

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



RFP FOR COMMUNITY RENEWABLE ENERGY FACILITY AT OXON RUN
Solicitation No: DCAM-17-CS-0101

Addendum No. 6
Issued: September 11, 2017

This Addendum No. 6 is issued and hereby published on the DGS website on September 11, 2017. Except as modified hereby, the Request for Proposal (“RFP”) remains unmodified.

Item #1: Form of Contract. The Form of Contract is attached hereto as Exhibit A.

Item #2: Contract Documents. Section A.6. is hereby deleted in its entirety and replaced with the following:

“The Standard Contract Provisions and the Form of Contract are attached hereto as **Attachments G and O**, respectfully. Offerors should carefully review the Form of Contract and Standard Contract Provisions when submitting their proposal. To the extent there are any ambiguities or inconsistencies between this RFP, the Standard Contract Provisions and the Form of Contract, the Standard Contract Provisions and Form of Contract shall have precedence. Offerors are advised that they are required to submit their proposal premised upon agreeing to the terms of the Standard Contract Provisions and entering into the Form of Contract. **A proposal that identifies or describes changes or exceptions to the Standard Contract Provisions or the Form of Contract, may be deemed non-responsive.**”

By: Elouise Fripp
Elouise Fripp
Lead Contract Specialist

Date: 9/11/17

- End of Addendum No. 6 -

EXHIBIT A

FORM OF CONTRACT

[EXHIBIT TO APPEAR ON THE FOLLOWING PAGE]

AGREEMENT FOR DESIGN-BUILD AND MAINTENANCE SERVICES

BY AND BETWEEN

**DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES**

AND

[DESIGN-BUILDER]

**COMMUNITY RENEWABLE ENERGY FACILITY AT OXON RUN
CONTRACT NUMBER: DCAM-17-CS-0101**

**AGREEMENT FOR DESIGN-BUILD AND MAINTENANCE SERVICES
COMMUNITY RENEWABLE ENERGY FACILITY AT OXON RUN
CONTRACT NUMBER: DCAM-17-CS-0101**

THIS AGREEMENT (“Agreement”) is made by and between the **DISTRICT OF COLUMBIA GOVERNMENT** (the “District”), acting by and through its **DEPARTMENT OF GENERAL SERVICES** (the “Department”) and **[DESIGN-BUILDER]**, duly organized under the laws of [_____], and with a place of business at [_____] (the “Design-Builder”) (collectively, the “Parties”).

A. PROJECT INFORMATION

Project Name: Community Renewable Energy Facility at Oxon Run (the “Project”)
Lump Sum Amount: [_____] (\$[_____])
Substantial Completion Date: May 30, 2018
Project Manager: [_____])
Liquidated Damages: [_____] Dollars (\$[_____]) per calendar day

B. ATTACHMENTS

Exhibit A: Narrative Scope of Work & Preliminary Design Documents
Exhibit B: Schedule of Values
Exhibit C: Deliverable List
Exhibit D: LSDBE Utilization and Subcontracting Plan
Exhibit E: List of Allowances
Exhibit F: Key Personnel
Exhibit G: Davis Bacon Act Wage Rates
Exhibit H: Workforce Utilization Plan
Exhibit I: Design-Builder’s Designated Representative
Exhibit J: Standard Contract Provisions
Exhibit K: Maintenance Services Pricing

C. TERMS & CONDITIONS

SECTION 1 GENERAL PROVISIONS

Section 1.1 Relationship of Parties. The Design-Builder accepts the relationship of trust and confidence established with the Department by this Agreement, and covenants with the Department to furnish the Design-Builder’s reasonable skill and judgment and to cooperate with the Program Manager and all other stakeholders in furthering the interests of the Department. The Design-Builder shall use its best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Department. In performing its duties under this Agreement, the Design-Builder shall at all times use the standard of care used by Design-Builders that construct similar facilities in urban areas. Whenever the term “competent” is used herein to describe the Design-Builder’s actions or duties that term shall refer to the level of competence

customarily possessed by those Design-Builders that construct community renewable energy facilities of the same size as the Project in large, urban areas.

Section 1.2 Project Description. In general, the Project includes design-build services for the design and construction of a one (1) megawatt Community Renewable Energy Facility (“CREF”) photovoltaic (“PV”) system. The Design-Builder shall provide all of the labor, tools, equipment, and materials necessary to complete the Project and to provide the preventative and corrective maintenance services set forth in this Agreement. The Project shall provide a minimum production output of [1,040] MWhAC/year at point of interconnection (“POI”) throughout the period of the Agreement. The system will be oriented to the south to maximize annual production. The Design-Builder shall design and construct the CREF at the Oxon Run site (the “Site”). This shall involve predesign engineering studies of the site, confirmation of the solar potential, and the design and specification of an appropriate ground mounting system. All design services and documents shall be prepared by the Design-Builder’s duly licensed engineers (“Project Engineer”). The Design-Builder shall perform the work called for in the Scope of Work and photos and drawings provided in **Exhibit A**. To the extent there is an inconsistency in the Scope of Work, the selected Design-Builder shall provide the more expensive requirement. To the extent that a competent Design-Builder could have identified any such inconsistency or error, such inconsistency or error shall not serve as the basis for a change order and the selected Design-Builder shall assume the risk of such inconsistency or error. The Design-Builder shall work with the Project Engineer to advance the design for the Project, to obtain the required permits, to construct the approved design and complete interconnection with all required utilities no later than May 30, 2018 (the “Substantial Completion Date”).

Section 1.3 Completion Date. Subject to the Excusable Delay provisions of this Agreement, the Design-Builder agrees to substantially complete the Project on or before the Substantial Completion Date. Substantial Completion shall mean that all of the following have occurred: (1) the work has been completed with only minor punch list items remaining to be completed; (2) any and all required permits or approvals related to the work have been obtained; (3) all operating and maintenance manuals, training videotapes and warranties required by the Agreement have been delivered to the Department; (4) any supplemental training session required by the Agreement for operating or maintenance personnel have been completed; (5) all clean-up required by the Agreement has been completed; (6) the Project is ready for the Department or other District agency, as the case may be, to use it for its intended purpose and (7) all equipment, supplies, materials and items to be installed have been installed in accordance with the manufacturer’s specifications and industry standards and have undergone and passed the requisite testing and inspections. “Minor punch list items” are defined for this purpose as items that, in the aggregate, can be completed within thirty (30) days without interfering with the Department’s normal use of the Project. Final Completion shall mean the point at which Substantial Completion has been achieved, all punch list items noted at Substantial Completion have been completed and all documents the Design-Builder is required to deliver to the Department as a condition to receiving final payment have been received. Work is defined as the construction and services required by the Agreement, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Design-Builder to fulfill the Design-Builder’s obligations. The Work may constitute the whole or a part of the Project.

Section 1.4 Program Manager. The Department has engaged a Program Manager (or “PM”) to provide certain program management functions. Such Program Manager shall, at all times, be acting solely for the benefit of the Department, not the Design-Builder. **The Program Manager shall not be authorized to modify any of the rights or obligations of the Department or the Construction Manager pursuant to this Agreement, or to issue Change Orders or Change Directives. The Design-Builder 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.** Unless otherwise provided herein, all deliverables hereunder shall be submitted to the PM.

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

Section 1.6 Deliverables. Attached as **Exhibit C** is a list of deliverables required from the Design-Builder. This list is attached for the convenience of the parties and does not limit the Design-Builder’s obligations set forth herein. For the avoidance of doubt, it is understood and agreed that should that Design-Builder fail to deliver any such deliverable by the due date the Administrative Liquidated Damages set forth in the Standard Contract Provisions shall apply.

Section 1.7 Conformance with Laws. It shall be the responsibility of the Design-Builder to perform the Agreement 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 Design-Builder to determine the Procurement Regulations, statutes, laws, codes, ordinances, regulations, rules, requirements and orders that apply and their effect on the Design-Builder’s obligations thereunder. This Section 1.7 shall apply during both the Preconstruction and the Construction Phases.

Section 1.8 Responsibility for Agents and Contractors. At all times and during both the Preconstruction and Construction Phases, the Design-Builder shall be responsible to the Department, the Program Manager and the Project Engineer for any and all acts and omissions of the Construction Manager’s agents, employees, Subcontractors, Sub-Subcontractors, material suppliers, and laborers, and the agents and employees of the Subcontractors, Sub-Subcontractors, material suppliers, and laborers performing or supplying Work in connection with the Project. This Section 1.8 shall apply during the Design, Preconstruction and Construction Phases.

SECTION 2 DESIGN & PRECONSTRUCTION PHASE

Section 2.1 Detailed Schedule. Within seven (7) days of the issuance of a Notice to Proceed for Design and Preconstruction Phase, the Design-Builder shall submit to the Department for its approval an updated schedule of the Design and Preconstruction Phase as well as the Construction Phase of the Project (the “Project Schedule”). Such schedule shall include a schedule for submittals that is reasonably acceptable to the Department. During the Preconstruction Phase, the Design-Builder shall monitor the Project’s progress and promptly notify the Department of any

delays, regardless of their cause, the causes of such delays, and the Design-Builder's best projection of the effect of such delays on the Substantial Completion and Final Completion of the Project. The Department's receipt of, and lack of objection to, any schedule update showing Substantial or Final Completion later than the scheduled Substantial or Final Completion Date shall not be regarded as the Department's agreement that the Design-Builder may have an extension of time, or as a waiver of any of the Department's rights, but merely as the Design-Builder's representation that, as a matter of fact, the Project may not be completed by the applicable Substantial or Final Completion Date. The Project Schedule shall be maintained and continuously updated during the Preconstruction and Construction Phases.

Section 2.2 Potential Subcontractors and Suppliers. The Design-Builder shall furnish to the Department and its Program Manager a list of the subcontractors and suppliers that will work on this Project as well as a general description of each such subcontractor's scope of work. Within five (5) business days after such list is submitted, the Program Manager shall advise the Design-Builder if it has any objection to any of the listed subcontractors or suppliers. In the event the Program Manager has a reasonable objection to any such subcontractor or supplier, the Parties shall discuss such objection and agree on an appropriate course of action.

Section 2.3. Site Conditions Assessment. The Design-Builder shall perform field investigations necessary to confirm the existing site conditions utilizing reference documentation made available to the Design-Builder by the Department. The Design-Builder shall also be responsible for the collection, assessment and verification of existing conditions and providing additional recommendations to the Department upon conducting a complete site survey of the site as required to successfully construct the solar PV system which shall include assessing site topography, geotechnical attributes, and environmental status of the site.

Section 2.4 Photovoltaic System Performance Criteria. The Design-Builder shall ensure the following performance criteria are met for all arrays of the solar PV system:

- .1 Power provided shall match the utility grid voltage which should be 13.8 kV three phase compatible with the PEPCO distribution system. See **Exhibit A** for approximate interconnection location.
- .2 The estimated annual energy delivery for all arrays shall be a minimum of [1,040] MWhAC/year at point of interconnection ("POI") and the Design-Builder shall provide an updated energy delivery estimate for each PV Array, as defined below, for each month of the year and total for the year at the delivered voltage.
- .3 The Standard Testing Conditions ("STC") rating power value will be entered into PVWatts (<http://pvwatts.nrel.gov/>) using the nearest weather file to determine estimated energy delivery in kWh AC. A default value for the system losses of fourteen percent (14%) shall be used.
- .4 "PV Array" shall mean one or more PV modules having that same orientation and on the same maximum power point tracking ("MPPT") system. Every array with differing orientation shall have a separate MPPT system.

- .5 All implemented PV Array locations shall be shade free from 9AM until 3PM (solar time). Design-Builder shall provide documentation of shading calculations for exterior extents for each proposed PV Array prior to construction and installation. These calculations may be modified for shading obstructions that will be removed and mitigated as part of the Project. The Design-Builder shall also provide supporting documentation would including sun path diagrams for exterior array locations or SunEye measurements.
- .6 All PV hardware components shall be either stainless steel or aluminum. PV structural components shall be corrosion resistant (galvanized steel, stainless steel, composites, or aluminum).

Section 2.5 Technical Requirements and Reference Materials. The Design-Builder shall ensure the requirements are performed in accordance with the following:

- .1 Code Compliance. Installation and equipment shall comply with applicable building, mechanical, fire, seismic, structural and electrical codes. Only products that are listed, tested, identified, or labeled by UL, FM, ETL, or another Nationally Recognized Testing Laboratory shall be used as components in the Project. Non-listed products are only permitted for use as Project components when a comparable useable listed component does not exist. Non-listed products proposed for use as components must be identified as such in all submittals to the Department.
- .2 The Design-Builder shall use components that are or are made of materials that are recyclable, contain recycled materials, and that are rated by the Environmental Protection Agency (“EPA”) or Energy Star if such components are available on the market.
- .3 The publications listed below form a part of this document and are hereby incorporated by reference:
 - (a) National Electrical Code (“NEC”)
 - (b) UL 1703 Flat – Plate PV Modules and Panels
 - (c) UL 1741 – Standard for Static Inverters and Charge Controllers for Use in Photovoltaic Power Systems
 - (d) FM Approved – Fire Protection Tests for Solar Component Products
 - (e) IEC 62446 Grid Connected Photovoltaic Systems- Minimum Requirements for System Documentation, Commissioning Tests, and Inspections
 - (f) Other technical codes that shall apply include:
 - i) ASME PTC 50 (solar PV performance)
 - ii) ANSI Z21.83 (solar PV performance and safety)
 - iii) IEEE 1547 (interconnections)

Section 2.6 Quality Control Plan. Within twenty one (21) calendar days of the post award conference meeting and prior to any construction on-site, the Design-Builder shall develop a quality control plan for the Project (the “Quality Control Plan” or “QCP”). A draft of the Quality Control Plan shall be submitted to the Department and shall be subject to the

Department's review and approval. The QCP may be rejected as incomplete and returned for resubmission if there is any performance, condition or operating test that is not covered therein. The Quality Control Plan shall be tailored to the specific products/type of construction activities contemplated by the Project, and in general, shall include a table of contents, quality control team organization, duties/responsibilities of quality control personnel, submittal procedures, inspection procedures, deficiency correction procedures, documentation process, and a list of any other specific actions or procedures that will be required for key elements of the Project. The Design-Builder shall ensure the Quality Control Plan shall include or provide for at a minimum the following:

- .1 For each performance and installation requirement, the QCP shall identify: item/system to be tested, exact test(s) to be performed, measured parameters, inspection/testing organization, and the stage of construction development when tests are to be performed. Each inspection/test shall be included in the overall construction schedule. The Design-Builder shall not be relieved from its obligation to conduct performance tests should such performance test not be omitted from the QCP.
- .2 The QCP is intended to document those inspections and tests necessary to assure DGS/DOEE that product delivery, quality and performance are as required. It also serves as an inspection coordination tool between the Design-Builder and DGS and or the District of Columbia Department of Energy and Environment ("DOEE"). An example of these inspections/tests is the final test/inspection for overall performance compliance of the system. Results from tests and inspections shall be submitted within 24 hours of performing the tests and inspections.
- .3 At a minimum, the QCP should conform to "IEC 62446 Grid Connected Photovoltaic Systems - Minimum Requirements for System Documentation, Commissioning Tests, and Inspections (2009)".
- .4 Performance tests to be conducted at the final commissioning/acceptance testing, and annually for the five (5) year maintenance period after the acceptance date. Performance tests shall include I-V curve traces for all PV strings. For project acceptance, measured performance at maximum power point must be at least 90% of expected performance, which will be adjusted for concurrently measured cell temperature and plane of array ("POA") irradiance. This can be accomplished using a current industry standard I-V curve tracer with capability to compare measured PV string I-V curves with nameplate performance of PV string compensated for concurrent cell temperature and POA irradiance measurements. If performance is less than 90% at the one year performance tests (measured using the same method as for project acceptance), Design-Builder shall promptly troubleshoot and correct any malfunction or issues as necessary to return project to 90% measured performance or better. The Design-Builder shall supply DGS/DOEE with detailed documentation of malfunction or errors and all corrective actions taken.
- .5 Updating. During the construction phase, the Design-Builder shall update the QCP if any changes are necessary due to any changes or schedule constraints. DGS/DOEE

shall be notified immediately of any schedule and/or procedural changes.

Section 2.7 Solar Electric Module Array. The Design-Builder shall ensure the Solar Electric Module Arrays conform to the following:

- .1 Photovoltaic Modules
 - (a) PV modules shall be a commercial off-the-shelf product, shall be UL listed, and shall be on the California Senate Bill 1 (SB1) List of Eligible SB1 Guidelines Compliant Photovoltaic Modules to be eligible for Construction Specifications Institute (CSI), and shall be properly installed according to manufacturer's instructions, NEC, and as specified herein.
 - (b) The PV modules shall be installed such that the maximum amount of sunlight available year-round on a daily basis should not be obstructed. At a minimum, all PV arrays shall be shade free from 9 a.m. until 3 p.m. (solar time). All projects must include documentation of the impact from any obstruction on the seasonal or annual performance of the solar electric array.
- .2 System wiring shall be installed in accordance with the provisions of the NEC.
- .3 System wiring shall be above ground in conduits, cable trays or messenger wire cable support systems.
- .4 All modules installed in a series string shall be installed in the same plane/orientation.
- .5 PV modules shall have a 25-year limited warranty that modules will generate no less than 80% of rated output under STC. PV modules that do not satisfy this warranty condition shall be replaced.
- .6 Panel installation design shall allow for the best ventilation possible of panels to avoid adverse performance impacts.
- .7 Provide DGS/DOEE with 1% extra PV panels.
- .8 Warranty. Provide a panel manufacturer's warranty as a minimum: No module will generate less than 90% of its specified minimum power when purchased. PV modules shall have a 25-year limited warranty guarantying a minimum performance of at least 80% of the original power for at least twenty-five (25) years. Measurement made under actual installation and temperature will be normalized to standard test conditions using the temperature and coefficients published in the module specifications.
- .9 Inverter and Controls
 - (a) Each inverter and associated controls shall be properly installed according to manufacturer's instructions.

- (b) Inverters shall be commercial off-the-shelf product, listed to UL 1741 and IEEE 1547, and shall be on the California Senate Bill 1 (SB1) compliant List of Eligible Inverters per SB1 guidelines:
<http://www.gosolarcalifornia.org/equipment/inverters.php>
- (c) The inverter shall have at a minimum the following features:
 - i) UL/ETL listed
 - ii) Peak efficiency of 96% or higher
 - iii) Inverter shall have operational indicators of performance and have built-in data acquisition and remote monitoring.
- (d) The inverter shall be capable of parallel operation with the existing AC power. Each inverter shall automatically synchronize its output waveform with that of the utility upon restoration of utility power.
- (e) Stand-alone boost up transformers not incorporated into the inverters shall be National Electrical Manufactures Association (NEMA) premium efficiency. Exterior transformers shall be housed in a NEMA 3R enclosure and be pad mounted. They shall be located next to switchgear housings in a location to be approved by DGS and DOEE.
- .10 Warning labels shall be posted on the control panels and junction boxes indicating that the circuits are energized by an alternate power source independent of utility-provided power.
- .11 Operating instructions shall be posted on or near the system, and on file with facilities operation and maintenance documents.
- .12 Provide detailed lock out /tag out instructions for all equipment.
- .13 Install inverters and control panels in most optimum locations with appropriate environmental protection. Roofs may be used if structurally sufficient. If inverters are mounted outside they shall be shaded from direct sun from 10 a.m. to 6 p.m. in the months of June to August and be able to be secured.
- .14 The inverter and system shall utilize an astronomical timer or other means to shut down the inverter during night time to avoid energy usage at night.
- .15 Warranty. A 10-year manufacturers' warranty shall be provided.
- .16 Control Panel to Solar Electric Array Wire Runs
 - (a) Areas where wiring passes through ceilings, walls or other areas of the building shall be properly restored, booted, sealed and returned to their original condition.

- (b) All wiring between carports and the point of interconnection shall be underground and meet applicable codes.
- (c) Thermal insulation in areas where wiring is installed shall be replaced to “as found or better condition.” Access doors to these areas shall be properly sealed and gasketed.
- (d) All field electrical devices shall have the capability to be locked as appropriate.

.17 Lightning Protection. Provide surge protection on all electrical systems.

Section 2.8 PV Monitoring

- .1 The PV systems installed shall provide for monitoring by DGS/DOEE as well as by the general public on a vendor provided website. The public site is intended for education and outreach regarding renewable energy production and information on avoided greenhouse gas production. The public site shall be maintained for three (3) years by the Design-Builder.
- .2 Monitoring shall be by an IP addressable device which shall be displayed graphically in a user-friendly manner and contain the following parameters:
 - (a) AC energy
 - (b) Solar irradiance
 - (c) Show status of all equipment
 - (d) Provide electrical one line showing operation and performance of all equipment
- .3 Data shall be available both in real time and in archived in 15-minute averages. All monitoring hardware and monitoring equipment shall be provided by the Design-Builder.
- .4 The system shall also include metering for remote data collection and display on vendor-provided web site of system performance. System performance shall allow display during different monitoring periods from one hour to one year.
- .5 Provide networking equipment, engineering, programming, wiring, and software to allow remote connection by DGS/DOEE to the local area network.
- .6 Meters utilized for the Project shall be listed on CEC List of Eligible System Performance Meters per SB1 Guidelines, shall be UL listed, and shall comply with PEPCO net energy metering requirements.

Section 2.9 Mounting System. The Design-Builder shall ensure the mounting system design complies with the following specifications:

- .1 Mounting system shall be ballasted on the surface without ground penetration, unless the Design-Builder is able to prove that a subsurface mounting system would not require environmental site remediation.
- .2 Mounting system design shall meet applicable local code requirements with respect to snow, wind, and earthquake factors.
- .3 Panels' orientation or azimuth shall be within 20-30 degrees of due south.
- .4 Panels' tilt shall be optimized to maximize overall system performance while considering site latitude and wind conditions.
- .5 The Design-Builder shall develop and submit to the Department for its review and approval a stormwater management and erosion control management plan. The Project must be designed so as to achieve the requirements of the International Green Construction Code and the stormwater management regulations adopted by the Department of Energy & Environment in 2013, which amended Title 21, Chapter 5 of the District of Columbia Municipal Regulations. The stormwater management and erosion control plan shall be in compliance with all District of Columbia Stormwater Management requirements.
- .6 Design-Builder shall complete landscaping and install a fence around the site. An allowance of \$125,000 shall be included for such work.

Section 2.10 Design Services. The Design-Builder shall cause the Project Engineer to complete the design of the Project so that it reflects a logical progression of the design intent set forth in **Exhibit A**. The Design-Builder shall cause the Project Engineer to submit to the Department and its Program Manager copies of all design documents for review and approval. The Department shall have seven (7) days to approve the design document, and if the Department takes no action within seven (7) days, the design documents shall be deemed approved. The Department may disapprove the design documents or any change thereto for any reason. In the event the Department disapproves any such package, the Design-Builder shall not be entitled to a change in the Lump Sum Price and/or the Substantial Completion Date unless the change being requested by the Department reflects a departure from the design intent fairly reflected in **Exhibit A**. To the extent that the change being requested by the Department is necessary in order to preserve the design intent or functionality contemplated in **Exhibit A** or is necessary in order to address concerns raised by the Code Official, Design-Builder shall cause the Project Engineer to further revise the drawings and shall not be entitled to an adjustment to the Lump Sum Price or the Substantial Completion Date by virtue of such redesign.

Section 2.10.1 Schematic Design. During this phase, based on the approved preliminary concept design, the Design-Builder shall be required to develop a schematic design. The schematic design shall contain such detail as is typically required for schematic design under the standard AIA contract. In general, the Design-Builder shall be required to undertake the following tasks and submit to the Department:

- .1 Utilize findings and final preliminary concept plans, perform site visits as necessary, attend and/or facilitate meetings with stakeholders and District staff to review program of requirements, required utilities, drainage, where/when necessary to develop Schematic Design Documents.
- .2 Obtain and review applicable District standards and guidelines for design (Design Criteria Manual, Unified Development Code, DOEE Standards), where applicable, and provide a complete design that meets all applicable District codes. Coordinate security requirements with DC PSPD. Coordinate with utilities, regulatory agencies and other third parties for review and approval as necessary.
- .3 Intentionally Omitted.
- .4 Attend and participate in community meeting(s) to update community regarding the Project.
- .5 Prepare a presentation and provide a minimum of three (3) presentation boards for each community meeting and present/display onsite. Presentation boards shall be in full color and include at least one (1) 3-D rendering.
- .6 Prepare and submit three (3) hard-copy sets, and one (1) electronic copy in PDF, of Schematic Design Documents, Preliminary Specifications, Schematic cost estimate to the Project Manager for review and approval (30% plan review).
- .7 After receiving schematic design comments, meet and coordinate as necessary with:
 - a. Owner, stakeholders, and all relevant regulatory or reviewing agencies as necessary to review project requirements.
 - b. Pepco, DC Water, DOEE and all others as necessary for infrastructure and utility requirements.
 - c. Private utilities and service providers if necessary
- .8 Respond in writing to all District comments on plans.
- .9 Act as scribe for all design related meetings. Distribute meeting minutes to all attendees.
- .10 Perform comprehensive Value Engineering effort (VE) utilizing 30% Plan Review submission. Provide report of findings to DGS. Conduct a meeting with DGS and other stakeholders as necessary to present and discuss VE options.
- .11 Upload all design documentation and deliverables as required utilizing the online DGS Project Management Information System (Prolog Converge) and guidelines.

Section 2.10.2 Design Development Phase. During this phase, the Design-Builder will

be required to progress the approved schematic design into a full set of design development documents. In general, the Design-Builder shall be required to undertake the following tasks and submit to the Department:

- .1 Perform site visits as necessary and attend/facilitate meetings with District staff as necessary to develop and progress Design Development Documents. Incorporate VE options chosen by DGS.
- .2 Intentionally Omitted.
- .3 Complete code compliance analysis and drawing.
- .4 Meet and coordinate with regulatory, reviewing, and stakeholder agencies as necessary.
 - a. Present the design to utilities, regulatory agencies and other third parties as applicable.
- .5 Prepare and submit three (3) hard-copy sets, and one (1) electronic copy in PDF of Design Development Documents including Detailed Specifications, Cost Estimate and schedule to the District staff for review and approval (60% plan review). **I**
- .7 Respond in writing to all District comments on plans.
- .8 Attend and participate in community meeting(s) to update community regarding the Project.
- .10 Prepare a presentation and provide a minimum of three (3) presentation boards for each community meeting and present/display onsite. Presentation boards shall be in full color and include at least one (1) 3-D rendering.
- .11 Coordinate final utility plans as required.
- .12 Act as scribe for all design related meetings. Distribute meeting minutes to all attendees.
- .13 Upload all design documentation and deliverables as required utilizing the online DGS Project Management Information System (Prolog Converge) and guidelines.
- .14 Statement of constructability within ten (10) days of the conclusion of the Design and Preconstruction Phase, executed by both the Design-Builder and the Project Engineer.

Section 2.10.3 Permit Set.

Section 2.10.3.1 Services & Deliverables. The Design-Builder shall be required to

develop a complete set of construction documents for permitting (“Permit Set”). In general, the Design-Builder shall be required to undertake the following tasks and submit to the Department:

- .1** Progress design and Design Development documents and prepare the Permit Set.
- .2** Intentionally Omitted.
- .3** Submit three (3) hard-copy and one (1) electronic PDF copy of all documents comprising the Permit Set and Specifications to the Department for its review and approval.
- .4** Attend follow up meetings and coordinate with regulatory agencies, Fire Marshall, DGS Facilities personnel, and others as necessary.
- .5** Obtain all required signatures on plans.
- .6** Complete Platting and record Plat.
- .7** Complete final coordination with utilities and service providers as necessary.
- .8** Attend and participate in community meeting(s) to update community regarding the Project.
- .9** Prepare a presentation and provide a minimum of three (3) presentation boards for each community meetings and present/display onsite. Presentation boards shall be in full color and include at least one (1) 3-D rendering.
- .10** Submit appropriate number of copies of plans to applicable DC regulatory agencies for permit review.
- .13** Coordinate with all DC regulatory agencies and permit reviewers as necessary.
- .14** An Environmental Impact Screening Form (EISF) will be required and shall be the responsibility of the Design-Builder.
- .15** Correct plans to reflect issues noted by regulatory agencies and permit reviewers as required. Re-submit for additional review and approval as required. Provide three (3) hard-copy sets and one electronic PDF copy of all corrected plans to DGS (95% plan review).
- .16** Act as scribe for all design related meetings. Distribute meeting minutes to all attendees.
- .17** Upload all design documentation and deliverables as required utilizing the online DGS Project Management Information System (Prolog Converge) and guidelines.

Section 2.10.3.2 Permit Set Department Approval. The Design-Builder shall prepare the Permit Set and shall submit such set to the Department for its review and approval. The Department shall have the right to reject the Permit Set submission for any reason; provided, however, the Design-Builder shall be entitled to an equitable adjustment to the Agreement if the basis for Department's rejection is something other than (i) the design is not a logical development of the Scope of Work; or (ii) the design fails to meet the requirements of the Scope of Work as set forth in **Exhibit A**. The Design/Builder shall be required to incorporate at no additional cost to DGS minor adjustments that may be requested by DGS.

Section 2.10.3.3 Permit Submission. Once approved by the Department, the Design-Builder shall submit the approved permit drawings to the necessary authorities for review and approval. The Design-Builder shall develop a list of the required permits, shall track the progress of all such permits through the review process, and shall keep DGS and its Program Manager aware of the status and any significant delays in the permit process. The Design-Builder shall engage such permit expeditors as the Design-Builder deems necessary or appropriate in light of the Project's schedule. The Design-Builder shall prepare complete Permit Construction Documents and Specifications and submit three (3) sets to regulatory agencies (DCRA and all other applicable agencies) for Code and general review and approval (95% plan review). The Design-Builder shall also be responsible for securing and paying for the building permit for the Project. The Design-Builder shall secure and pay for any other permits, governmental fees, licenses and inspections necessary for the execution the work and to complete the Project. The Department shall cooperate with the Design-Builder in securing such permits, licenses and inspections; provided however, the Department shall not be required to pay the fees for such permits, licenses and inspections unless otherwise noted herein. An allowance in the amount of [_____] Dollars (\$[_____]) is included in the Lump Sum Price for the costs of the building permit.

Section 2.10.4 Construction Documents Phase. The Design-Builder shall be required to develop a complete set of issue for construction documents ("IFC"). The Design-Builder shall complete and deliver the IFC documents no later than ninety (90) days from Notice to Proceed. In general, the Design-Builder shall be required to undertake the following tasks and submit to the Department:

- .1 Progress design and Design Development documents and prepare Construction Documents.
- .2 Intentionally Omitted.
- .3 Submit three (3) hard-copy and one (1) electronic PDF copy of all Construction Documents and Specifications to the Department for its review and approval.
- .4 Attend follow up meetings and coordinate with regulatory agencies, Fire Marshall, DGS Facilities personnel, and others as necessary.
- .5 Obtain all required signatures on plans.

- .6 Complete Platting and record Plat.
- .7 Complete final coordination with utilities and service providers as necessary.
- .8 Attend and participate in community meeting(s) to update community regarding the Project.
- .9 Prepare a presentation and provide a minimum of three (3) presentation boards for each community meetings and present/display onsite. Presentation boards shall be in full color and include at least one (1) 3-D rendering.
- .10 Submit appropriate number of copies of plans to applicable DC regulatory agencies for permit review.
- .13 Coordinate with all DC regulatory agencies and permit reviewers as necessary.
- .14 An Environmental Impact Screening Form (EISF) will be required and shall be the responsibility of the Design-Builder.
- .15 Correct plans to reflect issues noted by regulatory agencies and permit reviewers as required. Re-submit for additional review and approval as required. Provide three (3) hard-copy sets and one electronic PDF copy of all corrected plans to DGS (100% Construction Documents) (“IFC Set”).
- .16 Act as scribe for all design related meetings. Distribute meeting minutes to all attendees.
- .17 Upload all design documentation and deliverables as required utilizing the online DGS Project Management Information System (Prolog Converge) and guidelines.
- .19 Certificate of Substantial Completion executed by the Project Engineer and submitted to the Contracting Officer for verification, concurrence and approval.

Section 2.11 Project Schedule. The Design-Builder has developed a preliminary schedule for the Project, which includes a schedule for the Design and Preconstruction phase (the “Design Schedule”) and a schedule for the construction phase (the “Construction Phase Schedule”) and copies of which is attached hereto as **Exhibit C.** During the Design and Preconstruction Phase, the Design-Builder shall monitor the Project’s progress and promptly notify the Department of any delays, regardless of their cause, the causes of such delays, and the Design-Builder’s best projection of the effect of such delays on the Substantial Completion, and Final Completion of the Project. The Department's receipt of, and lack of objection to, any schedule update showing Substantial or Final Completion later than the scheduled Substantial or Final Completion Date shall not be regarded as the Department’s agreement that the Design-Builder may have an extension of time, or as a waiver of any of the Department’s rights, but merely as the Design-

Builder's representation that, as a matter of fact, the Project may not be completed by the applicable Substantial or Final Completion Date. The Project Schedule shall be maintained and continuously updated during the Design, Preconstruction and Construction Phases.

Section 2.12 Notices. The Design-Builder shall comply with and give notices required by agencies having jurisdiction over the Work. If the Design-Builder performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall assume full responsibility for such Work and shall bear the attributable costs. The Design-Builder shall promptly notify the Department in writing of any known inconsistencies in the Drawings and Specifications with such governmental laws, rules and regulations.

Section 2.13 Design & Preconstruction Phase Deliverables. The following deliverables, which list is provided for the convenience of the Parties and is subject to the terms and conditions set forth in this Agreement, shall be submitted by the Design-Builder to the Department during the Design and Preconstruction Phase”

- .1 Design Schedule;
- .2 Construction Phase Schedule;
- .3 Phase II Environmental Assessment;
- .4 Survey of existing conditions;
- .5 Stormwater Management and Erosion Control Plan;
- .6 Schematic Design Documents, Preliminary Specifications, and Schematic cost estimate;
- .7 Design Development Documents, and Design Development Specifications;
- .8 Permit Set;
- .9 List of Permits;
- .10 Construction Documents, including 95% written responses, Specifications and Cost Estimate;
- .11 Summary of required agency review and timetables (i.e. CFA, Office of Planning);
- .12 Results of Hazardous Materials Survey;
- .13 Environmental Impact Screening Form Submission; and
- .14 Submission of progress plans for building and site at each phase of development.

Section 2.14 Letter Contract. The Department and the Design-Builder entered into a letter contract dated [_____] (the “Letter Contract”). It is understood and agreed that certain of the design and preconstruction activities described above were performed while the Letter Contract was in place, and the terms of the Letter Contract shall merge into and be superseded by this Agreement upon the execution of this Agreement. For avoidance of doubt, any services provided or work performed pursuant to the Letter Contract and prior to the date that this Agreement is effective shall be governed by the terms and conditions of this Agreement.

SECTION 3 COMPENSATION

Section 3.1 Lump Sum Price. The Design-Builder shall be paid a Lump Sum Price in the amount set forth in the Project Information Section of this Agreement to Fully Complete the Project. Fully Complete shall mean to undertake all of the Work necessary to fully construct and complete the Project and execute all tasks necessary to: (i) obtain the final approval to operate (“Approval to Operate”) for the Project from PEPCO; (ii) execute interconnection agreements as may be necessary; (iii) submit final lien releases from the Design-Builder and Subcontractors and material suppliers; (iv) complete all punch list items to the Department’s approval and sign-off; and (v) cause all representations, warranties and guarantees to be honored and otherwise fulfill all of the requirements set forth in the Agreement.

Section 3.2 Nature of the Lump Sum Price. The Design-Builder acknowledges and understands that the Lump Sum Price is based on the Narrative Scope of Work and Schematic Design included as **Exhibit A**, and that such Lump Sum Price includes [_____] Dollars (\$[_____]) for the cost of the design services. As such, the Design-Builder and the Department acknowledge that the Drawings and Specifications are not complete, however, the Design-Builder hereby represents that it has a sufficient understanding of the Project to agree to a Lump Sum Price to Fully Complete the Project. The Design-Builder hereby acknowledges that the Narrative Scope of Work and Schematic Design included as **Exhibit A** provide sufficient detail and information to provide a firm Lump Sum Price and that the Lump Sum Price set forth herein is intended to represent the Design-Builder’s offer to Fully Complete the Project. The Parties acknowledge and agree that it is their intent to have the Design-Builder to construct and deliver a fully functional Project site as contemplated in the Construction Documents for the Lump Sum Price and consistent with the Project Schedule. In furtherance of such intent, the Design-Builder hereby assumes the risks associated with and shall be responsible for (i) any changes in market conditions that affect the cost of labor or materials; (ii) the elements of the Work that are not reflected on the preliminary design but which are a logical development of the design intent or otherwise necessary for the Project serve its intended purpose; (iii) coordination issues between the Construction Documents; (iv) elements of work not shown on the Construction Documents, but which are reasonably inferable from the Construction Documents; (v) cost associated with acceleration of the work and expediting of materials necessary to meet the Project Schedule which are the result of anything other than an Excusable Delay; (vi) the risk of subcontractor default. For the avoidance of doubt, the Design-Builder accepts responsibility for the evolution of the design that is necessary to deliver a Project that accomplishes the design intent in the preliminary design as the documents are progressed from a conceptual design to a complete issued for construction set of documents.

Section 3.3 Risks Assumed by Design-Builder. Execution of the Agreement by the Design-Builder is a representation that the Design-Builder has thoroughly examined the terms of this Agreement and the Construction Documents and has visited the Project site and has become familiar with local conditions under which the Work is to be performed. The Design-Builder further represents that it has satisfied itself that it can undertake the work for the stated cost. Among other things, by entering into this Agreement, the Design-Builder assumes the following risks: (1) the nature of the land and subsoil; (2) the form and nature of the site and surrounding areas; (3) details and levels of existing pipe lines, conduits, sewers, drains, cables or other existing services; (4) the quantities, nature and availability of the materials, tools, equipment and labor necessary for the completion of the Work; (5) the means of access to the site and any accommodation that may be required; (6) uncertainties of weather and physical conditions at the site; and (7) in general to have itself obtained all necessary information as to risk contingencies, climatic, hydrological and natural conditions and other circumstances which may influence or affect its performance of the Work.

Section 3.4 Allowances. The Lump Sum Price includes the allowances identified on **Exhibit E.** In the event that the cost of any Scope of Work to be covered by any allowance will exceed the amount of the allowance, the Design-Builder shall submit a Change Request. In the event that the cost of any Scope of Work to be covered by any allowance is less than the allowance, the savings in the allowance shall revert to the Department.

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

SECTION 4 CONSTRUCTION PHASE

Section 4.1 General. The Construction Phase shall commence when the Department issues a written Notice to Proceed for Construction. The Design-Builder shall construct the work described on the approved Construction Documents for the Project, including any work that is that is not specifically shown thereon but is reasonably inferable therefrom or necessary for a fully functioning Project. The Work shall be carried out in a good and workmanlike, first-class manner, and in timely fashion. All materials and equipment to be incorporated into the Project shall be new and previously unused, unless otherwise specified, and shall be free of manufacturing or other defects. The Design-Builder further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects. The Design-Builder warrants that it will use the highest quality of materials and equipment that the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. If required by the Department, the Design-Builder shall furnish satisfactory evidence as to the type, grade and quality of materials and equipment.

Section 4.1.1 Supervision & Coordination.

The Design-Builder will be required to properly supervise and coordinate its work. At a minimum,

it is envisioned that the Design-Builder will be required to undertake the following tasks:

- .1 Participate and assist in Project/Planning meetings;
- .2 Maintain full-time on-site construction supervision and provide daily inspections, quality control, monitoring, coordination of various trades, record drawings, and daily work log;
- .3 Coordinate work with any on-site PEPCO personnel so as to ensure that their activities are not adversely affected;
- .4 Conduct periodic progress meetings following a Design-Builder generated agenda with the Program Manager;
- .5 Provide general safety and signage and posting for the project and see that each subcontractor prepares and submits adequate safety program and monitoring throughout the project;
- .6 Obtain all job permits and approvals from the Department of Consumer and Regulatory Affairs that are required to perform and complete the Work, unless otherwise noted herein;
- .7 Prepare payment requests, verify accuracy and forward to Department for approval and payment;
- .8 Assemble close-out documents required; and
- .9 Provide assistance to the Department through all applicable warranty periods.
- .10 Coordinate its work with all third parties so as not to delay the critical path of the Project.
- .11 Prepare and submit to the Department construction meeting minutes, progress meeting minutes, daily logs, inspection reports, preliminary and baseline schedules, (Primavera format) and schedule updates demonstrating the critical path of the Project (Primavera format).

Section 4.2 Mandatory Subcontract Provisions. To the extent the Design-Builder intends to subcontract a portion of the Work, or is required to do so by law, any subcontract in excess of Twenty Five Thousand Dollars (\$25,000) shall include the following provisions:

- .1 that, to the extent of the Work or supply within the Agreement's scope, the Subcontractor or supplier is bound to the Design-Builder for the performance of all obligations which the Design-Builder owes the Department under the Agreement;
- .2 that the Subcontractor or supplier is not in privity with the Department and shall not seek compensation directly from the Department on any third-party beneficiary, quantum meruit, or unjust enrichment claim, or otherwise, except as may be permitted by any applicable mechanic's lien law;
- .3 that the Department is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit;
- .4 that the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Design-Builder is terminated for default;

- .5 that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Design-Builder to suspend or stop work;
- .6 that the Subcontractor or supplier shall maintain records of all Work it is requested or authorized to do on a time and material or cost-plus basis, or with respect to claims that it has asserted on a time and materials or cost-plus basis, during the Project and for at least three (3) years after the Project is Substantially Complete and requiring the Subcontractor or supplier to make those records available for review or audit by the Department during that time;
- .7 that the Subcontractor and Sub-subcontractors, at all tiers, have reviewed the Construction Documents including, but not limited to, all Drawings and Specifications provided by the Project Engineer, for accuracy, constructability and completeness and will bring any deficiency to the attention of the Department before the Subcontractor enters into a subcontract with the Design-Builder;
- .8 that the Subcontractor shall obtain and maintain, throughout the Project, workers' compensation insurance in accordance with the laws of the District of Columbia. It is understood that this provision is not applicable to supply agreements;
- .9 that, if the Department terminates the Agreement for convenience, the Design-Builder may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) days' written notice to the Subcontractor or supplier, and that the Subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in the Termination for Convenience provisions in the Standard Contract Provisions;
- .10 that the Department shall have the right to enter into a contract with the Subcontractor or supplier for the same price as its subcontract or supply agreement price less amounts already paid, if the Design-Builder files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;
- .11 that the Subcontractor or supplier shall not be entitled to payment for defective or non-conforming work, materials or equipment, and shall be obligated promptly to repair or replace non-conforming work, materials or equipment at its own cost;
- .12 a provision requiring that Subcontractors and suppliers promptly pay Subcontractors and suppliers at lower tiers, imposing upon the Subcontractors and suppliers a duty to pay interest on late payments, and barring reimbursement for interest paid to lower tier Subcontractors or suppliers due to a Subcontractor's or supplier's failure to pay them in timely fashion;
- .13 a provision requiring that all Subcontractors at all tiers comply with the provisions of Section 10 (Economic Inclusion Requirements); provided, however, that the Design-Builder may, in its reasonable discretion impose a different LSDBE

subcontracting goal on some or all of its Subcontractors; provided, further, however, that nothing in this provision shall be deemed to excuse the Design-Builder from using its best efforts to achieve the LSDBE subcontracting goal on an aggregate basis for the Project;

- .14 a provision which allows the Design-Builder to withhold payment from the Subcontractor if the Subcontractor does not meet the requirements of the Subcontract;
- .15 lien and claim release and waiver provisions substantially identical to those in this Agreement.

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

Section 4.4 Site Observations. The Design-Builder will be required to visit the site, become familiar with local conditions under which the work is to be performed and correlate personal observations with requirements of the Construction Documents. The Design-Builder shall carefully study and compare the Construction Documents with each other and with information furnished by the Department. Before commencing activities, the Design-Builder shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Design-Builder with the Construction Documents; and (3) promptly report errors, inconsistencies or omissions discovered to the Department. Once work is started, the Design-Builder assumes the responsibility and costs for the work and the cost of correcting work previously installed.

Section 4.5 Warranty of the Construction Work. The Design-Builder warrants to the Department that materials and equipment furnished under this Agreement will be of good quality and new unless otherwise expressly permitted in writing, that for the one (1) year period following the Substantial Completion Date the construction work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the Construction Documents and/or any approved design documents. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. The Design-Builder and a representative of the Department shall walk the Project together eleven (11) months after the Substantial Completion Date to identify any necessary warranty work. In the event the Design-Builder fails to schedule such a walk, the Warranty period shall be extended until such time as the Design-Builder schedules such a walk.

Section 4.6 Unsafe Materials and Hazardous Materials

Section 4.6.1 The term "Hazardous Material" shall mean, Any toxic substance or hazardous chemical defined or regulated pursuant to federal, state or local laws relating to pollution, treatment, storage or disposal of waste, or protection of human health or the environment. Such laws include, without limitation, the Comprehensive Environmental Response,

Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act and laws relating to emission, spills, leaks, discharges, releases or threatened releases of toxic material. The term Hazardous Materials shall also include petroleum and petroleum bi-products. The Design-Builder shall not bring, spill or release onto the site asbestos, PCBs, or any other Hazardous Material that is not customarily used in a facility of the type and similar to the Project, and shall bring to the Department's attention any specification of such Hazardous Materials in the design documents. If the Design-Builder believes that anything in this Agreement would require that it use or bring onto the site asbestos, PCBs, or any Hazardous Material that is not customarily used in a facility of the type and similar to the Project, it shall immediately inform the Department and seek direction before proceeding.

Section 4.6.2 The Parties acknowledge that although the site may contain significant amounts of Hazardous Materials or petroleum contaminated soil, such Hazardous Material is more likely than not located 10 feet or more below grade); that the Project's ground-mounted ballasted systems will require minimal excavation not extending to such depth; and that significant remediation at the site will not be required. **Notwithstanding the Design-Builder shall be required to conduct removal and disposal activities (inclusive of importing clean backfill) of isolated pockets of soil that may be encountered in running conduit or the like.** In performing such work, The Design-Builder shall comply with all laws, including, without limitation, the requirements of the EPA and all jurisdictional agencies as well as all laws relating to safety, health welfare, and protection of the environment, in removing, treating, encapsulating, passivating, and/or disposing of Hazardous Materials, including, but not limited to, removal, treatment, encapsulation, passivation, and/or disposal of the Hazardous Materials. If any notices to governmental authorities are required, the Design-Builder shall also give those notices at the appropriate times. **The Design-Builder shall ensure abatement subcontractors and disposal sites are appropriately licensed and qualified. In addition, the Design-Builder shall ensure that any subcontractors involved in the abatement of hazardous materials maintain a contractor's pollution legal liability insurance policy of at least Two Million Dollars (\$2,000,000) for the duration of the Project and a period of three (3) years after Substantial Completion of the Project, and that any disposal site to which hazardous materials are taken carries environmental impairment liability insurance for the duration of the Project and a period of three (3) years after Substantial Completion of the Project.**

Section 4.6.3 The Design-Builder shall keep detailed records documenting Work done so that the Department may independently verify compliance with all laws, the number of units actually removed, treated, and/or disposed of, and the appropriate unit price(s) applicable to the Work.

Section 4.6.4 The Department may elect to terminate the Agreement for convenience, at its sole discretion, to the extent large scale Hazardous Material remediation is required.

Section 4.7 Progress Meetings. The Design-Builder shall schedule and conduct at a minimum bi-weekly progress meetings at which the Department, the Project Engineer, the Program Manager, the Design-Builder and appropriate Subcontractors can discuss the status of the Work. The Design-Builder shall prepare and promptly distribute meeting minutes.

Section 4.8 Written Reports. The Design-Builder shall provide written reports to the Program Manager on the progress of the entire Work in accordance at least every other week, including, but not limited to, a baseline schedule and schedule updates with narrative demonstrating the critical path of the Project in Primavera format. The Design-Builder shall also maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, major equipment on the site, Work accomplished, problems encountered and other similar relevant data as the Department may reasonably require. The log shall be available to the Department, the Project Engineer and the Program Manager and on a monthly basis a copy of the log shall be submitted to the Department.

Section 4.9 Key Personnel. To carry out its duties, the Design-Builder shall provide at least the key personnel identified in **Exhibit F** to this Agreement, who shall carry out the functions identified in **Exhibit F**. The Design-Builder shall not replace any of the key personnel without the Department's prior written approval. If the Design-Builder removes or reassigns any of the key personnel (excluding, however, instances where such personnel become unavailable due to death, disability, or separation from the employment of the Design-Builder or any affiliate of the Design-Builder) without the prior written consent of the Department's Designated Representative, the Design-Builder shall pay to the Owner the sum of Ten Thousand Dollars (\$10,000) as liquidated damages. This liquidated damages amount shall not bar recovery of any other damages, costs or expenses other than the Department's internal administrative costs. In addition, the Department shall have the right, to be exercised in its sole discretion, to remove, replace or to reduce the scope of services of the Design-Builder in the event that a member of the key personnel has been removed or replaced by the Design-Builder without the consent of the Department.

Section 4.10 Work by Separate Contractors. The Department reserves the right to perform construction or operations related to the Project with the Department's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site.

Section 4.11 Site Safety and Clean-Up. The Design-Builder will be required to: (i) provide a safe and efficient site, with controlled access, including the installation and provision of such safety barricades, enclosures and overhead protection as may reasonably be required by the Department and as may be necessary to ensure a safe workplace or as may be required by OSHA or other applicable law, and to remove such at the end of the Work and leave the site in broom clean condition; (ii) provide wheel washing stations on site so as to prevent the accumulation of dirt and other refuse on the streets surrounding the Project site; (iii) be responsible for site security; and (iv) be responsible for the cost of temporary power used during the construction of the Project, including, but not limited to, the cost of installing such temporary wiring as may be required.

Section 4.12 Close-out. The Design-Builder shall be required to prepare and submit at close-out a complete set of product manuals, warranties, etc. The Design-Builder shall also provide the Department with a complete set of its Project files, including, but not limited to, shop drawings.

Section 4.13 Salvaged and Stored Items. The Design-Builder shall be responsible for salvaging and storing all items as identified by the Department in accordance with all applicable District laws and regulations, after notifying the Department and receiving the Department's permission to proceed.

Section 4.14 Cutting and Patching. The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching. The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Department or separate contractors by cutting, patching or otherwise altering such construction, or by excavation.

Section 4.15 Correction of Work.

Section 4.15.1 The Department shall be at liberty to object and to require the Design-Builder to remove forthwith from the Project site and the Work and to promptly replace the Superintendent, any foreman, technical assistant, laborer, agent, representative, or other person used by the Design-Builder in or about the execution or maintenance of the Work, who in the sole opinion of the Department is misconducting himself or herself, or is incompetent or negligent in the proper performance of his or her duties, or whose performance in the Work is otherwise considered by the Department to be undesirable or unsatisfactory, and such person shall not be again employed upon the Project without the written permission of the Department.

Section 4.15.2 The Design-Builder shall promptly correct Work rejected by Department for failing to conform to the requirements of the Construction Documents or any approved design document or applicable law or regulations whether observed before or after the Project's completion and whether or not fabricated, installed or completed, and shall correct any Work found to be not in accordance with the requirements within a period of one (1) year from the date of completion or by terms of an applicable special warranty required by this Agreement.

Section 4.15.3 If during the guarantee or warranty period, any material, equipment or system requires corrective Work because of defects in materials or workmanship, the Design-Builder shall commence corrective Work within forty-eight (48) hours after receiving the notice and work diligently until corrective Work is completed; provided, however, if such notice is received on the day before a weekend or a holiday, the Design-Builder will commence corrective Work on the next business day. If the Design-Builder does not, in accordance with the terms and provisions of the Contract Documents, commence all corrective Work within forty-eight (48) hours or if the Design-Builder commences such Work but does not pursue it in an expeditious manner, the Department may either notify the bonding company to have such Work and/or obligations performed at no additional cost to Department or may perform such Work and/or obligations and charge the costs thereof to Design-Builder.

Section 4.16 Manufacturers' Warranties.

Section 4.16.1 The Design-Builder warrants that all manufacturers' or other warranties on all labor, materials and equipment furnished by the Design-Builder or a Subcontractor or supplier

shall run directly to or will be specifically assigned to Department on demand or upon Project completion without demand. In the event any issue or defect which would be covered by any warranty arises but is not addressed by the grantor of the warranty, the Design-Builder shall be required to act as the guarantor of the obligations under the warranty and to perform under the terms of the warranty.

Section 4.16.2 The Design-Builder warrants that the installation of all materials and equipment shall be in strict accordance with the manufacturers' requirements or specifications.

Section 4.17 Schedule Update. The Design-Builder shall submit bi-weekly schedule updates which shall reflect actual conditions of Project progress as of the date of the update. The update shall reflect the actual progress of construction, identify developing delays, regardless of their cause, and reflect the Design-Builder's best projection of the actual date by which Substantial Completion and Final Completion of the Project will be achieved. Via a narrative statement (not merely a critical path method schedule), the Design-Builder shall identify the causes of any potential delay and state what, in the Design-Builder's judgment, must be done to avoid or reduce that delay. The Design-Builder shall point out, in its narrative, changes that have occurred since the last update, including those related to major changes in the scope of work, activities modified since the last update, revised projections of durations, progress and completion, revisions to the schedule logic or assumptions, and other relevant changes. Any significant variance from the previous schedule or update shall also be identified in a narrative, together with the reasons for the variance and its impact on Project completion. All schedule updates shall be in a native format reasonably acceptable to the Department (e.g., Primavera). The Department may make reasonable requests during the Project for changes to the format or for further explanation of information provided. Submission of updates showing that Substantial Completion or Final Completion of the Project will be achieved later than the applicable scheduled completion date shall not constitute requests for extension of time and shall not operate to change the scheduled completion date. The Department's receipt of, and lack of objection to, any schedule update showing Substantial Completion or Final Completion later than the dates agreed upon in the Project Schedule shall not be regarded as the Department's agreement that the Design-Builder may have an extension of time, or as a waiver of any of the Department's rights, but merely as the Design-Builder's representation that, as a matter of fact, Substantial Completion or Final Completion of the Project may not be completed by the agreed upon date in the Project Schedule. Changes to the scheduled completion dates may be made only in the circumstances and only by the methods set forth in this Agreement.

Section 4.18 Application for Substantial Completion Certificate. The Design-Builder shall apply to the Department for a Certificate of Substantial Completion upon meeting the criteria set forth in Section 1.3 of this Agreement. Upon application by the Design-Builder, the Project Architect shall verify that the Design-Builder has achieved Substantial Completion, within the meaning of Section 1.3 of this Agreement, upon which event the Project Architect shall execute such Substantial Completion Certificate, certifying to the Contracting Officer that Substantial Completion has been achieved. Upon receipt of the executed Substantial Completion Certificate from the Architect, the Design-Builder shall cause the Architect to submit such Substantial Completion Certificate to the Contracting Officer for review and approval.

Section 4.19 Construction Phase Deliverables. The following deliverables, which list

is provided for the convenience of the Parties and is subject to the terms and conditions set forth in this Agreement, shall be submitted by the Design-Builder to the Department during the Construction Phase:

- .1 Submittals;
- .2 Minutes of Progress Meetings;
- .3 NET Energy Metering and Interconnection Agreement Submissions;
- .4 Punchlist ;
- .5 Warranties, Manuals and As-Builts Drawings; and
- .6 Quality Control Plan.

Section 4.19 Inspection and Commissioning. The Design-Builder shall be responsible for all inspection and commissioning of the PV Systems. Such activities shall be subject to the Department's and DOEE's review and approval and shall include, but are not limited to:

- .1 System Inspection – Verify system conforms to as-built plan set. Observe and report system compliance with applicable codes and standards.
- .2 DC Insulation Resistance Testing – PV source and output circuits.
- .3 AC Insulation Resistance Testing – Inverter output circuit.
- .4 Open-circuit Voltage (Voc) and Polarity Verification – PV source and output circuits as needed.
- .5 Inverter Commissioning, Start-up, and Operation – Per manufacturer guidelines.
- .6 System Output Performance Calculation – Instantaneous power vs. expected power.
- .7 String Performance Testing – Operating current of PV source circuits and/or output circuits.
- .8 Data Acquisition System (DAS) Commissioning – Per manufacturer guidelines.
- .9 IV Curve Tracing – PV source circuits (from 10% – 100%).
- .10 Documentation and Reporting of all Commissioning Tests and Procedures.

Section 4.20 Interconnection Agreements. The Design-Builder shall be responsible for the interconnection of each System to PEPCO-approved electrical systems and shall be solely responsible for all equipment, maintenance, and repairs associated with such interconnection

equipment in accordance with the terms and conditions of this Agreement. The Design-Builder shall:

- .1 Coordinate with PEPCO to ensure that the Project satisfies all PEPCO criteria for interconnection of the project to the PEPCO electric distribution system. This includes coordinating all negotiations, meeting with PEPCO, design reviews, and participating in any needed interaction between PEPCO and DGS/DOEE.
- .2 Prepare required submissions for obtaining the Net Energy Metering (“NEM”) and interconnection agreement from the utility on behalf of the Department. The Department shall facilitate such submissions to PEPCO upon preparation and submission by the Design-Builder to the Department of such NEM and interconnection agreements, and DGS or DOEE, as the case may be, shall execute will the NEM and all applicable interconnection agreements.
- .3 Manage interconnection and startup of the Project in coordination with the Site and PEPCO. The Design-Builder shall at its own expense pay any interconnection, processing, and other fees and expenses as may be required by PEPCO for interconnection and operation of the Project.

SECTION 5 CLAIMS FOR ADDITIONAL TIME

Section 5.1 Time is of the essence for this Agreement.

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

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

man-made; provided, however, that delays due to Differing Site Conditions or remediation of Hazardous Materials shall be deemed an Excusable Delay.

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

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

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

Section 5.4 If the Design-Builder wishes to make a request extend the Substantial Completion Date, written notice as provided herein shall be given. The Design-Builder's written notice and request to the Department 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 request is necessary. The information set forth in the Design-Builder's request, including, but not limited to any additional costs, shall be for the Department's consideration in determining whether to grant the Design-Builder's request for an extension of the Substantial Completion Date and shall not be construed to entitle the Design-Builder to additional compensation or reimbursement of additional costs.

Section 5.5 **Acceleration.** Subject to the terms of this Section 5.5, the Department shall have the right to direct the Design-Builder to accelerate the Work if, in the reasonable judgment of Department, the Design-Builder fails to: (i) supply a sufficiency of workers or to deliver the materials or equipment with such promptness as to prevent the delay in the progress of the Work; or (ii) the progress of the Work materially falls behind the projections contained in the then currently approved Project Schedule. In the event that the Department or its Program Manager determine that either of the events specified in the preceding sentence have occurred, the Department shall provide the Design-Builder with written notice of such event and the Design-Builder shall be required to provide the Department with a corrective action plan that is reasonably designed to address the concerns raised in such notice within three (3) days after receipt of such notice. If the Department and the Design-Builder are unable to agree on the terms of such corrective action plan within five (5) days after the issuance of the notice (i.e. with forty eight (48)

hours after the receipt of the proposed corrective action plan), the Department shall have the right to direct such acceleration as the Department, in its reasonable judgment, deems necessary. Provided the notice provisions of this Section are complied with, the cost of any acceleration directed under this Section shall not justify an adjustment to the Lump Sum Price or the Substantial Completion Date. The Design-Builder hereby acknowledges that this provision is a material inducement upon which the Department has relied in entering into this Agreement; and represents and warrants that it has included sufficient funding in its Lump Sum Price in order to comply with the requirements of this Section.

SECTION 6 – MAINTENANCE PHASE

Section 6.1 Base Term. The Design-Builder shall upon provide maintenance and commission services of the PV Array systems (the “Maintenance Services”) for a period of one (1) year from the date of successful interconnection to the utility (the “Base Term”).

Section 6.2 Option Years. The Department shall have the right to unilaterally extend the term of this Agreement for four (4), one (1) year option periods (each an “Option Period”) or successive portions thereafter. The Department shall give the Design-Builder preliminary, written notice of its intent to exercise an option period at least thirty (30) days in advance of the expiration of the Agreement, provided that the Department will give the Design-Builder a preliminary, written notice of its intent to exercise an option period at least thirty (30) days in advance of the Contract expiration. The preliminary notice does not commit the Department to an extension. The Design-Builder may waive the thirty (30) day preliminary notice requirement by providing a written waiver to the Contracting Officer prior to the expiration of the Design-Builder. Any option exercise by the Department shall be subject to the following conditions:

- .1 The total duration of this Agreement, including the exercise of any options, shall not exceed five (5) years;
- .2 The exercise of any Option Year is subject to the availability of appropriated funds at the time of the exercise of the option;
- .3 Unless otherwise specified in this Agreement, during any Option Year, contract requirements and deliverables remain the same as those of the Base Term; and
- .4 If the Department exercises an option period, the extended Agreement shall be considered to include this entire option Section.

Section 6.3 Pricing. The Design-Builder’s compensation for the performance of the Maintenance Services during the Base Term, and in the event the Department exercises its option to extend the term of the Agreement to cover the Option Period(s), for each such Option Period, shall be as specified as a lump sum price for each such period in **Exhibit K** to this Agreement. All pricing including Option Year pricing shall be the Design-Builder’s sole method of compensation for the Maintenance Services and sufficient to cover all of the Design-Builder’s cost including, but not limited to, all labor, supervision, supplies, equipment, vehicles, administrative, home office expenses, overhead, profit and all applicable year-over-year service cost increases due to market variables.

Section 6.4 Preventative Maintenance. The Design-Builder shall provide preventative maintenance services which shall include each of the services listed in the table below, provided that line items requiring maintenance on intervals extending beyond the Base Term, shall only be required in the event the Department exercises the applicable Option Year.

Service Name	Service Description	O&M Category	Interval
Install software upgrades	Install any recent software upgrades to inverter programming or data acquisition and monitoring systems	Electrical	4 years
Module electrical connection Testing	PV Module electrical connection check	Electrical	4 years
Overvoltage surge suppressor Testing	Test overvoltage surge suppressors in inverter	Inverter	4 years
Module torque Inspection	PV module torque check & visual inspection	Mechanical	4 years
Racking torque Inspection	Racking torque check and inspection	Mechanical	4 years
Module output Testing	Test output of modules that exhibit cracked glass, bubble formation oxidation of busbars, discoloration of busbars, or PV module hot spots (bypass diode failure)	PV Module	4 years
Module Testing	Test modules showing corrosion of ribbons to junction box	PV Module	4 years
Corrosion Inspection	Inspect electrical boxes for corrosion or intrusion of water or insects. Seal boxes if required.	AC Wiring	Annual
AC Disconnect Switch Inspection	Check position of disconnect switches and breakers.	AC Wiring	Annual
Protection device Inspection	Exercise operation of all protection devices.	AC Wiring	Annual
Re-torque AC connections	Re-torque all electrical connections on AC side of system.	AC Wiring	Annual
Grounding Inspection	Test system grounding with "megger"	DC Wiring	Annual
Cable Inspection	Inspect cabling for signs of cracks, defects, pulling out of connections; overheating, arcing, short or open circuits, and ground faults.	DC Wiring	Annual
DC Disconnect Switch Inspection	Check proper position of DC disconnect switches.	DC Wiring	Annual
Combiner Box Inspection	Open each combiner box and check that no fuses have blown and that all electrical connections are tight. Check for water	DC Wiring	Annual

Service Name	Service Description	O&M Category	Interval
	incursion and corrosion damage. Use an infrared camera for identifying loose connections because they are warmer than good connections when passing current.		
Electrical Box Inspection	Look for any signs of intrusion by pests such as insects and rodents. Remove any nests from electrical boxes (junction boxes, pull boxes, combiner boxes) or around the array. Use safe sanitation practices because pests may carry disease.	DC Wiring	Annual
Re-torque combiner box connections	Re-torque all electrical connections in combiner box	DC Wiring	Annual
Manage documentation	Confirm availability and take any measures to secure operating instructions, warranties and performance guarantees, and other project documentation.	Documents	Annual
Meet with site staff	Meet with key site staff to continue awareness, question any issues, and report on findings.	Documents	Annual
AC disconnect box Inspection	AC disconnect box inspection	Electrical	Annual
Transformer Inspection	Transformer/switchgear inspection	Electrical	Annual
Check central SCADA	Check central SCADA/network manager, include software IT and IT hardware updates as required	Electrical	Annual
Combiner box inspection	DC circuit test and combiner box inspection	Electrical	Annual
Grounding hardware Testing	Check grounding hardware	Electrical	Annual
Dust Cleaning from heat rejection fins	Clean (vacuum) dust from heat rejection fins	Inverter	Annual
Performance Testing	Perform performance test: measure incident sunlight and simultaneously observe temperature and energy output. Calculate PV module efficiency as a function of temperature and calculate the balance-of-system efficiency. Compare readings with diagnostic benchmark (original efficiency of system).	Inverter	Annual
Inverter Inspection	Observe instantaneous operational indicators on the faceplate of the inverter to ensure that the amount of power being generated is typical of the conditions.	Inverter (Electrical)	Annual

Service Name	Service Description	O&M Category	Interval
	Compare current readings with diagnostic benchmark. Inspect Inverter housing or shelter for physical maintenance required if present		
Torque Inspection	Torque inspection	Mechanical	Annual
Galvanization Inspection	Galvanization inspection	Mechanical	Annual
Instrument Inspection	Spot-check monitoring instruments (pyranometer, etc.) with hand-held instruments to ensure that they are operational and within specifications.	Monitoring	Annual
String Inspection	Test open circuit voltage of series strings of modules	PV Array	Annual
Array Inspection	Walk through each row of the PV array and check the PV modules for any damage. Report any damage to rack and damaged modules for warranty replacement. Note location and serial number of questionable modules.	PV Array	Annual
Mounting System Inspection	Inspect ballasted, non-penetrating mounting system for abnormal movement	PV Array	Annual
Remove bird nest	Remove bird nests from array and rack area.	PV Array	Annual
Corrosion Inspection	Check all hardware for signs of corrosion, and remove rust and re-paint if necessary.	PV Array (Mechanical)	Annual
Hot spot Inspection	Use infrared camera to inspect for hot spots; bypass diode failure	PV Module	Annual
Transformer meter Inspection	Inspect transformer meter, oil and temperature gauges, include housing container, or concrete housing if presentment	Transformer	Annual
Manage alarms	Monitor alarms and site-specific alert parameters	Asset Management	As needed
Manage inventory	Manage inventory of spare parts	Asset Management	As needed
Replace air filters	Replace any air filters on air-cooled equipment such as inverter.	Inverter	As needed
Vegetation Management	Determine if any new objects, such as vegetation growth, are causing shading of the array and move them if possible. Remove any debris from behind collectors and from gutters.	PV Array	As needed
Replace weather sensors	Calibrate or replace weather sensors and meters	Electrical	As per manuf.

Service Name	Service Description	O&M Category	Interval
Replace transient voltage surge suppression device	Replace transient voltage surge suppression devices	Inverter	As per manuf.
Cleaning & Snow Removal	Bird Cleaning General Cleaning/Veg Mobilization Array Cleaning, Snow Removal, Dust Cleaning, Pollen Cleaning	PV Array	Bi-annual
Maintain log	Maintain a log of cumulative power delivery (kWh to date) and chart this value against date. Chart the value even for uneven or infrequent intervals. Explain variation by season or weather.	Meter	Monthly
Manage preventative activities	Update record with preventative maintenance activities and track any problems or warranty issues and secure the record on-site.	Documents	Ongoing

Section 6.5 Corrective Maintenance. The Design-Builder shall provide corrective maintenance services that include, at a minimum, the services listed below:

Corrective Maintenance Service Description	O&M Category	Interval
Replace inverter AC fuse(s)	AC Wiring	As needed
Replace protective devices (breakers) in building panel	AC Wiring	As needed
Replace broken/crushed AC wiring conduit and fittings	AC Wiring	As needed
Repair line-to-line fault	AC Wiring	As needed
Locate line-to-line fault	AC Wiring	As needed
Replace failed fuses in combiner box	DC Wiring	As needed
Replace MC Connectors between modules	DC Wiring	As needed
Replace MC connector lead to combiner box	DC Wiring	As needed
Re-route conduit	DC Wiring	As needed
Replace broken/crushed DC wiring conduit and fittings	DC Wiring	As needed
Repair ground fault	DC Wiring	As needed
Locate ground fault	DC Wiring	As needed
Locate underground DC wiring as part of repairs to faults	DC Wiring	As needed
Replace fuse(s) on DC source circuits to inverter	DC Wiring	As needed
Seal leaking junction box	DC Wiring	As needed
Start/stop inverter (reboot to clear unknown error)	Inverter	As needed
Replace inverter fan motor	Inverter	As needed
Replace inverter data acquisition card/board; diagnose with fault	Inverter	As needed

Corrective Maintenance Service Description	O&M Category	Interval
code		
Replace inverter control card (PWM signal, voltage, phase, frequency, shut-down); diagnose with fault code	Inverter	As needed
Replace IGBT driver card/board; diagnose with fault code	Inverter	As needed
Replace maximum power point tracker card/board; diagnose with fault code	Inverter	As needed
Replace AC contactor in inverter	Inverter	As needed
Replace IGBT matrix in inverter	Inverter	As needed
Replace 24VDC power supply for inverter controls	Inverter	As needed
Replace DC contactor in inverter	Inverter	As needed
Replace GFI components in inverter	Inverter	As needed
Replace capacitors in inverter	Inverter	As needed
Replace inductors (coils) in inverter	Inverter	As needed
Replace fuses internal to inverter	Inverter	As needed
Replace inverter relay/switch	Inverter	As needed
Replace overvoltage surge suppressors for inverter	Inverter	As needed
RE-install inverter control software	Inverter	As needed
Manual reset of arc-fault trip (NEC 690.11)	Inverter	As needed
Restore lost internet connection	Monitoring	As needed
Excavate and replace failed foundation element	PV Array	As needed
Repair or replace rack parts damaged by corrosion or physical damage	PV Array	As needed
Replace modules failing performance test and IR scan after showing cracks in glazing, discoloration of metallic contacts, delamination or signs of water	PV module	As needed
Repair cracking of PV module back sheet	PV module	As needed
Repair or replace damage to module frame	PV module	As needed
Replace transformer	Transformer	As needed
Re-tap transformer	Transformer	As needed
Replace terminal block	Inverter	As needed
Replace inverter	Inverter	As needed
Locate underground AC wiring	AC wiring	As needed

Section 6.6 Maintenance Phase Deliverables. During this phase, the Design-Builder shall maintain and provide maintenance logs of all maintenance activities and services. Such logs shall describe the activity, service date, resolution, follow-up actions, parts repaired or replaced, and identification of service personnel. The Design-Builder shall update the record with preventative maintenance activities and track any problems or warranty issues and secure the record on-site. Logs must cover all of the preventative and corrective maintenance items noted in this Section 6.

SECTION 7 CHANGES & MARK-UPS

Section 7.1 Changes Generally. Unless otherwise specified herein, changes to the Work shall be reviewed in accordance with the District of Columbia Department of General Services Standard Contract Provisions, General Provisions (Construction Contract), as amended, which are attached hereto as **Exhibit J** and incorporated herein.

Section 7.2 Markups. For Changes to the Lump Sum Price, the following conditions shall apply:

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

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

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

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

.5 The amount of credit to be allowed by Design-Builder 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.

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

- (a) **Labor.** Payment will be made for direct labor cost plus indirect labor cost such as insurance, taxes, fringe benefits and welfare provided such costs are considered reasonable. Indirect costs shall be itemized and verified by receipted invoices. If verification is not possible, up to eighteen percent (18%) of direct labor costs may be allowed.
- (b) **Rented Equipment.** Payment for required equipment rented from an outside company that is neither an affiliate of, nor a subsidiary of, the Design-Builder will be based on receipted invoices which shall not exceed rates given in the current edition of the Rental Rate Blue Book for Construction Equipment published by Data Quest. If actual rental rates exceed manual rates, written justification shall be furnished to the Contracting Officer for consideration. No additional allowance will be made for overhead and profit. The Design-Builder shall submit written certification to the Contracting Officer that any required rented equipment is neither owned by nor rented from the Design-Builder or an affiliate of or subsidiary of the Design-Builder.
- (c) **Design-Builder's Equipment.** Payment for required equipment owned by the Design-Builder or an affiliate of the Design-Builder will be based solely on an hourly rate derived by dividing the current appropriate monthly rate by 176 hours. No payment will be made under any circumstances for repair costs, freight and transportation charges, fuel, lubricants, insurance, any other costs and expenses, or overhead and profit. Payment for such equipment made idle by delays attributable to the Government will be based on one-half the derived hourly rate under this subsection.

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

Section 7.3 Design-Builder's Designated Representative. The Design-Builder designates the individual(s) identified in **Exhibit I** as its representative with express authority to bind the Design-Builder with respect to all matters requiring the Design-Builder's approval or

authorization. In addition, the Department retains the right to approve candidates for key on-site personnel in accordance with their experience with similar projects and local marketplace conditions. Once approved, individuals cannot be changed without the Department's prior approval. During the entire term, it is agreed that the Design-Builder's designated representative will devote his time exclusively to the Project, unless the Department consents to a reduction in time. All services provided by the Design-Builder shall be performed in accordance with the highest professional standards recognized and adhered to by Design-Builders that perform historic renovation construction services for municipal facilities.

SECTION 8 INSURANCE AND BONDS

Section 8.1 The Design-Builder will be required to maintain the following types of insurance throughout the life of the Agreement. In the event that a claim for or related to the Project is made on any such policy or any other policy, the Design-Builder shall be responsible for the payment of any applicable deductible and shall not be entitled to an increase in Lump Sum for the costs of paying such deductible.

- .1** Commercial general public liability insurance ("Liability Insurance") against liability for bodily injury and death and property damage, such Liability Insurance to be in an amount not less than Five Million Dollars (\$5,000,000) for liability for bodily injury, death and property damage arising from any one occurrence and Five Million Dollars (\$5,000,000) from the aggregate of all occurrences within each policy year. The Design-Builder shall include completed operations coverage and shall ensure that such coverage remains in place for the duration of the Project as well as three (3) years after Substantial Completion of the Project is achieved.
- .2** Workers' compensation and Employers Liability coverage providing statutory benefits for all persons employed by the Design-Builder, or its contractors and subcontractors at or in connection with the Work.
- .3** Automobile Liability, including Hired and Non-Owned Auto Liability in the amount of at least One Million Dollars (\$1,000,000) for each occurrence for bodily injury and property damage.
- .4** Builder's risk insurance written on an "all risk" basis and covering the value of the improvements being constructed. This coverage does not need to be maintained until such time as construction operations begin.
- .5** Contractor's Pollution Liability coverage in the amount of at least Two Million Dollars (\$2,000,000) for each occurrence. Such coverage shall be maintained for the duration of the Project as well as three (3) years after Substantial Completion of the Project is achieved.
- .6** Excess umbrella liability coverage (on at least a follow form basis) and when combined with the general liability policy has an aggregate limit of at least Ten Million Dollars (\$10,000,000).

.7 Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of design, architectural, engineering, or any other professional services under the Agreement. The policy shall provide limits of One Million Dollars (\$1,000,000) per occurrence for each wrongful act and Five Million Dollars (\$5,000,000) annual aggregate. For five (5) years after Substantial Completion of the Project, the Design-Builder shall maintain Professional Liability Insurance coverage for errors or omissions in performance which occurred prior to or on the Final Completion Date but were undiscovered until after that the Final Completion Date. The Design-Builder shall ensure that the Department has the ability to assert claims directly against the Design-Builder's Professional Liability Insurance (Errors and Omissions) policy. Not later than 30 days after Department's execution of this Agreement, the Design-Builder shall provide written instructions to the Department outlining the procedures for making claims against the Design Builder's Professional Liability Insurance (Errors and Omission) policy.

Section 8.2 Each insurance policy shall be issued in the name of the Design-Builder and shall name as additional insured parties the Department and the District of Columbia, and the officers, agents and employees of each. Such insurance policies shall not be cancelable or reduced without thirty (30) days prior written notice to the Department.

Section 8.3 All such insurance policies shall contain a waiver of subrogation against the Department and the District of Columbia, and their respective agents.

Section 8.4 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 8.5 Performance Bond and Payment Bond. The Design-Builder shall, before commencing the Construction Phase, provide to the Department a payment bond and performance bond, each with a penal sum equal to the 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 Design-Builder, even if such amount exceeds the penal value of such bond. All bonding companies must be included on the Department of Treasury's Listing of Approved Sureties. Unless otherwise directed by the Department, the Design-Builder shall require all Subcontractors whose Subcontract prices exceed One Hundred Thousand Dollars (\$100,000) to provide payment and performance bonds, with a penal sum equal to one hundred percent (100%) of the subcontract price. Further, the Design-Builder must deliver to the Contracting Officer copies of its subcontractor's Agreements of Indemnity. All bonds must be in a form acceptable to the Department, its lenders or bond trustee, and issued by a surety authorized to do business in the District of Columbia and bonding company listed on the United States Department of Treasury's Listing of Approved Sureties. All subcontractors' bonds must include a dual obligee rider, naming the Design-Builder and the Department as dual obligees. If the Guaranteed Maximum Price is increased pursuant to the terms of the Agreement, the Department may require that the amount of the bonds be increased in the amount of one hundred

percent (100%) of the increase, and the Design-Builder shall promptly comply. The Design-Builder shall furnish a copy of its bonds to any potential beneficiary of the bonds, or permit that person or company to make a copy. If the bonds provided become unacceptable to the Department, the Design-Builder shall promptly provide substitute security acceptable to the Department. If the Design-Builder intends to exercise its rights as dual obligee under any trade Subcontractor's bond, it shall first give the Department twenty (20) days written notice, so that the Department may lodge any objection it may reasonably have to the proposed action. If the Design-Builder fails to furnish evidence of such payment and performance bonds, agreements of indemnity or such additional security as set forth in this Section 10.2, within ten (10) days after written notice so to do, all payments under this Agreement will be withheld and work under this Agreement will be stopped until evidence of such bonds, additional security or agreements of indemnity is furnished.

SECTION 9 ECONOMIC INCLUSION REQUIREMENTS

Section 9.1 LSDBE Utilization and Subcontracting Plan. The Department requires that Local, Small and Disadvantaged Business Enterprises ("LSDBEs") participate in this project to the greatest extent possible. [Thirty-Five Percent (35%)] of the Work must be awarded to entities that are certified as Small Business Enterprises by the District of Columbia Department of Small and Local Business Development. The LSDBE certification shall be, in each case, as of the effective date of the subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal. The Design-Builder has developed an LSDBE Utilization and Subcontracting Plan that is attached hereto as **Exhibit D.** The Design-Builder shall comply with the terms of the LSDBE Utilization and Subcontracting Plan in making purchases and administering its Subcontracts and Supply Agreements.

Section 9.2 First Source Employment Act. The Design-Builder shall comply with subchapter X of Chapter II of Title 2 of the D.C. Code, and all successor acts thereto, including but not limited to the *Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011*, and all successor acts thereto and the rules and regulations promulgated thereunder. The Design-Builder and all member firms and Subcontractors shall execute a First Source Agreement with the District of Columbia Department of Employment Services ("DOES") prior to beginning Work at the Project site.

Section 9.3 Compliance with the Apprenticeship Act. The Design-Builder agrees to comply with the requirements of the Apprenticeship Act of 1946, D.C. Code §§ 32-1401, *et seq.* It is understood and agreed that thirty five percent (35%) of all apprentice hours for the Project must be District residents. If the Design-Builder or any of its subcontractors fail to use its best efforts to meet this goal, the Design-Builder or the subcontractor shall be subject to a penalty of five percent (5%) of the labor costs associated with the Agreement, in accordance with D.C. Code § 32-1431 and implementing regulations.

Section 9.4 Workforce Utilization Plan. The Design-Builder shall comply with the requirements of the approved Workforce Utilization Plan attached as **Exhibit H.** The percentage labor hours set forth in the Request for Proposals for the Project must be performed by District of Columbia residents (such requirement, the "Workforce Utilization Requirement").

SECTION 10 MISCELLANEOUS PROVISIONS

Section 10.1 Ownership And Use of Documents. The drawings, specifications and other documents prepared by the Design-Builder and its subconsultants, and copies thereof furnished to the Design-Builder, are for use solely with respect to this Project and shall become the property of the Department. They are not to be used by the Design-Builder, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Department and the Project Engineer.

Section 10.2 Governing Law. The Agreement 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 10.3 Davis-Bacon Act Provision. The Design-Builder agrees that the construction work performed under this Agreement shall be subject to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-7). The wage rates applicable to this Project are attached as **Exhibit G**. The Design-Builder further agrees that it and all of its subcontractors shall comply with the regulations implementing the Davis-Bacon Act and such regulations are hereby incorporated by reference.

Section 10.4 False Claims Act. The Design-Builder shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in District of Columbia Code § 2-381.02.

Section 10.5 No Third-Party Beneficiary Rights. Nothing in this Agreement shall be construed as creating third-party beneficiary rights in any person or entity, except as otherwise expressly provided in this Agreement.

Section 10.6 Limitations. The Design-Builder agrees that any statute of limitations applicable to any claim or suit by the Department arising from this Agreement or its breach shall not begin to run, or shall be deemed to be tolled, until Final Completion or, with respect to latent defects or nonconformities, such later time as the Department knew or should have known of the defect or nonconformity.

Section 10.7 Binding Effect; Assignment. The Agreement shall inure to the benefit of, and be binding upon and enforceable by, the Parties and their respective successors and permitted assigns. The Design-Builder shall not assign its rights under the Agreement, including the right to all or a portion of its compensation, without the Department's prior written consent. Any delegation or assignment made contrary to the provisions of this Section shall be null and void.

Section 10.8 Warranties and Representations

Section 10.8.1 All disclosures, representations, warranties, and certifications the Design-Builder makes in its proposal in response to the RFP shall remain binding and in effect throughout the term of the Agreement. The Design-Builder reaffirms that all such disclosures, representations, warranties, and certifications are true and correct.

Section 10.8.2 If any disclosure, representation, warranty or certification the Design-Builder has made or makes pursuant to the RFP or the Agreement, including, without limitation, representations concerning the Design-Builder's construction or design experience and qualifications, claims or litigation history or financial condition, is materially inaccurate, that shall constitute a material breach of the Agreement, entitling the Department to all available remedies.

Section 10.8.3 The terms and conditions of Section 10.8 shall apply throughout the term of this Agreement.

Section 10.9 Responsibility for Agents and Subcontractors. At all times and during both the Preconstruction and Construction Phases, the Design-Builder shall be responsible to the Department for any and all acts and omissions of the Design-Builder's agents, employees, Subcontractors, Sub-Subcontractors, material suppliers, and laborers, and the agents and employees of the Subcontractors, Sub-Subcontractors, material suppliers, and laborers performing or supplying Work in connection with the Project. This Section 10.9 shall apply throughout the term of this Agreement.

Section 10.10 Independent Contractor. In carrying out all its obligations under the Agreement, the Design-Builder shall be acting as an independent contractor, and not as an employee or agent of the Department, or joint venturer or partner with the Department. The Design-Builder shall have exclusive authority to manage, direct, and control the Work, and shall be responsible for all construction means, methods, techniques, sequences, and procedures, as well as for Project safety.

Section 10.11 Standard Contract Provisions. The Department's Standard Contract Provisions, as amended, which are attached hereto as **Exhibit J**, are hereby incorporated by reference and made a part of this Agreement.

SECTION 11 LIQUIDATED DAMAGES

In addition to the liquidated damages set forth in Section 4.9, if the Design-Builder 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 Design-Builder shall pay to the Department, as fixed, agreed and liquidated delay damages in the amount of set forth in the Project Information Section of this Agreement per day for each calendar day of delay for failure to meet the Substantial Completion Date. The Design-Builder 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. In the event the Design-Builder fails to meet the Substantial Completion Date for more than 50 days, the Design-Builder consents to a termination for default.

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

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

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

[DESIGN-BUILDER]

By: _____
Name: _____
Its: _____
Date: _____

Exhibit A

Narrative Scope of Work and Schematic Design

Exhibit B

Schedule of Values

Exhibit C

Deliverable List

1. Design and Preconstruction Phase Deliverables.

- a. Design Schedule
- b. Construction Phase Schedule
- c. Phase II Environmental Assessment
- d. Survey of existing conditions
- e. Stormwater Management and Erosion Control Plan
- f. Schematic Design Documents, Preliminary Specifications, and Schematic cost estimate (B.2.1.3)
- g. Design Development Documents, and Design Development Specifications
- h. Permit Set
- i. List of Permits
- j. Construction Documents, including 95% written responses, Specifications and Cost Estimate Construction Documents
- k. Summary of required agency review and timetables (i.e. CFA, Office of Planning)
- l. Results of Hazardous Materials Survey
- m. Environmental Impact Screening Form Submission
- n. Submission of progress plans for building and site at each phase of development

2. Construction Phase Deliverables.

- a. Submittals
- b. Minutes of Progress Meetings
- c. NET Energy Metering and Interconnection Agreement Submissions
- d. Punchlist
- e. Warranties, Manuals and As-Built Drawings
- f. Quality Control Plan

3. Maintenance Phase Deliverables.

- a. Maintenance logs of all preventative and corrective maintenance activities and services.

Exhibit D

LSDBE Utilization and Subcontracting Plan

Exhibit E

List of Allowances

- Landscaping and Fencing of Site \$125,000

Exhibit F

Key Personnel

Exhibit G

Davis-Bacon Wage Rates

Exhibit H

Workforce Utilization Plan

Exhibit I

Design-Builder Designated Representative

Exhibit J

DGS Standard Contract Provisions

Exhibit K

Maintenance Services Pricing