

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF GENERAL SERVICES

CONSTRUCTION SERVICES FOR FY15 SUMMER RENOVATIONS

Solicitation #: DCAM-15-CS-0127

Addendum No. 2  
Issued: May 20, 2015

---

This Addendum Number 02 is issued by e-mail on May 20, 2015. Except as modified hereby, the Request for Proposals (“RFP”) remains unmodified.

**Item #1**

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

**Item #2**

**The bid date remains unchanged.** Proposals are due by **May 27, 2015 at 2:00 pm EDT.** Proposals that are hand-delivered should be delivered to the attention of: Courtney Washington, Contract Specialist, at **Frank D. Reeves Center, 2000 14<sup>th</sup> Street, NW, 8<sup>th</sup> floor, Washington, DC 20009.**

- End of Addendum No. 2 -

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF GENERAL SERVICES



Office of Contracts and Procurement

[DATE]

**By Electronic Mail**

[NAME]  
[TITLE]  
[COMPANY]  
[ADDRESS]  
[ADDRESS]  
[EMAIL ADDRESS]

**Reference: RFP for Construction Services for FY15 DCPS Summer Renovations  
(DCAM-15-CS-0127)**

**Subject: Notice to Proceed & Letter Contract for [NAME OF SCHOOL/PROJECT]  
Contract Number: DCAM-15-CS-0127[\_\_\_]**

Dear [NAME]:

We refer to the proposal submitted by [NAME OF CONTRACTOR] (“[SHORT NAME OF CONTRACTOR]” or the “Contractor”) in response to the above referenced solicitation. If this Letter Contract is countersigned by [CONTRACTOR] without modification of any kind, it will serve as a notice to proceed for the work described below. This notice to proceed is subject to the following terms:

1. Letter Contract. This is a Letter Contract between [CONTRACTOR] and the District of Columbia government, acting by and through its Department of General Services (“DGS” or the “Department”), and shall govern our relationship until such time as a final contract is entered into for the work described in the above referenced solicitation (the “Definitized Contract”); provided, however, that to the extent an issue is not covered in this Letter Contract, the Form of Contract issued with the Request for Proposals shall govern. Once the Definitized Contract is signed, this Letter Contract shall automatically terminate and merge into the Definitized Contract.

[NAME]

[DATE]

Page 2

2. Scope of Work. The Contractor is hereby authorized to proceed with preconstruction services for the Project. The Contractor shall provide such preconstruction services as are necessary to properly advance the Project, including, but not limited to scheduling, reviewing the design documents for constructability, identifying any potential issues that may cause cost or schedule issues that conflict with the Department's requirements for the Project. Within five (5) of the date of this notice to proceed, the Contractor shall meet with the Department to determine the manner in which the trade work will be bid and self-performed work authorized. Unless otherwise authorized by the Department, the Contractor shall solicit bids based on the approved design documents as is further described in paragraph 6 of this Letter Contract. The Contractor shall engage in any value engineering and scope exercises necessary to ensure that the Project can be constructed for an amount that does not exceed the Department's budget for the Project. The Contractor is not authorized to proceed with the ordering of any such long lead items or early site activities unless directed to do so in writing and in advance by a duly authorized contracting officer for the Department.

3. Not-to-Exceed Amount. The limit of this authorization is [AMOUNT] (\$[NUMBER]) (the "Not-To-Exceed Amount"). The Not-To-Exceed Amount includes the Contractor's Preconstruction Fee in the amount of [AMOUNT] (\$[NUMBER]). The parties acknowledge that Preconstruction Fee is to be the Contractor's sole compensation for all preconstruction services performed under this Letter Contract and the Definitized Contract. It is understood that the Contractor shall not be due any additional compensation from the Department for such preconstruction services. In no event shall the Contractor be entitled to receive more than the Not-To-Exceed Amount under this letter contract unless authorized in advance and in writing the by a duly authorized contracting officer for the Department.

4. Insurance. At all times while working under this Letter Contract, the Contractor shall maintain the following insurance: (i) comprehensive general liability policy having a policy limit of at least Five Million Dollars (\$1,000,000) and including completed operations coverage; (ii) workers compensation coverage at the statutory limit; (iii) automobile liability, including a hired and non-owned automobile liability policy, of at least One Million Dollars (\$1,000,000); and (iv) pollution liability insurance policy of at least Two Million Dollars (\$2,000,000). All such policies shall be endorsed to add the District of Columbia, including, but not limited to, its Department of General Services, and the respective agents, employees and officers of each as additional insureds. The Contractor shall provide certificates evidencing such insurance prior to commencing any construction activities.

5. Deliverables. In connection with the services provided pursuant to this Letter Contract, the Contractor shall provide, at a minimum, a Lump Sum Price Proposal. The Lump Sum Price Proposal shall include the following:

- a. A preliminary schedule for the Project, including both the preconstruction phase activities as well as the construction phase activities.
- b. A list of long lead items, including the costs of such items.

[NAME]

[DATE]

Page 3

- c. The Parties acknowledge that the Department desires competitive pricing for the trade work and that the Contractor may wish to perform certain trade work with its own forces. During the Preconstruction Phase, the Contractor and the Department shall discuss and agree upon the manner in which trade work will be awarded. Unless self-performed work is approved, the Contractor will be required to solicit bids for all trade work in accordance with paragraph 6 below.
- d. A bid tabulation of the trade bids solicited. Such bid tabulation shall include LSDBE and Workforce utilization information in addition to price and other information. Such bid tabulations shall be submitted to the Department's Program Manager no later than [DATE].
- e. A Lump Sum Proposal for the Project no later than [DATE]. Such Lump Sum Price Proposal shall include the following:
  - a. A list of the design documents upon which it is based.
  - b. A list of any clarifications regarding the drawings on which the price is based.
  - c. A breakdown of the lump sum price by CSI division.
  - d. A list of any allowances included in the lump sum price
  - e. An LSDBE utilization plan outlining the dollar volume of work to be performed by CBEs.
  - f. A workforce utilization plan outlining the level of participation expected by District resident in the performance of the Project.

6. Basis of Lump Sum Price; Failure to Agree on Lump Sum Price. The Parties anticipate that a Lump Sum Price for the Project will be based on partially complete construction documents. The Parties further expect that the Contractor's proposed Lump Sum Price will be based on competitive bids from trade subcontractors. Unless otherwise agreed to by the Program Manager in writing, the Contractor shall obtain at least three (3) trade bids for each proposed subcontract in excess of One Hundred Thousand Dollars (\$100,000). The Contractor shall present such bids as part of its Lump Sum Price submission. In the event the Department and Contractor are unable to agree upon a Lump Sum Price for the Project, the Contractor shall forfeit its Preconstruction Fee.

7. Construction Phase Compensation. The Contractor understands and agrees that the Department makes no representation or warranty that the Contractor shall be entitled to serve as the Contractor for the Project. If, however, the Department and the Contractor agree upon a Lump Sum Price and schedule for the Project, the Contractor agrees that it shall be paid a Construction Fee, which includes the cost of general conditions, of [AMOUNT] (\$[NUMBER]), and the Lump Sum Price shall include a contingency of [PERCENT] of the costs of the trade work, whether self-performed or subcontracted. The Contractor further agrees to enter into a construction agreement that is substantially similar to the Form of Contract issued with the RFP, subject only to such adjustments as were requested by the Contractor in its bid and which are agreed to by the Department.

[NAME]

[DATE]

Page 4

8. Duration. This Letter Contract shall become effective on the date it is accepted and countersigned by the Contractor and terminate on the earlier to occur of the following: (i) the date the Definitized Contract becomes effective; or (ii) [DATE]. DGS reserves the right to terminate this Letter Contract, in whole or specified part, for convenience in the manner described in the Form of Contract issued with the Request for Proposals.

9. Billing. All invoices shall be submitted directly to the Department at the address specified above. Properly prepared invoices with the necessary backup shall be paid within thirty (30) days of receipt. Invoices not paid by that date shall bear interest in accordance with the Quick Payment Act.

10. Purchase Order Number. Our contracting group will issue a purchase order number within four (4) business days of its issuance and forward a copy of that number for your records. That number should be included in all future invoices and accounting records. In the event that you do not obtain a purchase order number within five (5) business days, please contact James Marshall directly to obtain this number.

11. Ownership and Use of Documents. All documents and work product prepared by the Contractor and its subcontractors or subconsultants related to the Project shall become the property of the Department. Without limiting the generality of the foregoing, the Contractor agrees that the Department shall be entitled to all such information and that the Department may use such documents as it sees fit (including, but not limited to, reprocurring a contractor for this project) in the event the Department and the Contractor are unable to agree upon a Lump Sum Price and schedule.

12. Trade Work/Site Control. Unless otherwise directed by the Department, the Contractor shall not perform any trade work or take control of the site. Any authorization to proceed with trade work will include appropriate provisions relating to bonds, insurance, and safety procedures.

13. Indemnification. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Department and the Department's consultants and agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

Assuming the foregoing terms are acceptable, please countersign below to indicate your acceptance. Should you have any questions, please feel free to contact [NAMES OF DGS PROJECT MANAGERS].

Sincerely,

[NAME]  
[TITLE]

Copy: [PM 1]  
[PM 2]

**ACCEPTED & AGREED TO**  
this \_\_\_\_\_ day of June 2015 by  
**[CONTRACTOR]**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**DESIGN-ASSIST CONSTRUCTION AGREEMENT  
FOR CONSTRUCTION SERVICES  
FY15 DCPS SUMMER RENOVATIONS AT  
[NAME OF SCHOOL/PROJECT]  
DCAM-15-CS-0127[\_\_\_]**

**THIS AGREEMENT** (“Agreement” or “Contract”) is made by and between the **DISTRICT OF COLUMBIA GOVERNMENT**, acting by and through its **DEPARTMENT OF GENERAL SERVICES** (the “Department”) and **[NAME]** (“NAME”), duly organized under the laws of **[JURISDICTION]**, and with a place of business at **[ADDRESS]** (the “Contractor”), (collectively, the “Parties”).

**A. PROJECT INFORMATION**

**Project Name:** Construction Services for **[NAME OF SCHOOL/PROJECT]** (the “Project”)

**Lump Sum Amount:** **[AMOUNT]** (\$\_\_\_\_\_)

**Completion Date:** August 14, 2015

**Project Manager:** \_\_\_\_\_

**Liquidated Damages:** Seven Hundred Fifty Dollars (\$750) per calendar day not to exceed Fifteen Thousand Dollars (\$15,000) in the aggregate.

**B. ATTACHMENTS**

**Exhibit A:** List of Design Documents

**Exhibit B:** Clarifications to Design Documents

**Exhibit C:** Schedule of Values

**Exhibit D:** List of allowances

**Exhibit E:** Key Personnel

**Exhibit F:** LSDBE Utilization Plan

**Exhibit G:** Workforce Utilization Plan

**Exhibit H:** Davis Bacon Act Wage Determinations

**C. TERMS & CONDITIONS**

**SECTION 1 GENERAL PROVISIONS**

**Section 1.1 Relationship of Parties.** The Contractor accepts the relationship of trust and confidence established with the Department by this Agreement, and covenants with the Department to furnish the Contractor’s reasonable skill and judgment and to cooperate with the Department and its Program Manager in furthering the interests of the Department. The Contractor shall use its best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Department.

**Section 1.2 Project Description.** The Project consists of the renovation of [GENERAL DESCRIPTION OF PROJECT], in accordance with the design documents listed on **Exhibit A** (such documents, the “Design Documents”). The Contractor understands that the Lump Sum Price set forth in this Agreement is intended to be its sole compensation to deliver a complete and fully functioning Project.

**Section 1.3 Completion Date.** Subject to the Excusable Delay provisions of this Agreement, the Contractor agrees to Substantially Complete the Project on or before the date set forth in the Project Information Section of this Agreement. Substantial Completion shall mean that all of the following have occurred: (1) the work has been completed with only minor punch list items remaining to be completed; (2) any and required permits or approvals related to the work have been obtained; (3) all clean-up required by the Contract has been completed; and (4) the Project is ready for the Department to use it for its intended purpose. To the extent that the work involves new systems for some or all of the building in which the Project is being constructed, the Contractor shall provide (i) all operating and maintenance manuals, training videotapes and warranties required by the Contract and (ii) schedule training session required by the Contract as quickly as possible, but no later than fifteen (15) business days after Substantial Completion. “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’s normal use of the Project. Final Completion shall mean the point at which Substantial Completion has been achieved, all punch list items noted at Substantial Completion have been completed and all documents the Contractor is required to deliver to the Department as a condition to receiving final payment have been received. Final Completion shall be achieved no later than thirty (30) days after the Substantial Completion Date.

**Section 1.4 Project Manager.** The Department has assigned a Project Manager to oversee the Contractor’s efforts in furtherance of this Project. Such Project Manager shall, at all times, be acting solely for the benefit of the Department, not the Contractor. The name and contact information for the assigned Project Manager is specified in the Project Information section of this Agreement. The Contractor shall take direction from, and coordinate its work with, the assigned Project Manager. **The Contractor acknowledges, however, that the Project Manager is not authorized to modify any of the rights or obligations of the Department or the Contractor pursuant to this Contract, or to issue Change Orders or Change Directives.**

**Section 1.5 Prolog.** The Contractor shall utilize the Department’s Prolog system to submit any and all documentation required to be provided by the Contractor for the Project, including, but not limited to, (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) proposed Changes; and (v) applications for payment. The Contractor also shall require all major subcontractors and subconsultants to utilize prolog for the Project.

## **SECTION 2 PRECONSTRUCTION PHASE**

**Section 2.1 Preconstruction Services.** The Contractor shall provide such preconstruction services as are necessary to properly advance the Project. It is understood that



such services shall include, but not be limited to, scheduling, cost estimating, performing constructability reviews, and identifying any long-lead items. During the Preconstruction Phase, the Contractor will also be required to review the design documents for constructability, and to obtain bids from trade subcontractors based on the approved design documents with the goal of developing an acceptable Lump Sum Price Proposal. Within five (5) days of the issuance of a Notice to Proceed for Preconstruction Services, the Contractor shall submit to the Department for its approval a schedule of Project. Such schedule shall include construction and preconstruction activities.

**Section 2.2** On or before the dates specified in the approved detailed schedule (see Section 2.1), the Contractor shall submit the necessary design information (i.e. permit drawings, shop drawings, submittals, sketches, etc.) to the Project Manager for his/her review and approval. Unless a different timeframe is established in the approved detailed schedule, the Project Manager shall have five (5) business days to review such documents. In the event the Project Manager finds such documents to be unacceptable, the Contractor shall be required to revise and resubmit such documents. The Contractor shall not commence construction activities unless and until such documents have been approved by the Project Manager. Any delays that result from design resubmissions shall be considered Non-Excusable.

**Section 2.3 Trade Bids.**

**Section 2.3.1 Bidding Procedures.** The Contractor shall meet with the Department to discuss the manner in which bids for the work will be solicited and the Lump Sum Price will be developed, including the process by which any self-performed work may be authorized. In the event the Project Manager has a reasonable objection to any such subcontractor or supplier, the Parties shall discuss such objection and agree on an appropriate course of action.

**Section 2.3.2 Bidding.** The Contractor shall solicit bids from trade subcontractors and suppliers for any work that is not authorized by the Department to be self-performed, the Contractor shall solicit bids from trade subcontractors for the work. Unless otherwise agreed upon, a minimum of three (3) bids for each trade package shall be required. The Contractor shall prepare and submit to the Department a bid tabulation of the bids so received. In addition to the information normally required in such bids, the Contractor 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.

**Section 2.4 Value Engineering.** Based on the trade bids received, the Contractor shall conduct such value engineering as is necessary to reconcile the costs of constructing the Project with the Department's budget for the Project. The Contractor shall meet with the Department's representatives to discuss any value engineering and changes in scope.

**Section 2.5 Lump Sum Price Formation.** Based on any approved value engineering, scope modifications and changes in the Project Budget, the Contractor shall prepare and submit to the Department a Lump Sum Price proposal to complete the Project. The Lump Sum Price

proposal shall represent the Contractor's offer to Fully Complete the Project. The Lump Sum Price shall include only the following:

- (i) the Preconstruction Fee;
- (ii) the Construction Fee;
- (iii) the sum of all approved trade subcontractor costs;
- (iv) the approved cost for any work that is authorized to be self-performed;
- (v) an amount equal to the Contingency Percentage bid by the Contractor multiplied by items (iii) and (iv); and
- (vi) the cost of insurance and bonds.

In the event that the Department and the Contractor are unable to agree upon a Lump Sum Price or a schedule for the Project, the Department shall have the right to terminate the contract and assume any trade subcontracts held by the Contractor. In such an event, the Contractor shall forfeit its Preconstruction Fee.

**Section 2.6 Deliverables.** The following deliverables are required during the Preconstruction Phase. In the event that the Contractor fails to provide any deliverable listed below, the Contractor shall forfeit its preconstruction fee.

- a. Preliminary Schedule.
- b. List of Long Lead Items and recommendations for purchase.
- c. Lump Sum Price Proposal.

**Section 2.7 Letter Contract.** It is understood that certain of the preconstruction activities described above were performed while the Letter Contract was in place, and the terms of the Letter Contract shall merge into and be superseded by this Agreement upon the execution of this Agreement.

### **SECTION 3 CONTRACT SUM**

**Section 3.1 Lump Sum Price.** The Builder shall be paid a Lump Sum Price in the amount set forth in the Project Information Section of this Agreement to Fully Complete the Project.

**Section 3.2 Nature of the Lump Sum Price.** The Contractor acknowledges and understands that the Lump Sum Price is based on the Approved Design. It is understood and agreed that the Lump Sum Price represents the Contractor's offer to Fully Complete the Project. The parties acknowledge and agree that it is their intent to have the Contractor to construct and deliver a fully functional Project as contemplated in the Approved Design for the Lump Sum Price and consistent with the Project Schedule. In furtherance of such intent, the Contractor hereby assumes the risks associated with and shall be responsible for (i) any changes in market conditions that affect the cost of labor or materials; (ii) coordination issues between the drawings; (iii) elements of work not shown on the Approved Design, but which are reasonably

inferable from the Approved Design; (iv) cost associated with acceleration of the work and expediting of materials necessary to meet the Project Schedule which are the result of anything other than an Excusable Delay; and (v) the risk of subcontractor default.

**Section 3.3 Risks Assumed by Contractor.** Execution of the Agreement by the Contractor is a representation that the Contractor has thoroughly examined the terms of this Agreement and the Approved Design and has visited the Project site and has become familiar with local conditions under which the Work is to be performed. The Contractor further represents that it has satisfied itself that it can undertake the work for the stated cost. Among other things, by entering into this Agreement, the Contractor assumes the following risks: (1) the nature of the land and subsoil; (2) the form and nature of the site and surrounding areas; (3) details and levels of existing pipe lines, conduits, sewers, drains, cables or other existing services; (4) the quantities, nature and availability of the materials, tools, equipment and labor necessary for the completion of the Work; (5) the means of access to the site and any accommodation that may be required; (6) uncertainties of weather and physical conditions at the site; and in general to have itself obtained all necessary information as to risk contingencies, climatic, hydrological and natural conditions and other circumstances which may influence or affect his performance of the Work.

**Section 3.4 Allowances.** The Lump Sum Price includes the allowances identified on **Exhibit D**. In the event that the cost of any Scope of Work to be covered by any allowance will exceed the amount of the allowance, the Contractor shall submit a Change Request in accordance with Article 8 of this Agreement for the difference. In the event that the cost of any Scope of Work to be covered by any allowance is less than the allowance, the savings in the allowance shall revert to the Department.

**Section 3.5 Tax Exempt Status.** The Department expects that the Project will qualify as tax-exempt under the applicable laws, and such tax exemption shall be reflected in the Lump Sum Price.

**Section 3.6** Subject to the terms and conditions of this Agreement, the Lump Sum Price shall be increased by two percent (2%) if both of the objectives set forth below are met and shall be decreased by two percent (2%) if either or both of the objectives set forth below are not met. The objectives are as follows:

- .1 **On-Time Completion.** Substantial Completion is achieved on or before August 14, 2015.
- .2 **Cost Control.** The total amount paid to the Contractor for Work performed under this Contract is less than or equal to the Lump Sum Price, regardless of any increases authorized by subsequent Change Order, plus Fifteen Thousand Dollars (\$15,000).

In determining whether these objectives have been met, the Department will evaluate whether the stated objectives have, in fact, been achieved. This decision shall be made regardless of the reason the objectives have or have not been met, and the Contractor acknowledges and agrees that the Contractor may lose entitlement to such portion of the Lump Sum Price even if objectives are not met due to the fault of the Department, the Architect/Engineer, the Code Official, events of force majeure or otherwise.

#### **SECTION 4 CONSTRUCTION PHASE**

**Section 4.1 General.** The Construction Phase shall commence when the Department issues a written Notice to Proceed for Construction. It is understood that a limited notice to proceed with construction activities may be provided in the form of an amendment to the Letter Contract. Unless otherwise authorized by the Department, the execution of this Agreement shall serve as notice to proceed with the Construction Phase.

**Section 4.2 Mandatory Subcontract Provisions.** To the extent the Contractor intends to subcontract a portion of the Work, any subcontract in excess of Twenty Five Thousand Dollars (\$25,000) shall include the following provisions:

- .1 that, to the extent of the Work or supply within the Contract's scope, the Subcontractor or supplier is bound to the Contractor for the performance of all obligations which the Contractor owes the Department under the Contract;
- .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;
- .3 that the Department is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit;
- .4 that the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Contractor is terminated for default;
- .5 that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Contractor to suspend or stop work;
- .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;

- .7 that the Subcontractor shall obtain and maintain, throughout the Project, workers' compensation insurance in accordance with the laws of the District of Columbia. It is understood that this provision is not applicable to supply agreements;
- .8 that, if the Department terminates the Contract for convenience, the Contractor may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) days' written notice to the Subcontractor or supplier, and that the Subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in the Termination for Convenience provisions of this Agreement;
- .9 that the Department shall have the right to enter into a contract with the Subcontractor or supplier for the same price as its subcontract or supply agreement price less amounts already paid, if the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;
- .10 that the Subcontractor or supplier shall not be entitled to payment for defective or non-conforming work, materials or equipment, and shall be obligated promptly to repair or replace non-conforming work, materials or equipment at its own cost;

**Section 4.3 Certified Subcontractors.** The Contractor shall not substitute or replace any Subcontractor or supplier certified by the District of Columbia Department of Small and Local Business Development without the Department's prior written consent.

**Section 4.4 Payment by Joint Check in Certain Instances.** If it comes to the Department's attention that a Subcontractor or supplier has not been paid in timely fashion (other than for disputed amounts), and if the Contractor fails to cure the problem within five (5) calendar days after the Department gives it written notice of the failure to pay, the Department may make payments to the Subcontractor or supplier and Contractor by joint check.

**Section 4.5 Field Measurements.** The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor. Once work is started, Contractor assumes the responsibility and costs for the work and the cost of correcting work previously installed.

**Section 4.6 Warranty of the Construction Work.** The Contractor warrants to the Department that materials and equipment furnished under this Agreement will be of good quality and new unless otherwise expressly permitted in writing, that for the one (1) year period following the Substantial Completion Date the construction work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the Program of Requirements and the Concept Design and the Approved Design. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. The Contractor and a representative of the Department shall walk the Project

together eleven (11) months after the Substantial Completion Date to identify any necessary warranty work.

**Section 4.7 Extent of Responsibility and Site Conditions.** The Contractor shall be entitled to make a Change Request for differing site or soils conditions only to the extent that: (i) the subsurface conditions on or adjacent to the Project site differ materially from those indicated in the geotechnical reports prepared by the Contractor; or (ii) such conditions could not have been discovered by a competent visual inspection of the site and are of unusual nature and differ materially from those ordinarily encountered and generally recognized as inhering to work of the character provided for in this Agreement (such circumstances, “Differing Site Conditions”). Any such Change Request shall be made pursuant to Article 8 of this Agreement.

**Section 4.8 Unsafe Materials and Hazardous Materials**

**Section 4.8.1** The Contractor shall not bring, spill or release onto the site asbestos, PCBs, or any other Hazardous Material that is not customarily used in a facility of the type and similar to the Project, and shall bring to the Department’s attention any specification of such Hazardous Materials in the design documents. If the Contractor believes that anything in this Agreement would require that it use or bring onto the site asbestos, PCBs, or any Hazardous Material that is not customarily used in a facility of the type and similar to the Project, it shall immediately inform the Department and seek direction before proceeding.

**Section 4.8.2** If Hazardous Materials beyond those contemplated in the Scope of Work are discovered on the site, the Contractor shall immediately inform the Project Manager and the Department of such discovery. Unless abatement of such Hazardous Materials is expressly included in the Program of Requirements and the Concept Design or the Approved Design, the Contractor shall be entitled to submit a Change Request in accordance with Article 8 of this Agreement by virtue of such discovery. If the Contractor is required to abate hazardous materials, the Contractor 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 Contractor shall also give those notices at the appropriate times. The Contractor shall ensure abatement subcontractors and disposal sites are appropriately licensed and qualified. In addition, the Contractor shall ensure that any subcontractors involved in the abatement of hazardous materials maintain a contractor’s pollution legal liability insurance policy of at least Two Million Dollars (\$2,000,000) for the duration of the Project and a period of three (3) years after Substantial Completion of the Project, and that any disposal site to which hazardous materials are taken carries environmental impairment liability insurance for the duration of the Project and a period of three (3) years after Substantial Completion of the Project.

**Section 4.8.3** The Contractor 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.

**Section 4.9 Progress Meetings.** The Contractor shall schedule and conduct at a minimum bi-weekly progress meetings at which the Department, the Program Manager and the Contractor and appropriate Subcontractors can discuss the status of the Work.

**Section 4.10 Written Reports.** The Contractor shall provide written reports to the Program Manager on the progress of the entire Work in accordance at least every other week.

**Section 4.11 Key Personnel.** To carry out its duties, the Contractor shall provide at least the key personnel identified in **Exhibit E** to this Agreement, who shall carry out the functions identified in **Exhibit E**. The Contractor shall not replace any of the key personnel without the Department's prior written approval, which shall not be unreasonably withheld.

**Section 4.12 Work by Separate Contractors.** The Department reserves the right to perform construction or operations related to the Project with the Department's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site.

**Section 4.13 Site Safety and Clean-Up.** The Contractor will be required to: (i) provide a safe and efficient site, with controlled access; (ii) provide wheel washing stations on site so as to prevent the accumulation of dirt and other refuse on the streets surrounding the Project site; (iii) be responsible for site security; and (iv) be responsible for the cost of temporary power used during the construction of the Project, including, but not limited to, the cost of installing such temporary wiring as may be required.

**Section 4.14 Close-out.** The Contractor shall be required to prepare and submit at close-out a complete set of product manuals, warranties, etc. The Contractor shall also provide the Department with a complete set of its Project files, including, but not limited to, shop drawings.

**Section 4.15 Salvaged and Stored Items.** The Contractor shall be responsible for salvaging and storing all items as identified by the Department.

**Section 4.16 Sediment and Erosion Control.** The Contractor shall be responsible for installing sediment and erosion control measures, inclusive of, but not limited to: silt fencing, inlet protection, stabilized construction entrances, and other control measures.

**Section 4.17 Cutting and Patching.** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the

cutting, fitting and patching. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Department or separate contractors by cutting, patching or otherwise altering such construction, or by excavation.

**Section 4.18 Correction of Work.**

**Section 4.18.1** The Department shall be at liberty to object and to require the Contractor to remove forthwith from the Project site and the Work and to promptly replace the Superintendent, any foreman, technical assistant, laborer, agent, representative, or other person used by the Contractor in or about the execution or maintenance of the Work, who in the sole opinion of the Department is misconducting himself or herself, or is incompetent or negligent in the proper performance of his or her duties, or whose performance in the Work is otherwise considered by the Department to be undesirable or unsatisfactory, and such person shall not be again employed upon the Project without the written permission of the Department or.

**Section 4.18.2** The Contractor shall promptly correct Work rejected by Department for failing to conform to the requirements of the Approved Design or applicable law or regulations whether observed before or after the Project's completion and whether or not fabricated, installed or completed, and shall correct any Work found to be not in accordance with the requirements within a period of one (1) year from the date of completion or by terms of an applicable special warranty required by this Agreement.

**Section 4.18.3** If during the guarantee or warranty period, any material, equipment or system requires corrective Work because of defects in materials or workmanship, Contractor shall commence corrective Work within forty-eight (48) hours after receiving the notice and work diligently until corrective Work is completed; provided, however, if such notice is received on the day before a weekend or a holiday, Contractor will commence corrective Work on the next business day. If Contractor does not, in accordance with the terms and provisions of the Contract Documents, commence all corrective Work within forty-eight (48) hours or if Contractor commences such Work but does not pursue it in an expeditious manner, Department may either notify the bonding company (if any) to have such Work and/or obligations performed at no additional cost to Department or may perform such Work and/or obligations and charge the costs thereof to Contractor.

**Section 4.19 Manufacturers' Warranties.**

**Section 4.19.1** The Contractor warrants that all manufacturers' or other warranties on all labor, materials and equipment furnished by Contractor or a Subcontractor or supplier shall run directly to or will be specifically assigned to Department on demand or upon Project completion without demand. In the event any issue or defect which would be covered by any warranty arises but is not addressed by the grantor of the warranty, the Contractor shall be required to act as the guarantor of the obligations under the warranty and to perform under the terms of the warranty.



**Section 4.19.2** The Contractor warrants that the installation of all materials and equipment shall be in strict accordance with the manufacturers' requirements or specifications.

**Section 4.20 Unrenovated Portions of the Structure.** In constructing the Project, the Contractor shall ensure that the unrenovated portions of the school, including, but not limited to, building systems, are not adversely affected. All unrenovated portions of the school 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 school functions at a lower level of functionality as a result of the Contractor's construction of the Project, the Contractor shall be back-charged the costs incurred by the Department in addressing the decreased functionality.

## **SECTION 5 CLAIMS FOR ADDITIONAL TIME**

**Section 5.1** Time is of the essence of this Contract.

**Section 5.2** The Contractor will perform the Work so that it shall achieve Substantial Completion by the Substantial Completion Date. Unless the failure to achieve Substantial Completion by the Substantial Completion Date is a result of an Excusable Delay, as defined in Section 5.3, the delay shall be deemed Non-Excusable and the Contractor shall not be entitled to an extension of time. Without limiting the generality of the foregoing, delays for the following reasons shall be regarded as Non-Excusable and shall not entitle the Contractor to an extension of time:

- .1 Delays due to job site labor disputes, work stoppages, or suspensions of work;
- .2 Delays due to adverse weather, unless the Contractor establishes that the adverse weather was of a nature and duration in excess of averages established by data from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for the Project locale for the ten (10) years preceding the effective date of the Contract;
- .3 Delays due to the failure of the Contractor or Subcontractors or material suppliers at any tier to perform in timely or proper fashion, without regard to concepts of negligence or fault; or
- .4 Delays due to Site conditions whether known or unknown as of the effective date of the Contract, foreseeable or unforeseeable at that time, naturally occurring or man-made; provided, however, that delays due to Differing Site Conditions or remediation of Hazardous Materials shall be deemed an Excusable Delay.

**Section 5.3** The Contractor shall be entitled to an adjustment in the Substantial Completion Date due to an Excusable Delay. The term "Excusable Delay" shall mean:

- .1 Delays due to adverse weather other than those that are classified as a Non-Excusable delay;
- .2 Delays due to acts of God, war, unavoidable casualties, civil unrest, and other similar causes of delay that are beyond the control of the Contractor; provided, however, that in no event shall a Non-Excusable delay or the action of the Contractor, or any of its employees, agents, Subcontractors or material suppliers be deemed an Excusable Delay; or
- .3 Delays caused by Differing Site Conditions or remediation of Hazardous Materials.

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

**Section 5.4** If the Contractor wishes to make a claim for an increase in the time to complete the Work required under this Agreement, written notice as provided herein shall be given. The Contractor's claim shall include an estimate of the cost and of the probable effect of delay on the progress of the Work. In the case of continuing delay, only one claim is necessary.

**Section 5.5 Acceleration.** Subject to the terms of this Section 5.5, the Department shall have the right to direct the Contractor to accelerate the Work if, in the reasonable judgment of Department, the Contractor fails to: (i) 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 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 Contractor with written notice of such event and the Contractor 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. If the Department and the Contractor are unable to agree on the terms of such corrective action plan within five (5) days after the issuance of the notice (i.e. with forty eight (48) hours after the receipt of the proposed corrective action plan), the Department shall have the right to direct such acceleration as the Department, in its reasonable judgment, deems necessary. Provided the notice provisions of this Section are complied with, the cost of any acceleration directed under this Section shall not justify an adjustment to the Lump Sum Price or the Substantial Completion Date.

**Section 5.6 Differing Site Conditions.** The term Differing Site Conditions shall mean subsurface conditions on or adjacent to the Project site which differ materially from those indicated in the geotechnical reports prepared by the Contractor. The term Differing Site

Conditions shall also include unknown physical conditions at the site of an unusual nature which differ materially from those ordinarily encountered and generally recognized as inhering to work of the character provided for in this Contract. During the Preconstruction Phase, the Contractor shall be required to conduct a thorough review of the Project site and the surrounding area and shall document its findings. In the event the Contractor fails to undertake and document such a thorough review, the Contractor shall be deemed to have known of those conditions which a thorough review would have detected.

## **SECTION 6 PAYMENT PROVISIONS**

**Section 6.1 Compensation.** The Contractor shall be paid its compensation in a series of progress payments and a final payment. Progress payments shall be based on a schedule of values that is agreed upon by the Parties as well as the Program Manager's good faith estimate of the level of completion for each component of the schedule of values.

**Section 6.2 Schedule of Values.** The Contractor has prepared the Schedule of Values attached hereto as **Exhibit C** which breaks down the Lump Sum Price for the various parts of the Work. The Schedule of Values shall be maintained in such a manner to provide a breakdown of the Lump Sum Price in enough detail to facilitate continued evaluation of applications for payment and progress reports. Large subcontracts shall be broken into several line items where, in the opinion of the Program Manager, such detail is necessary to properly track the progress of the Work. The proposed schedule of values shall also include separate line items for each part of the Work if so required by the Program Manager. The Contractor and the Program Manager shall meet as necessary to maintain the schedule of values for the Project in a manner acceptable to the Program Manager. No progress payments shall be made unless the then current Schedule of Values is acceptable to the Program Manager.

**Section 6.3 Retention.** The Department shall withhold from each progress payment an amount equal to ten percent (10%) of each progress payment. Once Substantial Completion has occurred, the Department will reduce the retention being withheld to an amount that is equal to two hundred percent (200%) of the Program Manager's good faith estimate of the remaining Work.

**Section 6.4 Documents Required with Application for Payment.** Each Application for Payment shall be accompanied by the Contractor's job cost ledgers in a form satisfactory to the Department, the Subcontractors' and Suppliers' Applications for Payment on AIA Documents G702 and G703 or other form acceptable to the Department, and such other supporting documentation as the Department may reasonably request.

**Section 6.5 Timely Payment of Subcontractors.** Within seven (7) days of receiving any payment from the Department including amounts attributable to Work performed, or materials or equipment supplied, by a Subcontractor or supplier, the Contractor shall either pay the Subcontractor or supplier for its proportionate share of the amount paid to the Contractor for the Subcontractor's or supplier's Work or materials or equipment, or notify the Department and

the Subcontractor or supplier, in writing, of the Contractor's intention to withhold all or part of the payment and state the reason for the withholding. All monies paid to the Contractor under the Agreement shall be used first to pay amounts due to Subcontractors or suppliers supplying labor or materials for the Project and only money remaining after such payments are made may be retained by the Contractor. Monies paid by joint check shall be deemed to have been paid fully to the Subcontractor or supplier named as a joint payee, unless the Department agrees otherwise in writing. Any interest paid to Subcontractors or suppliers because the Contractor has failed to pay them in timely fashion shall not entitle the Contractor to a Change Order.

**Section 6.6 Lien Waivers.** Each Application for Payment shall be accompanied by written waivers of the right to file a mechanic's lien and all other claims.

**Section 6.7 Submission.** On the twenty-fifth (25<sup>th</sup>) day of each month the Contractor shall submit to the Department (with a copy to the Program Manager) an Application for Payment, which Application for Payment shall cover the entire month during which the Application for Payment is submitted. All amounts formally submitted via Application for Payment and not disputed by the Department shall be due and payable on the last day of the month following submission or, if that is not a business day, on the following business day.

**Section 6.8 Right to Withhold Payments.** The Department will notify the Contractor within fifteen (15) days after receiving any Application for Payment of any defect in the Application for Payment or the Contractor's performance which may result in the Department's declining to pay all or a part of the requested amount. The Department may withhold payment from the Contractor, in whole or part, as appropriate, if:

- .1 the Work is defective and such defects have not been remedied; or
- .2 the Department has determined that the Contractor's progress has fallen behind the Project Schedule, and the Contractor fails, within ten (10) calendar days of the Department's written demand, to provide the Department with a realistic and acceptable plan to recover the delays; or
- .3 the Contractor has failed to pay Subcontractors or suppliers promptly or has made false or inaccurate certifications that payments to Subcontractors or suppliers are due or have been made; or
- .4 any mechanic's lien has been filed against the Department, the site or any portion thereof or interest therein, or any improvements on the site, even though the Department has paid all undisputed amounts due to the Contractor, and the Contractor, upon notice, has failed to remove the lien, by bonding it off or otherwise, within ten (10) calendar days; or
- .5 the Contractor is otherwise in substantial breach of this Agreement.

**Section 6.9 Payment Not Acceptance.** Payment of any progress payment or final payment shall not constitute acceptance of Work that is defective or otherwise fails to conform to the Contract, or a waiver of any rights or remedies the Department may have with respect to defective or nonconforming Work.

## **SECTION 7 INDEMNIFICATION.**

**Section 7.1** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Department and the Department's consultants, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

## **SECTION 8 CHANGES CLAUSE**

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

**Section 8.2 Executed Change Directive/Change Order Required.** Only a written Change Directive or Change Order, executed by the Department, may make changes to the Contract. In particular, but without limitation, a written Change Directive or Change Order executed by the Department is the only means by which changes may be made to the Substantial or Final Completion Date, or the Lump Sum Price.

**Section 8.3 Department-Initiated Changes.** If the Department wishes to make a change in the Work or to accelerate the Work, it will execute and issue to the Contractor a written Change Directive, either directing the Contractor to proceed at once with the changed Work or directing it to not to proceed, but to inform the Department, in writing, of the amount, if any, by which the Contractor believes that Substantial or Final Completion Date and/or the Lump Sum Price should be adjusted to take the Change Order or Change Directive into account.

**Section 8.4 Notice of Change Event.** The Contractor must give the Department written notice of any Change Event within ten (10) calendar days of the date on which the Contractor knew, or reasonably should have known, of the Change Event. To the extent available, the notice must state the nature of the Change Event and describe, generally, all changes in the Contract to which the Contractor believes it is entitled. Such notice is an express condition precedent to any claim or request for adjustment to the Substantial or Final Completion Date, or the Lump Sum Price arising from the Change Event and, if the notice is not given within

the required time, the Contractor will have waived the right to any adjustment to the Substantial or Final Completion Date or the Lump Sum Price arising from the Change Event.

**Section 8.5 Detailed Change Request.** Within twenty (20) days after giving notice of a change event, the Contractor shall submit a written change request describing, in reasonable detail, all adjustments it seeks to the Substantial or Final Completion Date or the Lump Sum Price as a result of the Change Event. The change request shall include the same information as described in Section 8.3 with respect to any Contract changes the Contractor seeks due to the Change Event, and the amount of any requested adjustment to the Lump Sum Price Sum shall be limited in accordance with that Subparagraph.

**Section 8.6 Markups.** For Changes to the Lump Sum Price, the following conditions shall apply:

.1 For increases in the Work which the Contractor is permitted to perform by Builder's own forces, the Lump Sum Price shall be increased by the sum of: (i) the Direct Cost of the Work; and (ii) a fee (covering home office overhead, field supervision, general conditions and profit) of fifteen percent (15%) of the sum due under (i);

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

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

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

.5 The amount of credit to be allowed by Contractor to Department for a deletion or change which results in a net decrease in the Lump Sum Price shall be

the Cost avoided as confirmed by Department plus fifteen percent (15%) for profit on the deleted work.

**Section 8.7 Failure to Agree.** If the Contractor claims entitlement to a change in the Contract, and the Department does not agree that any action or event has occurred to justify any change in time or compensation, or if the parties fail to agree upon the appropriate amount of the adjustment in time or compensation, the Department will unilaterally make such changes, if any, to the Contract, as it determines are appropriate pursuant to the Contract. The Contractor shall proceed with the Work and the Department's directives, without interruption or delay, and shall make a claim as provided in Article 12. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Contract and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

**Section 8.8 Department's Designated Representative.** The Department designates Jonathan Kayne, Interim Director, Department of General Services, as its representative with express authority to bind the Department with respect to all matters requiring the Department's approval or authorization; provided, however, the James Marshall and Kimberly Gray, Supervisory Contract Specialists in Contracts & Procurement Division, shall have the express authority to bind the Department for matters that are administrative in nature or of a value no greater than One Hundred Thousand Dollars (\$100,000). These representatives shall have the exclusive authority to make decisions on behalf of the Department concerning estimates and schedules, construction budgets, changes in the Work, and execution of Change Orders or Change Directives, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Contractor. In order for the Department to effectively manage the Project and assure that the Contractor does not receive conflicting instructions regarding the Work, the Contractor shall promptly notify the Department's representative upon receiving any instructions or other communication in connection with the Contractor's Work from any employee of the Department or other purported agent of the Department other than the Department's representative.

## **SECTION 9 LIQUIDATED DAMAGES**

**Section 9.1** If the Contractor fails to achieve Substantial Completion by the Substantial Completion Date, the Parties acknowledge and agree that the actual damage to the Department for the delay will be impossible to determine, and in lieu thereof, the Contractor shall pay to the Department, as fixed, agreed and liquidated delay damages in the amount of set forth in the Project Information Section of this Agreement per day for each calendar day of delay for failure to meet the Substantial Completion Date. The Contractor and the Department agree that the liquidated damages do not constitute, and shall not be deemed, a penalty but represent a reasonable approximation of the damages to the Department associated with a delay in the Project.

## **SECTION 10 INSURANCE AND BONDS**

**Section 10.1** The Contractor will be required to maintain the following types of insurance throughout the life of the Contract. In the event that a claim for or related to the Project is made on any such policy or any other policy, the Contractor shall be responsible for the payment of any applicable deductible and shall not be entitled to an increase in Lump Sum for the costs of paying such deductible.

- .1 Commercial general public liability insurance (“Liability Insurance”) against liability for bodily injury and death and property damage, such Liability Insurance to be in an amount not less than One Million Dollars (\$1,000,000) for liability for bodily injury, death and property damage arising from any one occurrence and One Million Dollars (\$1,000,000) from the aggregate of all occurrences within each policy year. The policy should include completed operations coverage. Such coverage shall be maintained for the duration of the Project as well as three (3) years after Substantial Completion of the Project is achieved.
- .2 Workers’ compensation and Employers Liability coverage providing statutory benefits for all persons employed by the Contractor, or its contractors and subcontractors at or in connection with the Work.
- .3 Automobile Liability, including Hired and Non-Owned Auto Liability in the amount of at least One Million Dollars (\$1,000,000) for each occurrence for bodily injury and property damage.
- .4 Builder’s risk insurance written on an “all risk” basis and covering the value of the improvements being constructed. This coverage does not need to be maintained until such time as construction operations begin.
- .5 Excess umbrella liability coverage (on at least a follow form basis) and when combined with the general liability policy has an aggregate limit of at least Five Million Dollars (\$5,000,000).
- .6 Contractor’s Pollution Liability coverage in the amount of at least Two Million Dollars (\$2,000,000) for each occurrence. Such coverage shall be maintain for the duration of the Project as well as three (3) years after Substantial Completion of the Project is achieved.

**Section 10.2** Each insurance policy shall be issued in the name of the Contractor and shall name as additional insured parties the Department and the District of Columbia, and the officers, agents and employees of each. Such insurance policies shall not be cancelable or reduced without thirty (30) days prior written notice to the Department.

**Section 10.3** All such insurance policies shall contain a waiver of subrogation against the Department and the District of Columbia, and their respective agents.



**Section 10.4** All such insurance policies shall be written by a company that is rated at least A- by A.M. Best and having a surplus size rating of at least XV and is licensed/approved to do business in the District of Columbia.

**Section 10.5 Performance Bond and Payment Bond.** The Contractor shall, before commencing the Construction Phase, provide to the Department a payment bond and performance bond, each with a penal sum equal to the Lump Sum Price. Such bond shall remain in full force and effect until Final Completion is achieved and the Department shall be able to draw upon such bond regardless of the amount paid by the Department to the Contractor, even if such amount exceeds the penal value of such bond. All bonding companies must be included on the Department of Treasury's Listing of Approved Sureties.

## **SECTION 11 ECONOMIC INCLUSION REQUIREMENTS**

**Section 11.1 LSDBE Utilization.** The Contractor shall **perform at least 35% of the contracting effort with its own forces, and if such Offeror subcontracts any work, 35% of the subcontracted effort must be subcontracted to CBEs.** 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 subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal. The Contractor has developed an LSDBE Utilization Plan that is attached hereto as **Exhibit F.** The Contractor shall comply with the terms of the LSDBE Utilization Plan in making purchases and administering its Subcontracts and Supply Agreements.

**Section 11.2 First Source Employment Act.** The Contractor shall comply with subchapter X of Chapter II of Title 2 of the D.C. Code, and all successor acts thereto, including but not limited to the Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011, and all successor acts thereto and the rules and regulations promulgated thereunder. The Contractor and all member firms and Subcontractors shall execute a First Source Agreement with the District of Columbia Department of Employment Services ("DOES") prior to beginning Work at the Project site.

**Section 11.3 Compliance with the Apprenticeship Act.** The Contractor agrees to comply with the requirements of the Apprenticeship Act of 1946, D.C. Code §§ 32-1401, et seq. It is understood and agreed that thirty five percent (35%) of all apprentice hours for the Project must be District residents. If the Contractor or any of its subcontractors fail to use its best efforts to meet this goal, the Contractor or the subcontractor shall be subject to a penalty of five percent (5%) of the labor costs associated with the Contract, in accordance with D.C. Code § 32-1430 and implementing regulations.

**Section 11.4 Workforce Utilization Plan.** The Contractor shall comply with the requirements of the approved Workforce Utilization Plan attached as **Exhibit G.** At least Thirty Five Percent (35%) of the percentage labor hours for the Project must be performed by District

of Columbia residents (such requirement, the “Workforce Utilization Requirement”). If the Department determines that the Contractor has achieved the Workforce Utilization Requirement, the Contractor shall be entitled to an incentive payment equal to one half of one percent (½%) of the Lump Sum Price.

## **SECTION 12 ALTERNATIVE DISPUTE RESOLUTION**

**Section 12.1 Notice of Claim.** If the Contractor has complied with all provisions in Section 8.4 regarding changes, and the Department has denied the changes requested in a written Change Proposal, or has failed to respond to a written Change Proposal within thirty (30) days, and the Contractor wishes to pursue a claim over the disputed item, or if the Contractor wishes to assert a claim over a contract dispute not arising from matters related to a Change Event, Change Order or Change Directive, then the written notice of claim must be submitted to the Department pursuant to procedures set forth in section 4733 of the Department's procurement rules and section 908 of the District's Procurement Practices Reform Act of 2010 (PPRA).

**Section 12.2 Contents of Notice of Contractor's Claim.** The notice of claim shall state the nature of the claim, the events or circumstances giving rise to the claim, the type of relief requested, and the amount of time or additional compensation, or other damages sought. If the amount of time, compensation, or other damages sought is not reasonably ascertainable at the time, the Contractor shall so state, explain why, and provide whatever estimates it can reasonably provide. The notice shall state clearly that the Contractor intends to assert a claim against the Department.

**Section 12.3 Appeal Procedures.** All claims arising under or in connection with the Agreement or its breach, or relating to the Project, whether framed in contract, tort or otherwise, and which are not resolved via the claims process may be resolved by filing an appeal with the District of Columbia Board of Contract Appeals in accordance with Title X of the PPRA. However, if a third party brings any claim against the Department, including, without limitation, claims of infringement of patents, copyrights or other intellectual property rights, the Department may bring an action for defense or indemnification against the Contractor in the court in which such claim is being litigated.

## **SECTION 13 MISCELLANEOUS PROVISIONS**

**Section 13.1 Extent of Contract.** The Contract, which includes this Agreement and the other documents incorporated herein by reference, including, but not limited to the Exhibits attached hereto, represents the entire and integrated agreement between the Department and Contractor and supersedes all prior negotiations representations or agreements, either written or oral. The Contract may be amended only by written instrument signed by both the Department and Contractor. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

**Section 13.2 Ownership And Use of Documents.** The Drawings, Specifications and other documents prepared by the Architect/Engineer, and copies thereof furnished to the

Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Department and the Architect/Engineer.

**Section 13.3 Governing Law.** The Contract shall be governed by and construed in accordance with the laws of the District of Columbia, without regard to its conflict of laws principles.

**Section 13.4 Buy American Act Provision.** The Contractor shall comply with the provisions of the Buy American Act (41 U.S.C. § 10a), including, but not limited to, the purchase of steel.

**Section 13.5 Davis-Bacon Act Provision.** The Contractor agrees that the construction work performed under this Contract shall be subject to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-7). The wage rates applicable to this Project are attached as **Exhibit H**. The Contractor further agrees that it and all of its subcontractors shall comply with the regulations implementing the Davis-Bacon Act and such regulations are hereby incorporated by reference.

**Section 13.6 False Claims Act.** Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in District of Columbia Code § 2-381.02.

**Section 13.7 No Third-Party Beneficiary Rights.** Nothing in this Agreement shall be construed as creating third-party beneficiary rights in any person or entity, except as otherwise expressly provided in this Agreement.

**Section 13.8 Limitations.** The Contractor agrees that any statute of limitations applicable to any claim or suit by the Department arising from this Contract or its breach shall not begin to run, or shall be deemed to be tolled, until Final Completion or, with respect to latent defects or nonconformities, such later time as the Department knew or should have known of the defect or nonconformity.

**Section 13.9 Binding Effect; Assignment.** The Contract shall inure to the benefit of, and be binding upon and enforceable by, the parties and their respective successors and permitted assigns. The Contractor shall not assign its rights under the Contract, including the right to all or a portion of its compensation, without the Department's prior written consent. Any delegation or assignment made contrary to the provisions of this Paragraph shall be null and void.

**Section 13.10 Survival.** All agreements warranties, and representations of the Contractor contained in the Contract or in any certificate or document furnished pursuant to the Contract shall survive termination or expiration of the Contract.

**Section 13.11 No Waiver.** If the Department waives any power, right, or remedy arising from the Contract or any applicable law, the waiver shall not be deemed to be a waiver of the power, right, or remedy on the later recurrence of any similar events. No act, delay, or course of conduct by the Department shall be deemed to constitute the Department's waiver, which may be effected only by an express written waiver signed by the Department.

**Section 13.12 Remedies Cumulative.** Unless specifically provided to the contrary in the Contract, all remedies set forth in the Contract are cumulative and not exclusive of any other remedy the Department may have, including, without limitation, at law or in equity. The Department's rights and remedies will be exercised at its sole discretion, and shall not be regarded as conferring any obligation on the Department's to exercise those rights or remedies for the benefit of the Contractor or any other person or entity.

**Section 13.13 Entire Agreement; Modification.** The Contract supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to the Contract shall be effective unless made in writing signed by both the Department and the Contractor, unless otherwise expressly provided to the contrary in the Contract.

**Section 13.14 Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable; each part of this Agreement is intended to be severable.

**Section 13.15 Anti-Deficiency Act.** The Department's obligations and responsibilities under the terms of the Contract and the Contract Documents are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) the D.C. Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act. Neither the Contract nor any of the Contract Documents shall constitute an indebtedness of the Department, nor shall it constitute an obligation for which the Department is obligated to levy or pledge any form of taxation, or for which the Department has levied or pledged any form of taxation. **IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE CONTRACT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.**

**Section 13.16 Termination for Default.** The Department may terminate the Contract for default if the Contractor fails materially to perform any of its duties or obligations under the

Contract. The Department must provide the Contractor with written notice of its intent to terminate the Contract under this provision seven (7) days before actually putting the termination into effect. If the Contractor has begun its curative action and has made progress satisfactory to the Department within the seven days, the Department may so notify the Contractor and the termination will not take effect. Otherwise, the termination shall take effect after seven days without further notice or opportunity to cure.

**Section 13.17 Termination for Convenience** The Department may, upon seven (7) days written notice to the Contractor, terminate the Contract in whole or specified part, for its convenience, whether the Contractor is in breach of Contract or not. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions. The Contractor shall be entitled to receive only the following with respect to the terminated portion of the Project: (1) Cost of Work performed up to the date of termination; (2) reasonable costs of terminating outstanding subcontracts and supply agreements and other similar wind-up costs in a reasonable amount; (3) a fair and reasonable portion of the overhead and profit attributable to the Work performed on the terminated portion of the Project, up to the time of termination. In the event of a termination for convenience, the Contractor shall not be entitled to profit on unperformed elements of the Work.

**Section 13.18 Anti-Competitive Practices and Anti-Kickback Provisions.**

**Section 13.18.1** The Contractor recognizes the need for markets to operate competitively and shall observe and shall comply with all applicable law, rules, and regulations prohibiting anti-competitive practices. The Builder shall not engage, directly or indirectly, in collusion or other anti-competitive practices that reduces or eliminates competition or restrains trade. The Department shall report to the appropriate authority any activity that evidences a violation of the antitrust laws, and take such other further action to which it is entitled or obligated under the law.

**Section 13.18.2** The Contractor shall observe and comply with all applicable law, rules, and regulations prohibiting kickbacks and, without limiting the foregoing, Contractor shall not (i) provide or attempt to provide or offer to provide any kickback; (ii) solicit, accept, or attempt to accept any kickback; or (iii) include, directly or indirectly, the amount of any kickback in the contract price charged by Contractor or a Subcontractor of the Contractor to the Department. The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in this subparagraph in its own operations and direct business relationships. The Department may take any recourse available to it under the law for violations of this anti-kickback provision.

**Section 13.18.3** The Contractor represents and warrants that it did not, directly or indirectly, engage in any collusive or other anti-competitive behavior in connection with the bid, negotiation or award of the Contract.

**Section 13.19 Ethical Standards for the Department's Employees and Former Employees.**

**Section 13.19.1** The Department expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed under the Contract. The Contractor may not assign to any former Department or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Subcontractor or vendor.

**Section 13.20 Gratuities and Officers Not To Benefit Provisions.**

**Section 13.20.1** If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any official, employee or agent of the Department or the District with a view toward securing the Contract or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract and may pursue such other rights and remedies provided by law and under the Contract.

**Section 13.20.2** In the event the Contract is terminated as provided in Section 13.20.1, the Department shall be entitled:

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

**Section 13.20.3** No member of, nor delegate to Congress, Mayor or City Council Member, nor officer nor employee of the District, nor officer nor employee of the Department shall be admitted to any share or part of the Contract or to any benefit that may arise therefrom, and all agreements entered into by the authorized representative of the Department in which he or any officer or employee of the Department shall be personally interested as well as all

agreements made by the Department in which the Mayor or City Council Member or officer or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department or by any officer thereof; but this provision shall not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or officer or employee of the District is de minimus.

**Section 13.21 Covenant Against Contingent Fees Provisions.**

**Section 13.21.1** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a Commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Department shall have the right to terminate the Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the Department, percentage, brokerage of contingent fee.

**Section 13.22 Conformance with Laws.** It shall be the responsibility of the Contractor to perform the Contract in conformance with the Department's Procurement Regulations (27 DCMR § 4700 et seq.) and all statutes, laws, codes, ordinances, regulations, rules, requirements and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Contractor to determine the Procurement Regulations, statutes, laws, codes, ordinances, regulations, rules, requirements and orders that apply and their effect on the Contractor's obligations thereunder. This Section 13.22 shall apply during both the Preconstruction Phase and the Construction Phase.

**Section 13.23 Warranties and Representations**

**Section 13.23.1** All disclosures, representations, warranties, and certifications the Contractor makes in its proposal in response to the RFP shall remain binding and in effect throughout the term of the Contract. The Contractor reaffirms that all such disclosures, representations, warranties, and certifications are true and correct.

**Section 13.23.2** If any disclosure, representation, warranty or certification the Contractor has made or makes pursuant to the RFP or the Contract, including, without limitation, representations concerning the 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 Contract, entitling the Department to all available remedies.

**Section 13.23.3** The terms and conditions of Section 13.23 shall apply throughout the term of this Agreement.

**Section 13.24 Responsibility for Agents and Contractors.** At all times and during both the Preconstruction and Construction Phases, the Contractor shall be responsible to the Department for any and all acts and omissions of the Contractor's agents, employees, Subcontractors, Sub-Subcontractors, material suppliers, and laborers, and the agents and employees of the Subcontractors, Sub-Subcontractors, material suppliers, and laborers performing or supplying Work in connection with the Project. This Section 13.24 shall apply throughout the term of this Agreement.

**Section 13.25 Independent Contractor.** In carrying out all its obligations under the Agreement, the Contractor shall be acting as an independent contractor, and not as an employee or agent of the Department, or joint venturer or partner with the Department. The Contractor shall have exclusive authority to manage, direct, and control the Work, and shall be responsible for all construction means, methods, techniques, sequences, and procedures, as well as for Project safety.

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

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**[NAME OF CONTRACTOR]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_



**Exhibit A**

List of Design Documents

DRAFT

**Exhibit B**

Clarifications to Design Documents

DRAFT

**Exhibit C**

Schedule of Values

DRAFT

**Exhibit D**

List of Allowances

DRAFT

**Exhibit E**

Key Personnel

DRAFT

**Exhibit F**

LSDBE Utilization Plan

DRAFT

**Exhibit G**

Workforce Utilization Plan

DRAFT

**Exhibit H**  
Davis Bacon Act Wage Determinations

DRAFT