

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF GENERAL SERVICES

ARCHITECTURAL/ENGINEERING SERVICES FOR  
BENNING PARK COMMUNITY CENTER

Solicitation #: DCAM-15-AE-0157

Addendum No. 4  
Issued: October 14, 2015

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This Addendum Number 04 is issued by e-mail on October 14, 2015. Except as modified hereby, the Request for Proposals (“RFP”) remains unmodified.

**Item #1**

**Requests for Information:** Below is a list of questions received and the Department’s responses.

1. Please clarify if third party review is allowed to be under contract to the Architect. Consultation with a certified third party review firm indicates that DCRA has issued a position that third party is not allowed to be under contract to the Architect. **Response: The Department will engage the third party plan reviewer. The Architect will be required to coordinate and work with the third party plan reviewer to make the required changes to the design documents based on any permit comments.**
2. Permits:
  - a. Is the Architect responsible for the work associated with obtaining all the permits, e.g. expediting/obtaining all signatures? **Response: This will be handled through the builder.**
  - b. If the Architect is responsible for obtaining signatures on all permits, is the Architect responsible for permit fees (to be included as a reimbursable expense)? **Response: Please see Section 4.3 of the Form of Contract with respect to permit fees.**
3. Reimbursable Expenses:
  - a. How is the Architect to handle reimbursable expenses? **Response: Please see Section 4.3 of the Form of Contract.**
  - b. Is there a differentiation between travel/in-house (copy, printing, delivery) expenses and expenses providing materials to DGS, DCRA and other Approvals Agencies? **Response: Please see Section 4.3 of the Form of Contract.**

**Item #2**

**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 #3**

**The bid date is hereby changed.** Proposals are due by **October 21, 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. 4 -

**AGREEMENT FOR  
ARCHITECTURAL/ENGINEERING SERVICES**

**BY AND BETWEEN**

**DISTRICT OF COLUMBIA  
DEPARTMENT OF GENERAL SERVICES**

**AND**

**[SELECTED OFFEROR]**

**BENNING PARK COMMUNITY CENTER**

**AGREEMENT BETWEEN OWNER AND ARCHITECT FOR  
ARCHITECTURAL/ENGINEERING SERVICES  
BENNING PARK COMMUNITY CENTER  
DCAM-15-AE-0157**

**THIS AGREEMENT** (“Agreement”) is made by and between the **DISTRICT OF COLUMBIA GOVERNMENT**, acting by and through its **DEPARTMENT OF GENERAL SERVICES** (the “Owner” or the “Department”) and **[OFFEROR]**, being duly organized under the laws of the [Location], and with a place of business at [ADDRESS] (the “Architect”).

**WITNESSETH:**

**WHEREAS**, the Department issued a solicitation for architectural/engineering services for the modernization of the Benning Park Community Center (“Benning Park”), located at the intersection of Southern Avenue and Fable Street, SE, Washington, DC (the “Project”); and

**WHEREAS**, the Architect submitted a proposal dated [DATE] in response to the Department’s solicitation to provide such services; and

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

**WHEREAS**, the Architect wishes to provide all of the design and related services necessary for the Project pursuant to the terms and conditions set forth in this Agreement;

**WHEREAS**, the Department intends to engage a builder (the “Design-Builder”) to work with the Architect in advancing the design, to provide a guaranteed maximum price (“GMP”) for the requisite construct, to assume the Architect’s contract and manage the completion of the design after a GMP has been established, and to construct the Project;

**WHEREAS**, the Department requires that the Project, including the requisite construction, be Substantially Complete no later than June 2017 (the “Substantial Completion Date”);

**WHEREAS**, the Department has retained the services of a Program Manager (the “Program Manager”) to advise it concerning the Project; and

**WHEREAS**, the Parties entered into a letter contract dated [DATE] (the “Letter Contract”) pursuant to which the Architect was authorized to provide preliminary services in furtherance of the Project;

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

**ARTICLE 1**  
**GENERAL PROVISIONS**

**Section 1.1 Relationship of Parties.** The Architect accepts the relationship of trust and confidence established with the Department by this Agreement, and covenants with the Department to furnish the Architect's reasonable skill and judgment and to cooperate with the Program Manager in furthering the interests of the Department. The Architect shall use its best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Department. The Department shall endeavor to promote harmony and cooperation among the Department, Architect, Design-Builder, Program Manager, and other persons or entities employed by the Department for the Project.

**Section 1.2 Project Description.** In general, the Project includes the development of a design for the modernization. The modernization shall include ADA accessibility requirements (including an elevator), life safety and fire protection requirements, security requirements, IT renovations, window replacements, pool infiltration systems, MEP systems renovations, roof renovations and various exterior site improvements. Other renovation improvements are to occur in the existing spaces, which include multi-purpose activity rooms, kitchen, a computer lab, fitness area, dance studio, office area, reception area, lounge area, locker rooms, restrooms, boxing area and the gymnasium. Exterior renovations are to include improvements to the existing walkways, parking area, and landscape. The renovation shall be constructed in so as to achieve, at a minimum, LEED – Silver certification. As described herein, a Guaranteed-Maximum Price will be based on the Permit Set.

**Section 1.3 Program Manager.** At its discretion, the Department may hire a Program Manager (or "PM") to provide certain program management functions. The Program Manager shall, at all times, be acting solely for the benefit of the Department, not the Architect. The Program Manager shall not be authorized to modify any of the rights or obligations of the Department or the Architect pursuant to this Agreement, or to issue Change Orders or Change Directives. **The Architect hereby acknowledges and agrees that only a duly authorized contracting officer shall have the authority to issue Change Orders or Change Directives on the Department's behalf. As of the date that this Agreement is signed, the Department's duly authorizing contracting officers are Christopher Weaver, James Marshall, and Kimberly Gray.**

**Section 1.4 General Description of Architect's Duties.** It is the intent of the Parties that the Architect provide all architectural, engineering and other services necessary to develop a design for the Project that is consistent with the Department's programmatic, budgetary and schedule requirements for the Project, and to produce the required deliverables. In furtherance of this understanding, the Architect shall be required provide all such services in a timely manner so as to permit DPR to begin to occupy the Project at least two weeks prior to the Substantial Completion Date. Without limiting the generality of the foregoing, it is understood and agreed that the Architect will be responsible for all aspects of the design. The Architect's services include, but are not limited to, (i) engineering services in the civil, structural, mechanical, electrical and plumbing engineering disciplines as well as any appropriate specialty subconsultants; (ii) the design of FF&E; (iii) engaging the services of an industrial hygienist or

similar specialist to survey existing structures on the Project Site so as to identify hazardous materials that require abatement (if needed); (iv) sustainable design initiatives including LEED certification; and (v) preparing a Phase 1 Archaeological Survey (if needed).

**Section 1.5 Phases.** In general, the Architect's work shall be divided into two phases as is more fully described in Articles 2 and 3. Generally, these duties include (i) development of a Permit Set of construction documents, as defined herein; and (ii) furthering the Permit Set for the Project as may be required by the Builder and providing such construction administration services as are requested by the Design-Builder. The services to be provided under Article 2 constitute the design phase services to be performed by the Architect (the "Design Phase Services"). The services to be provided under Article 3 constitute the construction phase services to be provided by the Architect (the "Construction Phase Services").

**Section 1.6 Delivery Method.** The Department intends to use a Modified Design/Build delivery method for this Project. The Architect understands and agrees that the Department intends to engage a Design-Builder following the execution of this Agreement while the Architect is preparing the schematic design documents for the Project and that such Design-Builder shall participate in the design process by reviewing design drawings, conducting constructability reviews and assisting with cost estimating to ensure that the design developed by the Architect is consistent with the Department's program, budget and schedule for this Project. Working together, but under separate contracts, the Architect and the Design-Builder will develop a Permit Set that will serve as the basis of a guaranteed maximum price ("GMP") to be provided by the Design-Builder for the construction of the Project. The Department expects that these documents will be completed in May 2016 and that the Design-Builder will put them out to bid with trade subcontractors in May/June 2016. Value engineering (if required) and GMP negotiations will occur in June/July 2016. Assuming that an acceptable GMP is developed, the Department intends to enter into an agreement with the Design-Builder establishing the GMP for the completion of the Project. Concurrent with the execution of the agreement establishing the GMP (the date of such execution, the "GMP Date"), the Department will assign this Agreement in its entirety to the Design-Builder and from and after the GMP Date, the Architect's contract shall be with the Design-Builder, and the Design-Builder shall be responsible to complete both the design and the construction of the Project. Such assignment shall occur automatically at the time the GMP is agreed to by the Builder and the Department and without the need for any further document; provided, however, that the Department shall issue a notice to both the Builder and the Architect confirming such assignment. The Architect hereby consents to such assignment. In the event that the Design-Builder fails to complete the Project, this Agreement will revert to the Department.

**Section 1.7 Schedule.** The Architect shall provide the services required hereunder in accordance with the schedule set forth below.

**Section 1.7.1 Design Phase Schedule.** During the Design Phase, the Architect shall provide those services and deliverables set forth in Article 2 in accordance with the schedule set forth below:

- .1 Submission of Concept Design: January 18, 2016;

- .2 Submission of Schematic Design: February 26, 2016;
- .3 Submission of Design Development Documents: April 22, 2016; and
- .4 Submission of the Permit Set: May 23, 2016.

**Section 1.7.2 Construction Phase Schedule.** A schedule for Construction Phase Services, including deliverable deadline for construction documents, if required, shall be developed by the Parties once the Design-Builder is engaged.

**Section 1.7.3 Time is of the Essence.** Time is of the essence in the performance of the Architect's obligations under this Agreement.

**Section 1.8 Department's Representative.** The Department's representative for this Project shall be:

Christopher Weaver  
Acting Director  
Department of General Services  
2000 14<sup>th</sup> Street, NW, 8<sup>th</sup> Floor  
Washington, DC 20009

Although day-to-day communications with the Architect shall be routed through the Program Manager, only the individual specified in this Section 1.8 shall have the authority to alter the terms of this Agreement; provided, however, that other duly authorized contracting officers shall have the authority to act on behalf of the Department with respect to matters with value up to \$100,000. Without limiting the generality of the foregoing, **it is understood and agreed that the Program Manager shall not have the authority to: (i) increase the Architect's fee or the not-to-exceed amount established herein; (ii) authorize any additional work; or (iii) increase the overall Project budget or the specified design-to-budgets.**

**Section 1.9 Architect's Representative.** The Architect representative for this Project shall be:

[ARCHITECT'S REPRESENTATIVE]

The Architect hereby represents and agrees that the representative specified in this Section 1.9 has the full legal authority to bind the Architect and to agree to changes to the terms of this Agreement.

**Section 1.10 Project Budget.** The Architect has been advised that the Government of the District of Columbia has set aside \$5 million (such amount, the "Design-to-Budget") to complete the Work. Such Budget is intended to cover (construction costs, design costs, FF&E, and the design-builder's fees and general conditions), and all cost estimates shall be prepared based on such components. Any increases to such Design-to-Budget must be approved by the Department's Budget Representative. As used herein, the term "Budget Representative" shall mean the Department's Director or its Deputy Director – Capital Construction. Any increase to the Design-to-Budget shall only be effective if such authorization is signed by the Budget

Representative. For the avoidance of doubt and as more fully set forth herein, the Architect further understands and agrees that it will manage its work in accordance with the Design-to-Budget Requirements set forth herein.

**Section 1.11 Land Use Entitlements.** The Parties acknowledge that the design for the Project will require various land use approvals. The Parties anticipate that the approval of the following bodies may be required:

- .1 Commission of Fine Arts
- .2 Office of Planning
- .3 Office of Historic Preservation

The Architect shall endeavor to obtain from the bodies listed above the approvals required in order for the Project to proceed. The Architect acknowledges that the aspects of the design for the Project may need to be revised or redesigned in order to obtain such approvals, and the fixed fee set forth herein includes sufficient amounts for such redesign.

**Section 1.12 Permits.** In addition to securing land use approvals, the Parties anticipate that permits will be required from the following bodies:

- .1 District of Columbia Department of Consumer and Regulatory Affairs
- .2 District of Columbia Department of Environment
- .3 District of Columbia Department of Transportation
- .4 District of Columbia Water and Sewer Authority

The Architect will be required to respond to comments provided by the regulatory agencies on the design documents as contemplated in Section 2.10 of this Agreement.

**Section 1.13** It is understood and agreed that certain of the design services required by this Agreement were performed by the Architect while the Letter Contract was in place, and the terms of the Letter Contract shall merge into and be superseded by this Agreement upon its execution.

## **ARTICLE 2** **DESIGN PHASE SERVICES**

**Section 2.1** The Architect shall provide all services, professional and otherwise, necessary to develop a design for the Project. Without limiting the generality of the foregoing, the Architect shall provide the services set forth in this Agreement and all other services reasonably necessary to achieve the goals set forth herein. The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Architect shall review laws, codes, and regulations applicable to the Architect's services. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

## **Section 2.2 Key Personnel.**

**Section 2.2.1** Attached as **Exhibit A** is a list of the key personnel and the role played by each that will be assigned by the Architect and its principal consultants to this Project. The Architect understands that the Owner selected the Architect based in large part on the key personnel proposed to staff this Project, and as such, the Architect agrees that the Architect will not be permitted to reassign any of the key personnel unless the Owner approves the proposed reassignment and the proposed replacement. In the event that any of the key personnel become unavailable to work on this Project for reasons beyond the control of the Architect or its principal consultants (i.e. due to retirement, resignation, etc.), the Architect shall propose a substitute for any such individual and obtain the Owner's consent to such substitute

**Section 2.2.2** Certain members of the Architect's Key Personnel shall be subject to liquidated damages for their removal or reassignment by the Architect. Those members of the Architect's Key Personnel subject to the liquidated damages provisions of this Agreement shall be identified in **Exhibit A** as subject to the liquidated damages provisions. In the event there is no delineation in **Exhibit A** of those members of the Architect's Key Personnel subject to the liquidated damages provisions of this Agreement, then all of the Key Personnel shall be subject to the liquidated damages provisions of this Agreement. In each instance where the Architect removes or reassigns one of the key personnel listed in **Exhibit A** as being subject to liquidated damages (but excluding instances where such personnel become unavailable due to death, disability or separation from the employment of the Architect or any affiliate of the Architect) without the prior written consent of the Owner's Designated Representative, the Architect shall pay to the Owner the sum of Twenty Five Thousand dollars (\$25,000) as liquidated damages and not a penalty, to reimburse the Owner for its administrative costs arising from the Architect's failure to provide the Key Personnel. The foregoing liquidated damage amount shall not bar recovery of any other damages, costs or expenses other than the Owner's internal administrative costs. In addition, the Owner shall have the right, to be exercised in its sole discretion, to remove, replace or to reduce the scope of services of the Architect in the event that a member of the Key Personnel has been removed or replaced by the Architect without the consent of the Owner. In the event the Owner exercises the right to remove, replace or to reduce the scope of services of the Architect, the Owner shall have the right to enforce the terms of this Agreement and to keep-in-place those members of the Architect's team not removed or replaced and the remaining members shall complete the services required under this Agreement in conjunction with the new members of the Architect's team approved by the Owner.

**Section 2.3** Except with the knowledge and consent of the Department's Designated Representative, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

**Section 2.4** The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner. The Architect shall review the Owner's

Program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

**Section 2.5** The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

**Section 2.6** Upon request of the Owner, the Architect shall make periodic presentations to explain the design of the Project to representatives of the Owner and to others in support of the Owner's efforts for the Project. The Architect understands and agrees that this obligation will require the Architect to participate in briefings of the affected neighbors, community organization, community leaders and District government officials as identified by Owner. Without limiting the generality of the foregoing, the Architect understands and agrees that it shall be required to meet at least once a month with certain community groups for the duration of the Project and that such meetings are likely to be more frequent during key aspects of the design process.

**Section 2.7 Concept Design.** The Architect shall develop a concept design for the Project. Such concept design shall be consistent with the Owner's Program and schedule for the Project.

**Section 2.7.1** The Architect shall be required to meet with the Department's Program Manager within one (1) week of its appointment in order to discuss the manner in which this project will proceed and the requirements applicable to the Project. The Architect will also be required to meet with other stakeholders to better understand the needs and requirements of the Project.

**Section 2.7.2 Services.** During the Concept Design Phase, the Architect will work with Owner and other stakeholders to further develop the programmatic requirements and prepare a concept design for the Project. At a minimum, during this phase, the Architect shall complete the following tasks:

- .1 Conduct meetings with the DGS representatives to confirm instructional program and verify community center requirements on a space-by-space basis.
- .2 Conduct life safety/building code analysis to verify compliance of design with DCRA's latest adaptation of the IBC code in use at the time the Contract is executed.
- .3 Conduct LEED Workshops with design team and DGS representatives to identify sustainable design strategies to be included in revised design. It is understood that a minimum of LEED for Silver certification is expected.
- .4 Participate in Value Engineering workshops with DGS representatives.
- .5 Prepare and submit EISF Submission.
- .6 Confer with the Department's IT representatives/consultants to verify technological requirements for the Project.

- .7 Perform/update a topography survey, if needed.
- .8 Request and receive hydrant flow test.
- .9 Perform alternative mechanical systems evaluation and recommend selection.
- .10 Confer with audio-visual and acoustic consultants to establish design requirements for the Project.
- .11 Prepare and submit a Phase 1 Archaeological Survey to DC HPRB, if needed, including all permitting and development of civil plans as required to support the work.
- .12 Survey existing facility to confirm locations, types, quantities and abatement specifications of hazardous materials to be abated, if needed.

**Section 2.7.3 Deliverables.** During this phase, the Architect will be required to prepare and to submit to the Department the below-listed deliverables. It is understood that all such deliverables shall be subject to review and approval by the Department, and the Architect's pricing assumes that revisions may be required to these documents to address concerns raised by the Department and/or other Project stakeholders.

- .1 Historic Resources Survey, if needed
- .2 Survey of existing conditions
- .3 Results of Hazardous Materials Survey, if needed
- .4 Conceptual floor plan and site plan.
- .5 Report with quantities and types of hazardous materials to be abated.
- .6 Phase 1 Archaeology survey, if needed
- .7 Flow Test Results
- .8 Record of Accepted LEED Strategies
- .9 Record of Accepted Value Engineering Strategies
- .10 EISF Submission.
- .11 Submission of progress plans for building and site at each phase of development.
- .12 Summary of Required Agency Review and Timetables, including but not limited to: Office of Planning ("OP"), and Commission of Fine Arts ("CFA")
- .13 Architectural Concept Development
  - i. Development of final master site plan
  - ii. Building plan
  - iii. Preliminary cost estimates
  - iv. Project schedule

**Section 2.8 Schematic Design Phase.** Based on the concept design prepared by the Architect as well as written and oral feedback from Department and its Program Manager, the Architect shall develop a schematic design that meets the requirements of the Department's Program and schedule.

**Section 2.8.1 Services.** The Schematic Design shall contain such detail as is typically required for a schematic design by AIA Best Practices. In general, the Architect shall be required to further develop conceptual plans and incorporate design changes; conduct additional community meetings and meet with Project stakeholders regarding the Project to solicit input

and keep constituents informed); and prepare necessary presentation materials (including 3-D renderings and models) to communicate design and obtain approval of design direction.

**Section 2.8.2 Deliverables.** In addition to the services described in Section 2.8.1, above, the Architect shall prepare and submit to the Department the following deliverables. All such deliverables shall be subject to review and approval by the Department. The Architect shall be required to revise these documents, without additional compensation, to address concerns raised by the Department and/or other project stakeholders.

- .1 Digital site and floor plans (including adjacencies and room locations);
- .2 Preliminary building elevations and sections;
- .3 Plan-to-Program Comparison;
- .4 Preliminary LEED Scorecard;
- .5 Design Narrative; and
- .6 Updated Project schedule and cost estimate (to be provided based on Schematic Design drawings).

**Section 2.8.3** At the end of the Schematic Design Phase, the Architect shall seek and obtain in writing from the Department's Budget Representative confirm of the Design-to-Budget. For the avoidance of doubt, in the absence of any adjustment to the previously approved Design-to-Budget by the Department's Budget Representative, the Architect shall be required to design to the previously approved Design-to-Budget. The Architect shall use its best efforts to develop the design development documents and all subsequent design documents in a manner that is consistent with the Design-to-Budget.

**Section 2.9 Design Development Phase.** Based on the approved schematic design and in a manner consistent with the Design-to-Budget, the Architect will be required to prepare a set of design development documents that describe the Work. As soon as the Design-Builder is appointed, the Architect shall work closely with the Design-Builder to develop an agreed upon listing of the number of bid packages that will be required as well as the level of detail that shall be included in each such bid package that will be included in the Permit Set. The Permit Set will serve as the basis of the Design-Builder's GMP. It is anticipated that this process will involve a series of meetings and working sessions with regard to each of the bid packages. No later than thirty (30) days after the Design-Builder is appointed, the Architect shall submit to the Department a memorandum which describes the packages that will be required for the Permit Set and the level of detail for each such package.

**Section 2.9.1** The Architect understands that the Owner intends to appoint the Design-Builder during the Design Development Phase and that the Architect and the Design-Builder shall work in close cooperation with each other. During the design development phase, the Architect shall work with the Builder to ensure that the design evolves in a manner that is consistent with the Design-to-Budget, schedule (i.e. to address the potential impact of long-lead purchasing items included in the design) and constructability. The Architect shall be required to work with the Design-Builder selected for this Project, and at a minimum shall meet with the builder twice a month to discuss the status of the design and key issues.

**Section 2.9.2** The Architect shall perform the following services required during this phase:

- a. Select and draft specifications for materials, systems, equipment.
- b. Develop detailed and dimensioned plans, wall sections, building section, and schedules.
- c. Complete code compliance analysis and drawing.
- d. Confirm space-by-space equipment layouts with representatives from DGS.
- e. Conduct follow up meetings with agencies as required.
- f. Coordinate furniture, fixtures, and equipment requirements (“FF&E”).
- g. Present the design to CFA, Office of Planning, and other regulatory agencies as required
- h. Register the project with USGBC to obtain LEED certification and pay all registration fees.

**Section 2.9.3** The Architect shall prepare and submit to the Department the following deliverables. All such deliverables shall be subject to review and approval by the Department. The Architect shall be required to revise these documents to address concerns raised by the Department and/or other project stakeholders.

- a. 35% (minimum progress) documents for all technical disciplines, drawings and specs
- b. 50% design development progress printing.
- c. A reconciliation report that addresses issues raised by the Design-Builder as a result of the 50% progress printing.
- d. CFA submission materials; meetings and presentations to CFA as required
- e. Updated Cost Estimate, Schedule (including phasing plan)
- f. Updated LEED Scorecard

**Section 2.9.4** At the conclusion of the Design Development Phase and based on input from the Architect and the Design-Builder’s construction estimates, the Department shall consider any changes to the Design-to-Budget. For the avoidance of doubt, in the absence of any adjustment to the previously approved Design-to-Budget by the Department’s Budget Representative, the Architect shall be required to design to the previously approved Design-to-Budget, including any value engineering that may be required in order to return the Project to the Design-to-Budget. It is understood that any such value engineering or redesign is included in the fixed fee set forth herein.

## **Section 2.10 Permit Set.**

**Section 2.10.1** The Architect shall be required to develop a Permit Set. The Permit Set shall represent the further progression of the approved design development documents together with any value engineering strategies approved by the Department and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. It is understood and agreed that the Permit Set will not be a fully complete set of construction documents, but it shall be code compliant and permit ready, with all major systems sufficiently designed, detailed, specified, coordinated, and

developed.

With regard to the mechanical, plumbing, elevators, electronic systems and other manufactured products, the parties anticipate that they may be purchased on a design-build basis. For those systems that will be purchased on a design-build basis, the Architect shall be required to: (x) provide a description of the system and its general layout; (y) provide a performance specification that contains detail and performance criteria that are acceptable to the Owner; and (z) review submissions from subcontractors (both while developing the GMP and thereafter) to determine whether they comply with the performance specification. With regard to finishes, the Architect shall prepare a description of the finishes that is acceptable to the Owner and in such a level of detail that it will permit the builder to provide a GMP.

The schedule of values attached as **Exhibit B** includes credit for certain systems that the Builder may elect to purchase on a design-build basis, and in the event such system(s) are purchased on a design-build basis this Architect's fee shall be reduced appropriately.

**Section 2.10.2** The Architect shall incorporate into the Permit Set the design requirements of governmental authorities having jurisdiction over the Project. In addition, the Architect shall be required to (a) define, clarify, or complete the concepts and information contained in the Permit Set; (b) correct design errors or omissions, ambiguities, and inconsistencies in the Permit Set (whether found prior to or during the course of construction); and (c) correct any failure of the Architect to follow written instructions of the Department during any phase of design services or the construction of the Project provided they are compatible with industry standards.

**Section 2.10.3 Deliverables.** The Architect shall provide the following deliverables during this phase:

- a. Prepare and submit Permit Set documents
- b. Prepare detailed and coordinated drawings and specifications to be included in the Permit Set.
- c. Prepare application and submit documents for building permit.
- d. Have all plans certified by a third party plan reviewer approved by DCRA for permit document submission.
- e. Upload all documents to DCRA's permit document review website in accordance with their instructions.
- f. Prepare all traffic control plans required to obtain relevant DDOT permit approvals at all stages of the project.

**Section 2.10.4** In addition to preparing the Permit Set, the Architect shall, at no additional cost to the Owner or the Design-Builder,

- .1 meet with the Design-Builder as and when requested to review the design, its constructability, and consistency with the GMP;
- .2 work with the Design-Builder in order to implement such value engineering ideas as may be necessary to meet the budget reflected in the GMP, including revising or preparing any design documents necessary to implement such value

- engineering;
- .3 address issues raised by the Code Official during the permit review process; and

**Section 2.10.5** The Architect shall facilitate the Design-Builder's bidding of the Permit Set with trade subcontractors. These services will include, but are not necessarily limited to:

- a. Assist Builder with distribution of documents, as needed.
- b. Prepare and issue bidding addenda.
- c. Respond to bidding questions and issue clarification, as needed.
- d. Consider and evaluate requests for substitutions
- e. Assist with bid openings and tabulations as needed.

**Section 2.11 Value Engineering/GMP Formation.** In furtherance of the Architect's obligation to design to the Design-to-Budget, the Architect understands and agrees that value engineering and other design changes may be required during the Design Development Phase, Permit Set Phase and at the conclusion thereof as bids are received from trade subcontractors in order to reach a design and a GMP that is consistent with the Owner's budget requirements, as they were specified at the conclusion of the schematic design phase. The Architect understands and agrees that it shall be required to work with the Owner and the Builder as they negotiate the GMP and that such efforts may involve redesigning portions of the Project or its systems and that the Architect shall not be entitled to any additional compensation as a result of such efforts. The Architect further understands and agrees that the Permit Set phase shall not be considered complete until and unless a GMP is agreed upon.

The Architect understands and agrees that any such redesign may need to be completed on an expedited basis or in multiple packages in order to keep the Project on schedule and the Architect shall use its best efforts to meet the Project's schedule requirements in performing such redesign. It is understood and agreed by both Parties to this Agreement that the Architect's redesign obligations under this Section 2.11 shall be the limit of the Architect's liability for the failure to meet its design to budget obligations.

### **ARTICLE 3**

#### **CONSTRUCTION DOCUMENTS AND CONSTRUCTION PHASE SERVICES**

**Section 3.1 Assignment and Further Design Services.** It is contemplated that the Design-Builder will provide a GMP based on the Permit Set and that thereafter, the Architect's contract will be assigned to the Design-Builder, and the Architect will work directly for the Design-Builder from such time. From and after such assignment, the Architect shall be required to provide such services as may be required in order to advance the Project, including, but not limited to, the preparation of more detailed construction documents and the provision of construction administration services. During the Design Development Phase, the Builder and the Architect shall negotiate a definitive scope for such services and a mutually acceptable fee for such services. Such service and fee shall be subject to the Owner's approval as part of the GMP approval process. The Architect understands and agrees that the Design-Builder shall be solely responsible for compensating the Architect for such services and that the Department shall not be liable for the cost of such services.

**Section 3.2 Construction Documents.** It is contemplated that the Architect will advance the Permit Set, as may be required by the Builder, after this Agreement is assigned to the Builder. If so requested by the Builder, the Architect shall, based on the Owner's approval of the Permit Set and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, prepare further developed Construction Documents for the Owner's approval. The Parties anticipate that with regard to those systems that are being purchased on a design-build basis the Architect will not be required to develop detailed Construction Documents and that the design-build subcontractor will be required to prepare and seal such documents. However, with regard to such systems, the Architect will be required to: (i) review the subcontractor's documents to ensure compliance with the performance specifications; and (ii) cooperate with the builder to assist in finalizing the design. For systems or work that are not purchased on a design-build basis, the Construction Documents shall illustrate and describe the further development of the approved Permit Set and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work.

**Section 3.2.1** The Architect shall modify or amend the Construction Documents and reissue portions of or all to: (a) define, clarify, or complete the concepts and information contained in the Construction Documents; (b) correct design errors or omissions, ambiguities, and inconsistencies in the Construction Documents (whether found prior to or during the course of construction); and (c) correct any failure of the Architect to follow written instructions of the Owner during any phase of design services or the construction of the Project provided they are compatible with industry standards. In addition, the Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project

**Section 3.2.2 Continued Design to Budget Requirements.** In general, the Architect shall use its best efforts to develop the Construction Documents in a manner that is consistent with the Design to Budget that was established at the GMP. In furtherance of the Architect's design to budget obligations, the Architect hereby agrees as follows:

- .1 With regard to any bid package that was purchased at the GMP on a design assist basis or with a mini-GMP, the Architect shall work with the Design-Builder and the relevant trade subcontractor to develop a design that can be accommodated by such mini-GMP or other subcontract structure. The Architect understands and agrees that this may require redesign and that any such redesign is included within its base fee.
- .2 With regard to work that will be purchased subsequent to the formation of the GMP, the Architect shall be required to work with the Owner and the Design-Builder should the trade bids for any such package exceed the design to budget figure established at the time the GMP was agreed upon for such package at no additional cost to either the Owner or the Design-Builder.

The Architect understands and agrees that any such redesign may need to be completed on an

expedited basis or in multiple packages in order to keep the Project on schedule and the Architect shall use its best efforts to meet the Project's schedule requirements in performing such redesign. It is understood and agreed by both parties to this Agreement that the Architect's redesign obligations under this Section 3.4 shall be the limit of the Architect's liability for the failure to meet its design to budget obligations.

**Section 3.2.3** At a minimum and in addition to any services that would typically be provided by an architect during this phase, the Architect shall provide prepare detailed and coordinated drawings and specifications for construction. The Architect shall also be required to prepare and submit at least two (2) sets of drawing updates that update the early packages to reflect changes and/or evolution of the design that occur in later packages.

**Section 3.3 Construction Administration.** The Owner and Architect acknowledge that in order to construct the Work, the Design-Builder will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review. During the Design Development Phase, the Owner, the Architect and the Design-Builder shall meet and develop a plan for the in which Construction Administration Services will be provided (the "Construction Administration Plan"). Among other things, the Construction Administration Plan shall include provisions addressing: (i) where construction administration services will be provided (i.e. on or off site); (ii) the staffing level that will be devoted to construction administration services; (iii) timelines for reviewing shop drawings, submittals, RFIs, etc.; and (iv) the process by which shop drawings, submittals, RFIs, etc. will be handled. Once agreed upon by the three parties, the Architect shall provide construction administration services in accordance with the Construction Administration Plan.

**Section 3.3.1** At a minimum and in addition to any services that would typically be provided by an architect during this phase, the Architect shall perform the following services:

- a. Attend biweekly progress meetings. Architectural site visits are included in base fee.
- b. Review and process shop drawing submissions, attend pre-installation and above ceiling coordination meetings, RFI's, etc.
- c. Prepare meeting notes and records of decisions/changes made.
- d. Conduct punchlist inspections.
- e. Review closeout documents for completeness.

**Section 3.3.2** The Architect shall provide the following deliverables during this phase:

- a. Meeting minutes, if requested
- b. ASI's or other clarification documents
- c. Punchlists
- d. Closeout document review comments
- e. As-Built Drawings (if authorized)

## **ARTICLE 4** **COMPENSATION**

**Section 4.1 Compensation For Design Phase Services.** The Architect shall be paid a fixed fee of [AMOUNT (\$NUMBER)] (the “Design Fee”) for all services necessary to accomplish the objectives of the Design Phase as described in Article 2 above. Monthly payments shall be made to the Architect on the percentage complete basis. Such fee is broken down among the various design phases in the schedule of values attached hereto as **Exhibit B.** Such schedule of values also breaks out the cost of mechanical design in each phase of the design process. It is understood that such breakout price shall be the basis for determining any credit for systems purchased on a design-build or design-assist basis.

**Section 4.2 Construction Documents and Construction Phase Services.** The Architect has quoted a fixed fee of [AMOUNT (\$NUMBER)] to progress the Permit Set into a fully complete construction documents. In the event, the Design-Builder requires something less than a fully complete set of construction documents (i.e. a fully coordinated and complete issued for construction set), the Design-Builder and the Department shall be entitled to an appropriate credit to the quoted fixed fee. For any construction administration services that the Design-Builder may request that the Architect provide, as contemplated by Section 3.3 of this Agreement, the Architect and the Design-Builder shall agree on a fee for such services; provided, however, that in no event shall such fee exceed [INSERT BID AMOUNT]. For any other services that are provided on an hourly basis, the Architect shall be compensated based on the fully loaded hourly rates set forth in **Exhibit C.** Such rates shall be fixed and not subject to further adjustment for the expected period of this Agreement plus a period of one (1) year thereafter. Compensation for services performed on an hourly basis shall be computed by multiplying the number of hours directly spent on the Project by the applicable hourly billing rate listed on **Exhibit C.** To the extent the Architect’s principals or employees are required to work more than forty (40) hours a week, the Architect shall be entitled to adjust such rates to reflect the additional cost of overtime only to the extent that the Architect (i) is required by law or agreement to pay its principals or employees a higher hourly rate that would otherwise be the case; and (ii) the Architect does, in fact, pay such principals or employees a higher hourly rate.

**Section 4.3 Compensation For Reimbursable Expenses.** Reimbursable Expenses are in addition to compensation for Design Phase Services and Construction Document and Construction Phase Services and include expenses incurred by the Architect and the Architect’s consultants directly related to the Project. Such expenses shall be reimbursed without markup of any kind and records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Department at mutually convenient times. An allowance of [AMOUNT] Dollars (\$[AMOUNT]) is established for permit fees, and an allowance of [AMOUNT] Dollars (\$[AMOUNT]) is established for printing costs. The printing allowance is to be used only for printing drawing and specification submissions for the Department; all other submission printing costs are included in the Design Fee. All allowances are to be used only with written approval of the Department’s Program Manager. Any unspent allowances shall revert to the Department. An allowance of [AMOUNT] Dollars (\$[AMOUNT]) is established for other reimbursable expenses, and shall include the following:

- .1 Transportation and authorized out-of-town travel and subsistence, provided, however, that local transportation costs (i.e. taxis, parking, etc.) shall not be reimbursable;

- .2 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 Reproductions, plots, standard form documents;
- .4 Postage, handling and delivery;
- .5 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Department, provided, however, that such expenses shall only be reimbursable to the extent that they were caused by the failure of the Department to act within timeframes agreed to by the parties in advance and in writing;
- .6 Additional renderings, models, and mock-ups, requested by the Department;
- .7 Any other similar expenditures directly related to the Project and reasonably incurred after first receiving written approval of the Department.

**Section 4.4 Retention.** An amount equal to five percent (5%) of all fees (but not expenses) shall be withheld as retention from all progress payments that are due to the Architect. In addition, the Owner agrees to provide an incentive amount equal to 5% of the original Design Fee (but not expenses). This 5% retention and 5% incentive will only be due the Architect if: (i) the Project is Substantially Complete on or before [SUBSTANTIAL COMPLETION DATE]; and (ii) the hard construction costs (inclusive of the builder's fees and general conditions) does not exceed One Hundred Three Percent (103%) of the amount allocated in the Design-to-Budget established at the end of the schematic design phase. The determination as to whether these goals have been achieved shall be measured irrespective of fault, only if both goals are met irrespective of whether the reason these goals were not met was caused by the Architect, the Builder, the Owner, the District, the Code Official or any other person or cause.

**Section 4.5 Payments.** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid forty five (45) days after the invoice date shall bear interest in accordance with the Quick Payment Act.

**Section 4.6 Payment Disputes.** Disputes or questions regarding a portion of an invoice shall not be cause for withholding payment for the remaining portion of the invoice.

## **ARTICLE 5** **INSURANCE**

**Section 5.1 Insurance.** The Architect shall maintain the following insurance for the duration of this Agreement. Any and all premiums or deductibles associated with such coverage shall be paid by the Architect.

**Section 5.1.1** Commercial general public 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 and shall be maintain for three (3) years after substantial completion of the Project is achieved.

**Section 5.1.2** Automobile Liability covering owned and rented vehicles operated by the Architect with policy limits of not less than Two Million Dollars (\$2,000,000) combined single limit and aggregate for bodily injury and property damage.

**Section 5.1.3** The Architect may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

**Section 5.1.4** Workers' compensation coverage providing statutory benefits and Employers Liability with a policy limit of not less than One Million Dollars (\$1,000,000) for all persons employed by the Architect, or its contractors and subcontractors at or in connection the Project.

**Section 5.1.5** Professional Liability covering the Architect's negligent acts, errors and omissions in its performance of professional services with policy limits of not less than Five Million Dollars (\$5,000,000) per claim and in the aggregate. The Architect shall maintain the coverage required by this Section 5.1.5 for a period of three (3) after Substantial Completion of the Project is achieved.

**Section 5.1.6** The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 5.1. The certificates will show the Owner as an additional insured on all such policies other than the workers compensation policy and the professional liability policy.

## **ARTICLE 6** **OWNERSHIP OF DOCUMENTS**

**Section 6.1 Ownership of Documents.** Regardless of whether the Project is completed, any design documents prepared by the Architect and the architectural, engineering or other consultants engaged by the Architect, any copies thereof furnished to the Design-Builder, and all other documents created in association with the Project shall become the sole property of the Owner upon full payment of Architect's fees then due under this Agreement, and shall not to be used by the Architect, its subconsultants on other projects, or for additions to this Project outside the scope of the work, without the specific written consent of the Owner. However, the Owner expressly acknowledges and agrees that the documents to be provided by the Architect under this Agreement will contain design details, features and concepts including some from the Architect's library, which collectively form part of the design for the project, but which separately are and shall remain the sole and exclusive property of the Architect. These details are repetitive in nature, not Project specific, function rather than form-oriented, and were not developed for or identifiable with the Project. Nothing herein shall be construed as a limitation on the Architect's absolute right to re-use such component design details, features and concepts on other projects, in other contexts or for other clients.

The Owner shall be under no obligation to account to the Architect for any profits obtained by the Owner as a result of the Project, or the use of such drawings, specifications and other

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

## **ARTICLE 7** **CHANGES, CLAIMS AND DISPUTES**

### **Section 7.1 Changes.**

**Section 7.1.1 Changes Authorized.** The Department may, without invalidating the Agreement, order changes in the services required under the Agreement, including additions, deletions or modifications to the Architect's scope of work. Any such change must be conveyed by the Department to the Architect via a written change directive or by change order. In the event that the Architect believes that any such additions or modifications entitle the Architect to additional compensation, the Architect shall submit a notification in accordance with Section 7.1.3 of this Agreement. Unless otherwise agreed, additional services that are authorized by the Department and performed by the Architect shall be compensated at the hourly rates set forth in **Exhibit C** hereto. The Architect shall not be entitled to mark-up on any additional services of its own services or the services of subconsultants, it being understood and agreed that the cost of managing, administering and processing any changes to the subconsultants that are generally consistent with the Project's current scope are already covered by the fee quoted herein.

**Section 7.1.2 Executed Change Directive Required.** Changes to the Agreement may be made only by a written change directive executed by the Department or by written change order executed by both the Architect and the Department.

**Section 7.1.3 Prompt Notice.** In the event the Architect encounters a situation which the Architect believes to be a change to this Agreement, the Architect shall provide the Department prompt written notice of such event and the possible impact such event could have on cost and schedule. All such notices shall be given promptly, considering the then applicable situations, but in no event more than five (5) calendar days after determining that it believes that there is a change to the Agreement. The Architect acknowledges that the failure to provide such notice in a timely manner could limit or eliminate the Department's ability to mitigate such

events, and thus, the Architect may not be entitled to an adjustment to its fee in the event it fails to provide prompt notice. The Architect shall include provisions similar to this provision in all of its subcontracts.

**Section 7.1.4 Failure to Agree.** If the Architect claims entitlement to a change in the Agreement, and the Department does not agree that any action or event has occurred to justify any change in time or compensation, or if the Parties fail to agree upon the appropriate amount of the adjustment in time or compensation, the Department will unilaterally make such changes, if any, to the Agreement, as it determines are appropriate pursuant to the Agreement. The Architect shall proceed with the work and the Department's directives, without interruption or delay, and may make a claim as provided in Section 7 of this Agreement. In the event that the Architect disagrees with any determination by the Department regarding a change request, the Architect may file a claim in accordance with Section 7.2 of this Agreement. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Agreement and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

**Section 7.2 Claims and Disputes.**

**Section 7.2.1** The Department and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of this Article 7 within the period specified by applicable law, but in any case not more than ten (10) years after the date of Substantial Completion of the Work. The Department and Architect waive all claims and causes of action not commenced in accordance with this Section.

**Section 7.2.2** To the extent damages are covered by property insurance, the Department and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. The Department or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

**Section 7.2.3** The Architect and Department waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

**Section 7.3 Claims & Dispute Resolution.** The Department and Architect shall endeavor to resolve claims, disputes and other matters in question between them through the ordinary course of business. If resolution is not reached in such manner, the Architect shall make a claim in accordance with this Section.

**Section 7.3.1 Notice of Claim.** If the Architect wishes to assert a claim over a contract dispute, the Architect shall provide written notice of the claim to the Department pursuant to procedures set forth in section 4732 of the Department's procurement rules and section 1004 of

the District's Procurement Practices Reform Act of 2010 ("PPRA").

**Section 7.3.2 Contents of Notice of 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 such notice is provided, the Architect shall so state, explain why, and provide whatever estimates it can reasonably provide. The notice shall state clearly that the Architect intends to assert a claim against the Department.

**Section 7.3.3 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 Architect in the court in which such claim is being litigated.

## **ARTICLE 8** **TERMINATION OR SUSPENSION**

**Section 8.1** If the Owner fails to make payments to the Architect in accordance with this Agreement, and such failure continues for more than sixty (60) days, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, prior to suspending services, the Architect shall give seven days' written notice to the Owner during which the Owner shall have the opportunity to cure. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

**Section 8.2** If the Owner suspends the Project for more than thirty (30) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

**Section 8.3** If the Owner suspends the Project for more than one (1) year for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

**Section 8.4** The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

**Section 8.5** In the event of termination not due to the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 8.6.

**Section 8.6** Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated.

**Section 8.7** In the event Architect fails to perform any of its obligations hereunder, including the services, in the manner required hereby, subject to seven (7) calendar days notice and a right for Architect to cure, Owner shall be entitled to terminate this Agreement and upon such termination, Owner shall be entitled to recover from Architect or setoff against any sums due Architect, Owner's reasonable damages and costs of delay in replacing Architect with a different architect. Owner shall be entitled to withhold payment from Architect until such damages may be calculated. If it is ultimately determined by the parties or a court that Owner withheld payments unreasonably, Owner shall pay the amount owed to Architect with interest at the annual rate of Wall Street Journal prime plus one percent.

**Section 8.8** In the event of termination or suspension, the Architect shall discontinue Work immediately upon written notice from the Owner. The Architect shall furnish to the Owner reproducible copies of all drawings, sketches, etc. and all specifications, reports, studies, analyses, and other electronic documents in approved format prepared by the Architect and his consultants, to the date of termination, whether or not termination is due to the fault of Architect, but only after Architect has received payment for all services performed in accordance with this Agreement.

## **ARTICLE 9** **MISCELLANEOUS PROVISIONS**

**Section 9.1** This Agreement shall be governed by the laws of the District of Columbia.

**Section 9.2** Terms in this Agreement shall have the same meaning as those in AIA Document A201-1997, General Conditions of the Contract for Construction to the extent such terms do not conflict with this Agreement.

**Section 9.3** The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns of such other party with respect to all covenants of this Agreement. The Architect shall not assign this Agreement without the written consent of the Owner

**Section 9.4** If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

**Section 9.5** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

**Section 9.6** Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

**Section 9.7** The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

**Section 9.8** In accordance with Section 9.12 below, if the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

**Section 9.9** The Architect agrees to indemnify and hold the Owner, the Owner's Representative and the Owner's officers, agents and employees harmless from and against all claims, liabilities, demands, losses, damages, judgments, costs, or expenses, including reasonable attorneys' fees and expenses recoverable under applicable law arising from the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services pursuant to this Agreement.

**Section 9.10** The Architect agrees to indemnify and hold the Owner and the Owner's Representative harmless from and against any and all claims, liabilities, demands, losses, damages, costs, or expenses arising from the Architect's failure to perform its obligations pursuant to agreements with third parties, including, but not limited to, subconsultants, made in order to provide the services required of the Architect under this Agreement.

**Section 9.11** The Architect shall pay for and defend all such suits or claims arising out of the Work for infringement of any patent rights or copyrights and hold the Owner and Owner's Representative harmless from loss on account thereof.

**Section 9.12 Confidentiality.** The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall

require of the Architect's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner.

**Section 9.13 Extent of Agreement.** This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

## **ARTICLE 10** **GOVERNMENTAL PROVISIONS**

**Section 10.1 Buy American Act Provision.** The Architect shall not design or specify a proprietary product that does not comply with the provisions of the Buy American Act (41 U.S.C. § 10a). The Trade Agreements Act and the North American Free Trade Agreement ("NAFTA") provide that designated country (as defined in FAR 25.401) and NAFTA country construction materials are exempted from application of the Buy American Act and are therefore acceptable hereunder.

**Section 10.2 False Claims Act.** The Architect 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 D.C. Code § 2-381.02.

### **Section 10.3 Retention of Records: Inspections and Audits.**

**Section 10.3.1** The Architect shall maintain books, records, documents and other evidence directly pertinent to performance under the Agreement in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Agreement.

**Section 10.3.2** The Architect shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Owner and the required cost submissions in effect on the date of execution of the Owner.

**Section 10.3.3** Owner, the District of Columbia government, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Architect for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Architect. The Architect shall provide proper facilities for such access and inspection.

**Section 10.3.4** The Architect agrees to include the wording of this Section 10.3 in all its subcontracts in excess of Five Thousand Dollars (\$5,000.00) that directly relate to Project performance.

**Section 10.3.5** Audits conducted pursuant to this Section will be in accordance with generally accepted auditing standards with the results prepared in accordance with generally

accepted accounting principles and established procedures and guidelines of the applicable reviewing or audit agency.

**Section 10.3.6** The Architect 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 Architect, the auditing agency will afford the Architect 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 10.3.7** The Architect shall preserve all records described herein from the effective date of the Agreement completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

**Section 10.4 Gratuities and Officers Not to Benefit Provisions.**

**Section 10.4.1** 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 Architect, or any agent or representative of the Architect, to any official, employee or agent of the Department or the District with a view toward securing the Agreement or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the Architect, terminate the right of the Architect to proceed under the Agreement and may pursue such other rights and remedies provided by law and under the Contract.

**Section 10.4.2** In the event the Agreement is terminated as provided in Section 10.4.1, the Department shall be entitled:

- .1 to pursue the same remedies against the Architect as it could pursue in the event of a breach of the Agreement by the Architect; 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 Architect in providing any such gratuities to any such Department or employee.

**Section 10.4.3** 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 a 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 10.5 Ethical Standards For Department's Employees And Former Employees.** The Department expects the Architect 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 Architect, nor any person associated with the Architect, 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 Architect 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 Agreement. The Architect may not assign to any former Department or District employee or agent who has joined the Architect'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 Architect may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Architect shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Architect or vendor.

**Section 10.6 Anti-Deficiency Act.** The Department's obligations and responsibilities under the terms of the Agreement 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 Agreement shall constitute an indebtedness of the Department, nor shall it constitute an obligation for which the Department is obligated to levy or pledge any form of taxation, or for which the Department has levied or pledged any form of taxation. **IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE CONTRACT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.**

## **ARTICLE 11** **ECONOMIC PROVISIONS**

### **Section 11.1 LSDBE Utilization.**

**Section 11.1.1** The Architect shall ensure that Local, Small and Disadvantaged Business Enterprises will participate in at least fifty percent (50%) of this Agreement. Thirty-five percent (35%) of the services performed pursuant to this Agreement must be awarded to entities that are certified as either Small or Disadvantaged Business Enterprises by the District of Columbia Department of Small and Local Business Development and twenty percent (20%) to entities that are certified as Disadvantaged Business Enterprises. 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.

**Section 11.1.2** The Architect has developed an LSDBE Utilization Plan that is attached hereto as **Exhibit D**. The Architect shall comply with the terms of the LSDBE Utilization Plan in making purchases and administering its Subconsultants and Supply Agreements.

**Section 11.1.3** Neither the Architect nor any Subconsultant may remove a Subconsultant or tier-Subconsultant if such Subconsultant or tier-Subconsultant is certified as an LSDBE company unless the Department approves of such removal. The Department may condition its approval upon the Architect developing a plan that is, in the Department's sole and absolute judgment, adequate to maintain the level of LSDBE participation on the Project.

**Section 11.2 Equal Employment Opportunity and Hiring of District Residents.**

**Section 11.2.1** The Architect shall comply with applicable laws, regulations regarding equal employment opportunity and affirmative action programs.

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

**Section 11.2.3** Fifty percent (50%) of all apprentices for the Project must be District residents.

**Section 11.3 First Source Agreement.**

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

**Section 11.3.2** The Architect and its constituent entities shall comply with subchapter X of Chapter II of Title 2, and all successor acts thereto, and the rules and regulations promulgated thereunder. The Contractor and all member firms and Subcontractors shall execute a First Source Agreement with the District of Columbia Department of Employment Services ("DOES") prior to beginning Work at the Project site.

**Section 11.3.3** The Architect shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

**Section 11.3.4** The Architect shall be responsible for: (i) including the provisions of this Section 11.3 in all subcontracts; (ii) collecting the information required in this Section 11.3 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in the reports required to be submitted by the Architect pursuant to Section 11.3.1.

**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: Christopher Weaver  
Title: Acting Director & Chief Contracting Officer  
Date: \_\_\_\_\_

**[SELECTED OFFEROR]**

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

**Exhibit A**

Key Personnel

**Exhibit B**

Schedule of Values

**Exhibit C**

Hourly Rates

**Exhibit D**

LSDBE Utilization Plan