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Date; (ii) has not been caused by the Contractor or any of its employees, agents, Subcontractors or material suppliers; and (iii) is on Project's critical path.

**Section 6.5** If the Contractor wishes to make a claim for an increase in the Contract time, written notice as provided herein shall be given. The Contractor's claim shall include an estimate of the cost and of the probable effect of delay on the progress of the Work. In the case of continuing delay, only one claim is necessary.

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

## **ARTICLE 7 COMPENSATION**

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

**Section 7.2 Schedule of Values.** The Contractor shall prepare a Schedule of Values 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 Project 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 labor and material for those elements of the Work where, in the opinion of the Project Manager, the cost and materials and labor are experienced are incurred at different points in time during the Project. Such elements of work typically include mechanical systems, vertical transport systems, windows, structural steel. The Contractor and the Project Manager shall meet as necessary to maintain the schedule of values for the Project in a manner acceptable to the Project Manager. No progress payments shall be made unless the then current Schedule of Values is acceptable to the Project Manager.

**Section 7.3 Retention.** The Department shall withhold from each progress payment an amount equal to ten percent (10%) of each progress payment until such time as fifty percent (50%) of the Work has been completed at which point the Department may cease retaining against such item. Once Substantial Completion has occurred, the Department may release further retention.

**Section 7.4 Documents Required with Application for Payment.** Each Application for Payment shall be accompanied by the Contractor's job cost ledgers in a form satisfactory to the Department, the Subcontractors' and Suppliers' Applications for Payment on AIA

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Documents G 702 and G703 or other form acceptable to the Department, and such other supporting documentation as the Department may reasonably request. Each Application for Payment shall include detailed documentation of costs as a condition to approving progress payments, but the Contractor shall nevertheless maintain complete documentation of the costs.

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

**Section 7.6 Lien Waivers.** Each Application for Payment shall be accompanied by written waivers of the right to file a mechanic's lien and all other claims for the Contractor and all Subcontractors and material suppliers at all tiers who have supplied labor or material or both for which payment is requested, subject only to receipt of payment. If the Department so requests, the Contractor shall also submit unconditional waivers of liens for itself and all Subcontractors and material suppliers at all tiers with respect to Work or materials or equipment for which payment has been previously made, and additional forms of waiver acknowledging receipt of final payment under the Contract, and providing final release of such liens.

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

**Section 7.8 Submission.** On the twenty-fifth (25<sup>th</sup>) day of each month the Contractor shall submit to the Department (with a copy to the Project Manager) an Application for Payment, which Application for Payment shall cover the entire month during which the Application for Payment is submitted. All amounts formally submitted via Application for Payment and not disputed by the Department shall be due and payable on the last day of the month following submission or, if that is not a business day, on the following business day.

**Section 7.9 Right to Withhold Payments.** The Department will notify the Contractor within five (5) 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

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

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

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

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

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

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

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

**Section 7.9.7** the Department has reasonable evidence that the Work will not be completed by the Substantial Completion Date, as required, that the unpaid balance of the Lump Sum Price would not be adequate to cover actual or liquidated damages arising from the anticipated delay; or

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

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

**Section 7.10 Payment Not Acceptance.** Payment of any progress payment or final payment shall not constitute acceptance of Work that is defective or otherwise fails to conform to the Contract, or a waiver of any rights or remedies the Department may have with respect to defective or nonconforming Work.

**Section 7.11 Department Not Obligated to Others.** The Department shall have no obligation to pay or be responsible in any way for payments to a consultant or subcontractor performing portions of the Work.

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

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

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

## ARTICLE 8 CHANGES IN THE WORK

**Section 8.1 Changes Authorized.** The Department may, without invalidating this Agreement and without notice to or approval of any surety, order changes in the Work released 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 shall be limited in accordance with that Subparagraph.

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

**Section 8.6.1** For increases in the Work which the Contractor is permitted to perform by Contractor's own forces, the Lump Sum Price shall be increased by the sum of: (i) the Direct Cost of the Work; and (ii) a fee (covering home office overhead, field supervision, general conditions and profit) of fifteen percent (15%) of the sum due under (i);

**Section 8.6.2** For increases in the Work performed by Subcontractors, the Lump Sum Price shall be increased by the sum of: (i) the Direct Cost of the Work incurred by the Subcontractor for the changed Work; (ii) a fee (covering home office overhead and profit) equal to fifteen percent (15%) of the sum due under (i) above for the Subcontractor performing such Work; and (iii) a fee (covering the Contractor's home office overhead, field supervision, general conditions and profit) of five percent (5%) of the sum of items (i) and (ii). Intervening tier Subcontractors shall be entitled to a mark-up of five percent (5%) (covering home office overhead, field supervision, general conditions and profit); provided, however, that in all situations and regardless of the number of tier Subcontractors involved, the maximum mark-up

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on the Direct Cost of the Work shall be twenty percent (25%) and provided, further, that the Contractor shall not be entitled to the markup referred to in item (iii) on changes unless such changes exceed, either individually or in the aggregate, five percent (5%) of the Lump Sum Price.

**Section 8.6.3** When both additions and credits are involved in any one change in the Work, the Contractor's Change Order and markup shall be figured on the basis of the net increase, if any.

**Section 8.6.4** Fee will not be paid by Department for overtime or weekend work unless overtime is requested in writing and approved in writing by Department.

**Section 8.6.5** The amount of credit to be allowed by Contractor to Department for a deletion or change which results in a net decrease in the Lump Sum Price shall be the Cost avoided as confirmed by Department plus fifteen percent (15%) for profit on the deleted work.

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

## **ARTICLE 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 set forth in the amount of \$ per day for each calendar day of delay for failure to meet the Substantial Completion Date. The Contractor and the Department agree that the liquidated damages do not constitute, and shall not be deemed, a penalty but represent a reasonable approximation of the damages to the Department associated with a delay in the Project.

## **ARTICLE 10 INSURANCE AND BONDS**

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

**Section 10.1.1** Commercial general public liability insurance (“Liability Insurance”) against liability for bodily injury and death and property damage, such Liability Insurance to be in an amount not less than One Million Dollars (\$1,000,000) for liability for bodily injury, death and property damage arising from any one occurrence and Two Million Dollars (\$2,000,000) from the aggregate of all occurrences within each policy year. The policy should include completed operations coverage.

**Section 10.1.2** Workers’ compensation and Employers Liability coverage providing statutory benefits for all persons employed by the Contractor, or its contractors and subcontractors at or in connection with the Work.

**Section 10.1.3** Automobile Liability, including Hired and Non-Owned Auto Liability in the amount of at least One Million Dollars (\$1,000,000) for each occurrence for bodily injury and property damage.

**Section 10.1.4** Contractor’s risk insurance written on an “all risk” basis and covering the value of the improvements being constructed. This coverage does not need to be maintained until such time as construction operations begin.

**Section 10.2** Each insurance policy shall be issued in the name of the Contractor and

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

**Section 10.3** All such insurance 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.

## ARTICLE 11 ECONOMIC INCLUSION REQUIREMENTS

**Section 11.1 LSDBE Utilization.** The Contractor shall comply with the requirements of the approved LSDBE Utilization Plan attached as **Exhibit E**.

**Section 11.2 First Source Employment Act.** The Contractor shall comply with subchapter III of Chapter 11 Title 1, and subchapter II of Chapter 11 of Title 1 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The Contractor and all member firms and Subcontractors shall execute a First Source Agreement with the District of Columbia Department of Employment Services (“DOES”) prior to beginning Work at the Project site.

**Section 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.

## ARTICLE 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, it shall inform the Department, in writing, of its claim. The notice must be delivered to the Department within fifteen (15) days of the Department's decision, or within thirty (30) days of the written request for a Change Order, if the Department has failed to respond to the request. If the Contractor wishes to assert a claim, as such term is defined in the General Conditions, over a dispute not arising from matters related to a Change Event, Change Order or Change Directive, the written notice of claim must be delivered within fifteen (15) days of the date the Contractor knew or should reasonably have known of the events giving rise to the claim or dispute.

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

**Section 12.3 Mediation.** Unless the parties hereafter otherwise agree, all disputes arising from or in connection with this Contract or its breach, or relating to the Project, whether framed in contract, tort or otherwise, shall first be referred to non-binding mediation in accordance with the American Arbitration Association's Construction Industry Mediation Rules. Within a reasonable time following the execution of the Contract, the Department, subject to the Contractor's reasonable approval, shall appoint an independent mediator(s), which will be charged with overseeing the mediation process.

**Section 12.4 Procedures.** Unless the parties hereafter otherwise agree, all disputes arising under or in connection with the Agreement or its breach, or relating to the Project, whether framed in contract, tort or otherwise, and which are not resolved by mediation, shall be resolved by the District of Columbia Board of Contract Appeals in accordance with Title X of the *Procurement Practices Reform Act of 2010* (PPRA). However, if a third party brings any claim against the Department, including, without limitation, claims of infringement of patents, copyrights or other intellectual property rights, the Department may bring an action for defense or indemnification against the Contractor in the court in which such claim is being litigated.

## **ARTICLE 13** **MISCELLANEOUS PROVISIONS**

**Section 13.1 Extent of Contract.** The Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Department and Contractor and supersedes all prior negotiations

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representations or agreements, either written or oral. The Contract may be amended only by written instrument signed by both the Department and Contractor. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

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

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

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

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

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

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

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

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and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection.

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

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

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

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

### **Section 13.6 Inspection For Supplies And Services**

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

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

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

**Section 13.7 Laws And Regulations Incorporated by Reference.** All federal and District of Columbia laws and regulations, and all Department procedures now or hereafter in effect, whether or not expressly provided for or referred to in the Contract, are incorporated by reference herein and shall be binding upon the Contractor and the Department. It shall be the responsibility of the Contractor to perform the Contract in conformance with the Department's procurement regulations and all statutes, laws, codes, ordinances, regulations, rules, requirements, and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Contractor to determine the procurement regulations, statutes, laws, codes, ordinances, regulations, rules, requirements, and orders that apply and their effect on the Contractor's obligations thereunder. However, if the application of a future law or regulation requires the Contractor to undertake additional work that is materially different in scope than that presently contemplated or required, the Contractor shall be entitled to an equitable adjustment for such additional work.

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

**Section 13.9 Anti-Competitive Practices and Anti-kickback Provisions**

**Section 13.9.1** The Contractor recognizes the need for markets to operate competitively and shall observe and shall comply with all applicable law, rules, and regulations prohibiting anti-competitive practices. The Contractor shall not engage, directly or indirectly, in collusion or other anti-competitive practices that reduces or eliminates competition or restrains trade. The Department shall report to the appropriate authority any activity that evidences a violation of the antitrust laws, and take such other further action to which it is entitled or obligated under the law.

**Section 13.9.2** The Contractor shall observe and comply with all applicable law, rules, and regulations prohibiting kickbacks and, without limiting the foregoing, Contractor shall not (i) provide or attempt to provide or offer to provide any kickback; (ii) solicit, accept, or attempt to accept any kickback; or (iii) include, directly or indirectly, the amount of any kickback in the contract price charged by Contractor or a Subcontractor of the Contractor to the Department. The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in this subparagraph in its own operations and direct business relationships. The Department may take any recourse available to it under the law for violations of this anti-kickback provision.

**Section 13.9.3** The Contractor represents and warrants that it did not, directly or indirectly, engage in any collusive or other anti-competitive behavior in connection with the bid, negotiation or award of the Contract.

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

**Section 13.11 Ethical Standards For Department's Employees And Former Employees.** The Department expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed under the Contract. The Contractor may not assign to any former Department or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Subcontractor or vendor.

**Section 13.12 Gratuities and Officers Not to Benefit Provisions**

**Section 13.12.1** If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any official, employee or agent of the Department or the District with a view toward securing the Contract or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract and may pursue such other rights and remedies provided by law and under the Contract.

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

**Section 13.12.2.1** to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor; and

**Section 13.12.2.2** as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Department) which shall be not less than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

**Section 13.12.3** No member of, nor delegate to Congress, Mayor or City Council Member, nor officer nor employee of the District, nor officer nor employee of the Department shall be admitted to any share or part of the Contract or to any benefit that may arise therefrom, and all agreements entered into by the authorized representative of the Department in which he or any officer or employee of the Department shall be personally interested as well as all agreements made by the Department in which the Mayor or City Council Member or officer or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department or by any officer thereof; but this provision shall not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or officer or employee of the District is de minimus.

**Section 13.13 Covenant Against Contingent Fees Provisions.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a Commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Department shall have the right to terminate the Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the Department, percentage, brokerage of contingent fee.

**Section 13.14 Non-Discrimination in Employment Provisions**

**Section 13.14.1** The Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. The affirmative action shall include, but not be limited to, the following:

**Section 13.14.1.1** Employment, upgrading, or transfer;

**Section 13.14.1.2** Recruitment or recruitment advertising;

**Section 13.14.1.3** Demotion, layoff, or termination;