convenience, for any reason whether the Design-Builder is in breach of contract or not. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions. The termination for convenience that arises out of or under this Agreement shall be in accordance with the terms of the Standard Contract Provisions.

**Section 16.5 Continued Responsibility After Termination.**

If the Design-Builder is terminated, for default, for Convenience or otherwise, the Design-Builder shall remain responsible for defects or non-conformities in all Work performed to the date of the termination.

## Article 17 OTHER CONDITIONS AND SERVICES

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

## Article 18 CHANGES IN THE WORK

**Section 18.1 Changes Authorized.**

In accordance with the Standard Contract Provisions (Construction Contract), the Department may, without invalidating the Agreement, and without notice to or approval of any surety, order changes in the Work, including additions, deletions or modifications. Any such change

must be conveyed by the Department to the Design Builder via written Change Directive or Change Order.

**Section 18.2 Executed Change Directive/Change Order Required.**

Only a written Change Directive or Change Order, executed by the Department, may make changes to the Agreement. In particular, but without limitation, a written Change Directive or Change Order executed by the Department is the only means by which changes may be made to the Substantial or Final Completion Dates, the Design-Build Fee, or the Guaranteed Maximum Price.

**Section 18.3 Department-Initiated Changes**

**1.** If the Department wishes to make a change in the Work or to accelerate the Work, it will execute and issue to the Design-Builder a written Change Directive, either directing the Design-Builder to proceed at once with the changed Work or directing it to not to proceed, but to inform the Department, in writing, of the amount, if any, by which the Design-Builder believes that Substantial or Final Completion Dates and/or the Guaranteed Maximum Price should be adjusted to take the Change Order or Change Directive into account.

**2.** Within ten (10) days of receiving a Change Directive, the Design-Builder shall provide the Department with a written statement of all changes in the Agreement, including, without limitation, any changes to the Substantial or Final Completion Dates or the Guaranteed Maximum Price to which it believes it is entitled as a result of the Change Directive. If additional time is sought, a schedule analysis supporting the requested extension should be included. The schedule analysis should include a written narrative explanation. If a change in the Guaranteed Maximum Price is sought (or if the Department has requested a deduct change), the statement should include a breakdown, by line item, of the estimated cost changes attributable to the proposed change. The Department may request, and the Design-Builder shall provide, further cost breakdowns, clarifications, documentation or back-up if the Department reasonably believes such additional information is needed to understand and evaluate the request. The additional information required may include cost and pricing data in accordance with the Department's regulations. Any requested adjustment to the Guaranteed Maximum Price shall be limited to increased Cost of the Work due to the Change Directive. The Design-Builder is not entitled to any markup on any kind of Change Orders except as authorized in Section 18.8, and if so authorized, any mark-up shall be in accordance with Section 18.11.

**3.** If the Department has not yet directed the Design-Builder to proceed with the change described by a Change Directive, the Department may rescind it. If the Department wishes to proceed, or has already directed the Design-Builder to proceed, the Design-Builder shall immediately proceed with the changed Work and, the Department and the Design-Builder shall use their good faith best efforts to reach an agreement upon the modifications to the Substantial or Final Completion Dates, and/or the Guaranteed Maximum Price that are justified by the Change Directive. If the Department and the Design-Builder reach agreement, the agreement shall be set forth in a Change Order and the Design-Builder shall also execute it, at which point it will become binding on both Parties.

**4.** If the parties fail to reach an agreement within sixty (60) days after the Department receives the Design-Builder's detailed statement pursuant to Section 18.3.2, and such other documentation as the Department may request, the Design-Builder may assert a claim in accordance with the Agreement. In such a case, and subject to adjustment via the claims and disputes process, the Department shall unilaterally grant the Design-Builder such adjustments, if any, to the Substantial or Final

Completion Dates, the Guaranteed Maximum Price, and/or the Preconstruction or Design-Build Fee as the Department has judged to be appropriate.

**Section 18.4 Notice of Change Event.**

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

**Section 18.5 Detailed Change Request.**

Within twenty (20) days after giving notice of a Change Event, the Design-Builder shall submit a written Change Request to the Department describing, in reasonable detail, all adjustments it seeks to the Substantial or Final Completion Dates or the Guaranteed Maximum Price as a result of the Change Event. The Change Request shall include the same information as described in Section 18.3 with respect to any Agreement changes the Design-Builder seeks due to the Change Event, and the amount of any requested adjustment to the Guaranteed Maximum Price shall be limited in accordance with that Section 18.3.

**Section 18.6 Changes to GMP.**

Subject to the condition precedent that the Design Builder have complied with the notice and documentation provisions of this Article, and subject to the limitations stated in this Agreement, the Design-Builder is entitled to an adjustment to the Guaranteed Maximum Price in the following cases:

**1.** If the Department issues a Change Directive or Change Order that directs the Design Builder to proceed with work which is beyond the scope of Work included within this Agreement; or

**2.** The Design-Builder encounters Differing Site Conditions or Hazardous Materials not identified in the Preconstruction Phase.

**Section 18.7 Deductive Change Orders.**

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

**Section 18.8 No Adjustments to Fee.**

The Design-Builder understands and agrees that the Design-Build Fee shall not be increased or decreased as a result of any Change Orders or Change Directive. In furtherance of this understanding, the Design-Builder agrees that it shall not be entitled to an increase in the Maximum Cost of General Conditions, or the Design-Build Fee by virtue of changes authorized by the Department unless such changes fall outside the general scope of work contemplated by this Agreement. The term general scope of work shall mean a state-of-the-art recreation center facility that is consistent with the Department's program of requirements and incorporates sustainable design initiatives. Without limiting the generality of the foregoing, it is understood and agreed that the Design-Builder shall not be entitled to any additional fees or general conditions unless (i) the Department makes additions to the scope provided for in this Agreement that cause the GMP, either individually or in the aggregate, to increase by more than ten percent (10%); or (ii) the Department makes additions to the scope provided for herein which (other than for punchlist or warranty work) require the Design-Builder's services for the Project to extend beyond **30 days after Substantial Completion.**

**Section 18.9 Executed Change Orders Final.**

The Design-Builder agrees that any Change Order executed by the Department and Design-Builder constitutes its full and final adjustment for all costs, delays, disruptions, inefficiencies, accelerations, schedule impacts, or other consequences arising from the change in question, whether a Change Directive, or a Change Event, or from any claimed cumulative effect of changes made to the date of the Change Order, and that no further adjustments in compensation or time shall be sought or made with respect to the Change Directive or the Change Event giving rise to the Change Order. Although the Parties anticipate that most Change Orders will not require an adjustment to the Cost of General Conditions, if the Work described in a Change Order requires an increase or decrease in the Maximum Cost of General Conditions (i.e. because such a Change requires additional field staff or other equipment that would be classified as General Conditions Costs), the Change Order shall contain an increase to the Design-Build Fee adjusting such amount. The cost of processing a Change Order shall not be considered an event that will require an increase in the Maximum Cost of General Conditions.

**Section 18.10 Failure to Agree.**

If the Design-Builder claims entitlement to a change in the Agreement, and the Department does not agree that any action or event has occurred to justify any change in time or compensation, or if the Parties fail to agree upon the appropriate amount of the adjustment in time or compensation, the Department will unilaterally make such changes, if any, to the Agreement, as it determines are appropriate pursuant to the Agreement. The Design Builder shall proceed with the Work and the Department's directives, without interruption or delay, and shall make a claim as provided in Article 18 herein. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Contract and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

## Article 19 CLAIMS & DISPUTE RESOLUTION

All claims or disputes arising out of this Agreement shall be governed by the terms of the Standard Contract Provisions (Construction Contracts and Architectural and Engineering Services).

**IN WITNESS WHEREOF**, the Parties have executed this Agreement (DCAM-20-CS-RFP-0004) through their duly authorized representatives as of the last date written below.

| | |
|---|---|
| **DEPARTMENT OF GENERAL SERVICES,** an agency within the executive branch of the Government of the District of Columbia | **[DESIGN-BUILDER]** |
| By: _____ | By: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Its: _____ |
| Date: _____ | Date: _____ |

**Exhibit A - Scope of Work, Program Requirements and Design Documents (if any)**

# Exhibit B - Preliminary Project Schedule

**Exhibit C - Deliverable List**

## A. Design & Preconstruction Phase Deliverables

1. Building System Assessment.
2. Baseline Schedule.
3. Concept Design
4. Preliminary Budget Estimates
5. Baseline Budget and Program
6. Construction Management Plan
7. List of Long Lead Items that could adversely impact the Project's schedule and recommendations for purchase.
8. Concept Design:
    - 8.1. Cconceptual floor plan and site plan.
    - 8.2. Updated property survey, including notations of utilities and all other easements.
    - 8.3. Hazardous material survey and analysis update
    - 8.4. Historic resources survey
    - 8.5. Zoning analysis
    - 8.6. Geotechnical Survey
    - 8.7. Architectural Concept Development
    - 8.8. Building plan
    - 8.9. Preliminary cost estimates
    - 8.10. Project schedule

9. Conceptual Design Estimate

10. Schematic Design:

    10.1. Digital floor plans and site plan

    10.2. Preliminary building elevations and sections

    10.3. Plan-to-Program Comparison

    10.4. Design Narrative

    10.5. Updated Schedule and Cost Estimate

    10.6. Phasing Plan, if necessary

    10.7. If Value Engineering is necessary, it should be executed at this stage of the design submission with all the stakeholders.

    10.8. Meeting minutes of Preliminary Design Review Meetings.

11. Schematic Design Estimate.

12. Design Development:

    12.1. 35% (minimum progress) documents for all technical disciplines, drawings and specs

    12.2. 50% design development progress printing.

    12.3. A reconciliation report that addresses issues raised by DGS representatives as a result of the 50% progress printing.

    12.4. CFA submission materials; meetings and presentations to CFA as required

    12.5. Historic Preservation Office (HPO) submission materials; meetings and presentations to HPO as required

12.6. meetings and presentations to HPO as required

    12.7. Submit the Contractor's second estimate for the hard cost of the Project with a Maximum +/- 5% of the owner's budget.

13. Permit Set:

    13.1. Drawings and specifications, ready for permitting, hard copy and electronic.

    13.2. Final estimate of construction cost.

14. Issued for Construction Documents ("IFC Set").

15. List of subcontractors from which the Design-Builder intends to solicit bids and bidding procedure.

16. Trade bid tabulations, including all subcontractor Proposals.

17. Report outlining Value Engineering strategies.

18. GMP Proposal.

19. Construction Phase Baseline Schedule.

20. Insurance Certificates

21. Payment and Performance Bonds

**B. Construction Phase Deliverables**

**15.3.7** Meeting minutes.

**15.3.8** RFI Responses, ASI's and/or other clarification documents.

**15.3.9** Punch lists.

**15.3.10** Closeout document review comments.

**15.3.11** As-Built Drawings.

**15.3.12** Contingency Balance Update

**15.3.13** Prolog submissions.

**15.3.14** Minutes of Progress Meetings.

**15.3.15** OSHA Safety Plan.

**15.3.16** Outreach Plan.

**15.3.17** Quality Control Plan.

**15.3.18** Quality Control Inspection Reports.

**15.3.19** Warranties and Manuals.

**15.3.20** Monthly Report, including Project Progress Report and Cost Variance Report.

**15.3.21** Bi-Weekly Schedule Updates.

**15.3.22** Invoices and Acceptable Application for Payment with Release of Liens and Claims.

**15.3.23** Insurance Certificates, including Hazardous Material Abatement Subcontractor Insurance Certificates.

**15.3.24** Hazardous Material Abatement Records.

**15.3.25** Performance and Payment Bonds.

**15.3.26** Certificate of Substantial Completion executed by the Project Architect and submitted to the Department for review, concurrence and approval.

**15.3.27** Documents that may be required by Contracting Officer from time to time.

**C. Close-Out Deliverables**

As set forth in Exhibit N.

**Exhibit D - Preliminary Subcontracting Plan**

To be submitted during GMP

**Exhibit E – EEOC Statement**

# Exhibit F - Key Personnel

# Exhibit G - Davis Bacon Act Wage Determination

# Exhibit H - Design-Builder's Designated Representatives

**Exhibit I - Department's Designated Representatives**

Keith A. Anderson

Agency Director

Department of General Services

2000 14th Street NW

Washington, DC 20009

George G. Lewis

Associate Director, Contracts and Procurement Division

Department of General Services

Contracts and Procurement Division

2000 14th Street, NW 8th Floor

Washington, DC 20009

# Exhibit J1 – Standard Contract Provisions (Construction)

# Exhibit J2 – Standard Contract Provisions (Architecture/Engineering)

# Exhibit K - Form of Lien Waiver

# Exhibit L - Form of GMP Amendment

**GUARANTEED MAXIMUM PRICE AMENDMENT**

**DESIGN-BUILD AGREEMENT [PROJECT NAME]**

THIS GUARANTEED MAXIMUM PRICE AMENDMENT ("Amendment") is entered into by and between the DISTRICT OF COLUMBIA GOVERNMENT, acting by and through its DEPARTMENT OF GENERAL SERVICES (the "Department") and **[DESIGN-BUILDER]**, (the "Design-Builder") pursuant to the Agreement, dated _____, between the District of Columbia government, by and through the Department and the Design-Builder, for the modernization of the **[NAME OF PROJECT]** and to establish a Guaranteed Maximum Price and Contract Time for the Work as set forth below.

## ARTICLE I GUARANTEED MAXIMUM PRICE

**Section 1.1** **Guaranteed Maximum Price**. Subject to additions and deductions which may be made only in accordance with the Agreement, the Design-Builder represents, warrants and guarantees to the Department that the total maximum cost to be paid by the Department for Design Builder's complete performance under the Agreement, including, but not limited to, Final Completion of all Work, all services of Design-Builder under the Agreement, and all fees, compensation and reimbursements to Design-Builder, shall not exceed the total amount of [INSERT AMOUNT] Dollars ($[INSERT AMOUNT]) ("*Guaranteed Maximum Price*"). Costs which would cause the Guaranteed Maximum Price (as may be adjusted pursuant to the Contract Documents) to be exceeded shall be paid by the Design-Builder without reimbursement by the Department.

**Section 1.2** **Guaranteed Maximum Price Components**. The Guaranteed Maximum Price is comprised of the maximum amount payable by the Department for:

**1.2.1** the Cost of the Work for full and complete performance of the Work in strict accordance with the Contract Documents;
**1.2.2** a Pre-Construction Fee for the Design-Builder, as defined in the Agreement, in the amount of [INSERT AMOUNT];
**1.2.3** a Design-Build Fee for the Design-Builder, as defined in the Agreement, in the amount of [INSERT AMOUNT];
**1.2.4** a Maximum Cost of General Conditions, , as defined in the Agreement, in the amount of [INSERT AMOUNT];
**1.2.5** a Design Fee in the amount of [INSERT AMOUNT]; and
**1.2.6** The Guaranteed Maximum Price is further broken down into line items and categories on Exhibits ____ attached hereto.

**Section 1.3** **Basis for the GMP.** The GMP is for the performance of the Work in accordance with the Contract Documents listed and attached to this Amendment and marked Exhibits ____ through ____, as follows:

**1.3.1** Exhibit ____: List of Drawings, Specifications, addenda and General, Supplementary and other Conditions of the Agreement on which the Guaranteed Maximum Price is based

**1.3.2** Exhibit ____: A list of Unit Prices and Allowance items as well as a statement of their basis.

**1.3.3** Exhibit ____: Assumptions and Clarifications made in preparing the Guaranteed Maximum Price, noting in particular any exclusions. The Assumptions and Clarifications shall take precedence over the Drawings and Specifications, but shall be subordinate to the Agreement and the terms of this Amendment.

**1.3.4** Exhibit ____: The proposed Guaranteed Maximum Price, including a statement of the detailed cost estimate organized by trade categories, allowances, Contingency, and other items and the fee that comprise the Guaranteed Maximum Price.

**1.3.5** Exhibit ____: A Construction Phase Schedule which shall include, but not be limited to, the Substantial and Final Completion Dates, upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the Substantial and Final Completion Dates are based (the "Project Schedule").

**1.3.6** Exhibit ____: An LSDBE Utilization Plan setting forth the names and estimated dollar volume of the work that will be perform by small, local and disadvantaged business enterprises, as certified by the Department of Small and Local Business Development, upon which the GMP is based.

**Section 1.4 Incomplete Drawings and Specifications.** Design-Builder and the Department acknowledge that the Drawings and Specifications are not complete and, as of the date hereof, that such Drawings and Specifications have reached the level of approximately __% complete permit set documents. The Design-Builder, however, has been actively involved in the design process and hereby represents that it has a sufficient understanding of the Project to agree to a Guaranteed Maximum Price to Fully Complete the Project. The Design Builder hereby acknowledges that the GMP Basis Documents provides sufficient detail and information to provide a firm Guaranteed Maximum Price and that the Guaranteed Maximum Price proposed therein is intended to represent the Design-Builder's offer to Fully Complete the Project. The Design-Builder and the Department agree to work together to complete the Drawings and Specifications as provided in this Agreement, consistent with the Guaranteed Maximum Price premises and assumptions and Project Schedule.

**Section 1.5 Design Intent; Inferable Work.** Design-Builder agrees that the Guaranteed Maximum Price is based on the current state of the design, which represents approximately [__] percent complete permit set documents. The GMP Basis Documents will include various clarifications and assumptions that are intended to further define the scope of Work that will be required to complete design. The Design-Builder has included within the Guaranteed Maximum Price sufficient amounts to cover aspects of the Work that are not shown on the GMP Basis Documents. If the Department does not approve any such scope increase, the Design-Builder

shall cause the Architect to develop a design that is consistent with the original design intent and shall complete the Work for an amount that does not exceed the GMP.

**Section 1.6 Cost Overruns.** Subject to additions or deductions which may be made in accordance with the Agreement, the Design-Builder shall be solely liable and responsible for and shall pay any and all costs, fees and other expenditures in excess of the Guaranteed Maximum Price for and/or relating to the Work, without entitlement to reimbursement from the Department. Design-Builder shall not be entitled to any fee, payment, compensation or reimbursement under this Agreement or relating to the Work or Project other than as expressly provided in the Agreement.

**Section 1.7 Allowances.** The Guaranteed Maximum Price includes specific "Unit Price Allowance Amounts" for certain items as shown on the Schedule of Values and budgeted in the Guaranteed Maximum Price ("*Allowance Items*"). The only Allowance Items shall be those specifically identified as such in the Schedule of Values and in the Guaranteed Maximum Price. The Allowance Amounts represent all Costs of the Work of the Allowance Items, including, without limitation, costs of materials, labor, handling, transportation, loading and unloading and installation, as determined by Design-Builder.

## ARTICLE 2

## INTENT, INTERPRETATION AND CORRELATION

**Section 2.1 Intent of the Agreement**. The intent of the Agreement is for the Design-Builder to perform and supply, and the Department hereby engages Design-Builder to and Design Builder hereby agrees to perform and supply, the Work, including all necessary design services, scheduling, procurement, supervision, construction, and construction management services and supply all necessary labor, materials, equipment and related work and services necessary to fully complete the Work and obtain the intended results of the Contract Documents, including, but not limited to the requirements of the Project Schedule and the Guaranteed Maximum Price requirements set forth in Article 1 above. The enumeration of particular items in the Specifications and/or Drawings shall not be construed to exclude other items. The Contract Documents are complementary, and what is required by any one of the Contract Documents (including either a Drawing or Specification) as being necessary to produce the intended results shall be binding and required as a part of the Work as if required by all Contract Documents.

**Section 2.2 Design-Builder's Compliance with Contract Documents**. Design-Builder agrees, accepts and assumes that the Department's decision will require implementation of the most stringent requirements among any conflicting provisions of the Contract Documents as being part of the Work. The Design-Builder agrees to be bound by all decisions by the Department to implement the most stringent of any conflicting requirements within the Contract Documents. Any failure by Design-Builder to seek such clarifications shall in no way limit the Department's ability to require implementation, including replacement of installed Work at a later date at Design Builder's sole expense, to achieve compliance with the more stringent requirements. Without limiting the generality of the foregoing, the Design-Builder hereby agrees as follows:

**2.2.1** The failure of the Department to insist in any one or more instances upon a strict compliance with any provision of this Agreement, or to exercise any option herein conferred, shall not be construed as a waiver or relinquishment of the Department's right thereafter to require compliance with such provision of this Agreement, or as being a waiver of the Department's right thereafter to exercise such option, and such provision or option will remain in full force and effect.

**2.2.2** If there is any inconsistency in the Drawings or any conflict between the Drawings and Specifications, Design-Builder shall provide the better quality or greater quantity of Work or materials, as applicable, unless the Department directs otherwise in writing.

**2.2.3** Design-Builder shall be responsible for dividing the Work among the appropriate Subcontractors and Vendors. No claim will be entertained by the Department based upon the organization or arrangement of the Specifications and/or the Drawings into areas, sections, subsections or trade disciplines.

**2.2.4** Detail drawings shall take precedence over scale drawings, and figured dimensions on the Drawings shall govern the setting out of the Work.

**2.2.5** Unless the Specifications expressly state otherwise, references to documents and standards of professional organizations shall mean the latest editions published prior to the Effective Date.

**2.2.6** Technical words, abbreviations and acronyms in the Contract Documents shall be used and interpreted in accordance with customary usage in the construction industry.

**2.2.7** Whenever consent, permission or approval is required from any party pursuant to the provisions of the Contract Documents, such consent, permission or approval shall, unless expressly provided otherwise in this Agreement, be given or obtained, as applicable, in writing.

## ARTICLE 3 [INTENTIONALLY OMITTED]

## ARTICLE 4 OTHER PROVISIONS

**Section 4.1 Design-Builder's Responsibilities.** The Design-Builder also expressly acknowledges that this Project and the Work will proceed on a "fast-track" method of construction, i.e., construction will commence without final Drawings and Specifications in place. More specifically, while Drawings and Specifications are complete for certain portions of Work, the design process will continue for other portions during construction based on the Guaranteed Maximum Price premises and assumptions. The Design-Builder has been, and will continue to be, an active participant in the design process. Given such participation, the Design-Builder represents that it is familiar with the scope and quality of those aspects of the Project that have not yet been fully designed, and has taken such scope and quality matters into consideration in preparing each component of the Guaranteed Maximum Price. The Design-Builder agrees to work with the Department in managing the construction and design work to complete the design process. The Design-Builder shall manage the Project, including coordinating redesign or value engineering necessary or advisable for certain aspects of the Project at any stage of the design process in order to bring the cost of such Work within or below, but not in excess of, the respective allowances or

the budgeted or allocated amounts for other items contained in the Guaranteed Maximum Price. Once the Drawings and Specifications are complete, it is recognized by the Design-Builder and the Department that the scope of the Guaranteed Maximum Price may include Work not expressly indicated on the Contract Documents, but which is reasonably inferable from the Contract Documents, and such Work shall be performed without any increase in the Guaranteed Maximum Price or extension of Contract Time, except if and to the extent otherwise expressly provided in this Agreement.

## ARTICLE 5 MISCELLANEOUS PROVISIONS

**Section 5.1 Prior Agreement Unaffected.** Except as expressly agreed to herein, all of the terms, conditions, representations and warranties set forth in the Agreement shall remain unaffected and in full force and affect.

**Section 5.2 Integrated Agreement.** This Amendment and any attachment hereto set forth the entire agreement and understanding of the parties regarding the transactions contemplated hereby and supersede all prior oral and written agreements, arrangements and understandings relating to the subject matter hereof. There are no oral or written agreements or understandings, representations or warranties among the parties other than those set forth herein.

**Section 5.3 Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be considered one and the same instrument.

**Section 5.4 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.

**IN WITNESS WHEREOF**, each of the parties to this Amendment to Agreement (DCAM-20-CS-RFP-0004) has caused it to be executed by its duly authorized representative on the dates set forth below.

DISTRICT OF COLUMBIA GOVERNMENT, by and through its DEPARTMENT OF GENERAL SERVICES

By: _____

Name: _____

Title: _____

Date: _____

[DESIGN-BUILDER]

By: _____

Name: _____

Its: _____

Date: _____

# Exhibit M - GMP Basis Documents (Permit Set) Due Date

# Exhibit N - FF&E and Close-Out Deliverable

1. **FF&E**

The Design-Builder shall be responsible for FF&E as set forth in this Exhibit: [TBD]

2. **Close-Out**

The following deliverables are required during the Project's Close-Out.

1 a complete set of the Design-Builder's Project files.
2 a complete set of product manuals (O&M), training videos, warranties, etc.
3 as built record drawings.
4 attic stock and schedule.
5 equipment schedule.
6 proposed schedule of maintenance.
7 environmental, health & safety documents.
8 all applicable inspection certificates/permits (boiler, elevator, emergency evacuation plans, health inspection, etc.).

9 Environmental, health & safety documents.

# Exhibit O - Subcontractor Performance Evaluation Form

**Exhibit P - At-Risk Portion of Design-Build Fee**

1. If the Design-Builder meets or exceeds its CBE subcontracting requirements and its first source employment requirements as outlined in Article 13, the Design-Builder shall earn thirty-three and one third percent (33 $^{1/3}$ %) of the Award Fee Pool. Entitlement to this portion of the Award Fee Pool shall be based on the final outcome of the Project. In the event this metric is achieved, then this portion of the Award Fee Pool shall be paid in the first progress payment that is due after Substantial Completion of the Project occurs.

2. If the Design-Builder achieves Substantial Completion of the work on or before **March 23, 2022**, the Design-Builder shall earn thirty-three and one third percent (33 $^{1/3}$ %) of the Award Fee Pool. Entitlement to this portion of the Award Fee Pool shall be based on the final outcome of the Project. For the avoidance of doubt, the Design Builder shall not be entitled to earn such portion of the Award Fee Pool even if the failure to deliver on-time was caused by the Client Agency, the Department, delays resulting from the permitting or zoning process, or an event of Force Majeure. In the event this metric is achieved, then this portion of the Award Fee Pool shall be paid in the first progress payment that is due after Substantial Completion of the Project occurs.

3. If the final amount due to the Design-Builder (inclusive of the Preconstruction Fee, the Design Fee, the earned portions of the Award Fee, the Base Design-Build Fee and the Cost of General Conditions) is less than One Hundred Three percent (103%) or the GMP as originally established, the Design-Builder shall earn thirty-three and one third percent (33 $^{1/3}$ %) of the Award Fee Pool. Entitlement to this portion of the Award Fee Pool shall be based on the final outcome of the Project. In the event this metric is achieved, then this portion of the Award Fee Pool shall be paid in the first progress payment that is due after Substantial Completion of the Project occurs.

# Exhibit Q - Equal Employment Opportunity Reports

# Exhibit R - Service Contract Act

# Exhibit S - Living Wage Act