

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF GENERAL SERVICES



**Addendum No. 3**

**To**

**Request for Proposal (“RFP”) No. DCAM-22-CS-RFP-0026**

**Construction Services for Major Renovations of PSCC Building**

**Issued: December 23, 2022**

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This Addendum No. 3 is issued on December 23, 2022. Except as modified herein, the RFP remains unchanged.

**Item No. 1.** The proposal due date is extended to **January 6, 2023, at 4:00 P.M.**

**Item No. 2.** Form of Contract (Attachment L of the RFP) is attached as **Exhibit 1**.

**Item No. 3.** Files in the link for Specifications and Drawings have been updated. click here to access:

[DCAM-22-CS-RFP-0026 Specs and Drawings](#)

By: James H. Marshall  
James H. Marshall  
Contracting Officer

Date: 12/23/22

--End of Addendum No. 3--

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF GENERAL SERVICES**



**EXHIBIT 1**

**[EXHIBIT WILL APPEAR ON THE FOLLOWING PAGE]**

**CONSTRUCTION SERVICES AGREEMENT  
MAJOR RENOVATIONS OF PSCC BUILDING**

**BY AND BETWEEN**

**THE DEPARTMENT OF GENERAL SERVICES**

**AND**

**[CONTRACTOR]**

**CONTRACT NUMBER: DCAM-22-CS-RFP-0026**

## PROJECT INFORMATION

### PROJECT SUMMARY

1.	<b>Project Name:</b>	Construction Services for Major Renovations of PSCC Building
2.	<b>Project Address:</b>	310 McMillan Drive NW, Washington, DC
3.	<b>Agreement Type:</b>	Construction Services with Lump Sum Price
4.	<b>Client Agency:</b>	District of Columbia Office of Unified Communications (“OUC”)
5.	<b>Contractor:</b>	[Contractor]
6.	<b>Agreement Amount:</b>	TBD
7.	<b>Liquidated Damages for Delay in Substantial Completion:</b>	\$1,000/day
8.	<b>Disincentive Fee for Failure to Timely Submit Deliverables:</b>	\$1,000, plus \$500 per day after receiving written notice
8.	<b>Substantial Completion Date:</b>	365 days from Notice to Proceed
9.	<b>Final Completion Date:</b>	455 days from Notice to Proceed
10.	<b>Administrative Term Expiration Date:</b>	545 days from Notice to Proceed
11.	<b>Key Personnel Replacement Fee</b>	\$25,000 per reassignment
12.	<b>Letter Contract Date:</b>	TBD

**CONSTRUCTION SERVICES AGREEMENT FOR  
MAJOR RENOVATIONS OF PSCC BUILDING  
DCAM-22-CS-RFP-0026**

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

**RECITALS**

**WHEREAS**, the Department issued a request for proposals dated November 23, 2022 (the “RFP”) to engage a contractor to provide construction services for the Major Renovations of PSCC Building project (the “Project”), located at 310 McMillan Drive NW, Washington, DC;

**WHEREAS**, the Department desires that the Project be substantially complete no later than 365 days from the Notice to Proceed (“Substantial Completion Date”);

**WHEREAS**, the Department desires that the Project achieve final completion no later than 455 days from the Notice to Proceed (“Final Completion Date”);

**WHEREAS**, the Department desires that the Project be administratively complete no later than 545 days from the Notice to Proceed (“Administrative Completion Date”);

**WHEREAS**, the Contractor submitted a proposal entitled Construction Services for Major Renovations of PSCC Building dated [Proposal date], to provide construction services for the Project;

**WHEREAS**, the Department wishes to retain the Contractor to provide construction services for the Project. The Project is to include preconstruction services and construction services;

**WHEREAS**, the Contractor wishes to provide the preconstruction and construction and related services necessary to complete the Project, subject to the terms and conditions set forth in this Agreement;

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

**WHEREAS**, the Department has engaged an Architect (the “Architect” or the “Architect/Engineer”) pursuant to a separate contract (the “Design Contract”) to provide design, planning, architectural and engineering services in order to construct the Project and the Architect has advanced the design of the Project to the development of the Drawings and Specifications; and

**WHEREAS**, the Department will remain in contract with the Architect/Engineer and will manage the Design Contract for the duration of the Project. The Contractor will, however, be required to coordinate with the Architect/Engineer.

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

## **Article 1 - DEFINITIONS**

### **Section 1.1. Agreement.**

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

### **Section 1.2. Client Agency.**

The governmental or quasi-governmental entity represented by the Department, requesting the Project. The client agency is the Office of Unified Communications ("OUC" or "Client Agency").

### **Section 1.3. Construction Documents.**

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

### **Section 1.4. Services.**

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

### **Section 1.5. Preconstruction Services.**

In order to ensure that the Project is completed in an efficient and timely manner, the Contractor shall be required to complete certain preconstruction activities prior to mobilizing to the Project site and commencing work.

### **Section 1.6. Construction Services.**

Services provided throughout the construction phase during which the Contractor shall carry out the bulk of the construction for the Project.

### **Section 1.7. Contract Documents.**

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

**Section 1.8. Drawings.**

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

**Section 1.9. Substantial Completion.**

For purposes of this requirement, the term “**Substantially Complete**” 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 Contract have been delivered to the Department; (4) any supplemental training session required by the Contract for operating or maintenance personnel have been completed; (5) all clean-up required by the Contract has been completed; and (6) the Project is ready for the Department to use it for its intended purpose. “**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.

**Section 1.10. Final Completion.**

The point at which Substantial Completion has been achieved, all punch list items noted at Substantial Completion have been completed with the Department’s approval and sign-off and all documents the Contractor is required to deliver to the Department as a condition to receiving final payment have been delivered. These may include, as applicable, but are not limited to, a final Certificate of Occupancy for the Project from the District of Columbia, and final lien releases from the Contractor and Subcontractors and material suppliers. The Contractor shall cause all representations, warranties, and guarantees to be honored, and otherwise fulfill all the requirements set forth in the Contract.

**Section 1.11. Administrative Term.**

The Contract shall have an administrative term (the “Administrative Term”) that runs from the effective date of the Notice to Proceed to the later of the Administrative Term Expiration Date. The Administrative Term is established for the sole purpose of permitting the Department’s Office of the Chief Financial Officer to process payments in the event any payments become due. The Administrative Term is NOT an extension of the Substantial or Final Completion Dates, and nothing herein shall be construed to extend the Substantial and Final Completion Dates or, limit the Department’s ability to assess liquidated damages thereon.

**Section 1.12. Hazardous Material.**

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

**Section 1.13. Notice to Proceed.**

A written notice to proceed, signed by the Department, directing the Contractor to proceed with the Project or any portion of the Project (“Notice to Proceed” or “NTP”).

**Section 1.14. Project Schedule.**

The schedule for the Project agreed to by the Department and the Contractor. Such schedule shall include a baseline schedule as updated periodically by the Contractor and approved by the Department. The Project Schedule shall not be changed except by a Change Order or Change Directive issued by the Department. The Project Schedule shall be in a form and contain such detail as may be agreed upon by the Parties.

**Section 1.15. Self-Performed Work.**

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

**Section 1.16. Specifications.**

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

**Section 1.17. Standard Contract Provisions.**

The District of Columbia Department of General Services Standard Contract Provisions for Construction Contracts, as amended, are attached hereto as **Exhibit E** and incorporated herein.

**Section 1.18. Subcontractor.**

Any person, natural or legal, to whom the Contractor delegates performance of any portion of the Work required by the Agreement. The term “Subcontractor,” used without a qualifier, shall mean a subcontractor in direct privity with the Contractor. “Subcontractors at all tiers” shall mean not only those Subcontractors in direct privity with the Contractor, but also those performing Work pursuant to sub-subcontracts, subcontracts, and so on. “Subcontractors” shall include both those who are retained to perform labor only and those who are retained both to perform labor and to supply material or equipment. “Subcontractors” shall also include design professionals who are not the Contractor’s employees and to whom the Contractor delegates any part of its responsibilities under the Agreement, except that references to “trade Subcontractors” shall exclude design professionals.

**Section 1.19. Work.**

The term “Work” refers to any and all work done in performance of the Services necessary, at any and all phases of the Agreement, to fully complete the Project.



## **Article 2 - GENERAL PROVISIONS**

### **Section 2.1. Term and Termination**

The period of performance under this Agreement shall commence from the date of execution of the Letter Contract by the Department and shall terminate upon the expiration of the Administrative Term or upon termination by the Department pursuant to Articles 5 and 6 of the SCP.

### **Section 2.2. Relationship of Parties.**

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

### **Section 2.3. Confidentiality of Information**

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

### **Section 2.4. Project Description.**

The Department has commissioned a set of Drawings and Specifications for the Project site that generally describes the work required to implement the Project. These Drawings and Specifications shall serve as the basis for the completion of the Project.

The OUC operates all public safety communications for the District of Columbia. Part of OUC's mission includes the management of the public safety radio network, as well as the Public Safety Answering Point for emergency (9-1-1) and non-emergency (3-1-1) calls. The mission of the OUC is to provide a fast, professional, and cost-effective response to emergency and non-emergency calls in the District. The PSCC houses both some components of the radio network and a part of the 911 and 311 call centers.

The PSCC building is an old building in need of modernization and renovation.

### **Section 2.4.1 Scope of Work**

As described in the Drawings and Specifications, the Project shall achieve the following:

#### **A. Architectural**

The primary changes include the expansion of the existing operations room, a new glazed lobby area, roof replacement and all system upgrades to support the existing and new space layout. The scope of work outlines the order of priorities in regard to building upgrades. Of the 37,000 SF facility, the renovation areas will be limited to the high priority upgrades and the spaces considered to be in poor condition to ensure the partial continuation of operations throughout all phases of construction. First and foremost are the areas deemed critical and in need of immediate upgrades:

- 1) Room 150 (Operations/Call Center) shall be increased from the existing 50 workstations to 102 operations stations.
- 2) The exterior area in front of the existing entrance shall be utilized to enlarge the existing Lobby area. The new proposed design creates a destination entrance to mark the building front and create a distinguished and inviting first impression. The new space arrangement will provide a more efficient screening sequence with a secondary access entrance for personnel with proper credential access.
- 3) The Radio Shop has been relocated to the west side of the first floor to allow for better accessibility to other floors and other occupied spaces throughout the First Floor.
- 4) The Second Floor core space is designed to be a single classroom with an operable partition to allow for the flexibility of two classrooms. When this partition is in use each classroom will have a presentation wall for training lessons. Each presentation wall includes a centralized smart wall for wireless screen sharing.
- 5) The East end of the original Vital Storage space has been given back to the corridor to allow for open modular office spaces and a Pantry Kitchenette. In general, the second-floor finishes are considered to be in good condition. The only spaces to be refinished are the new classrooms and the new designated space for IT Hotel Stations and Transcription.
- 6) All building restroom fixtures, finishes, and ceilings shall be replaced with new. Restroom and shower layouts have been modified where feasible to comply with ADA regulations.

- 7) Existing roofs shall be removed and upgraded with a new cold fluid applied waterproofing system. New catwalk, dunnage and equipment bases are provided as required for electrical and mechanical equipment.

**B. Mechanical**

The existing facility is served by an abundance of individual split-system DX AC units and computer room type (CRAC) units, each equipped with a dedicated remote air-cooled condenser and electric heating coil. The AC and CRAC units are typically located within the area they serve with their condensers located on grade. Details for the upgrade and replacement are included in the Design specifications document.

**C. Plumbing**

The existing facility is provided with domestic cold and hot water, sanitary, vent, storm, and natural gas utilities which are to remain. The extent of the plumbing work is to accommodate the new space programming, restroom renovations, new mechanical equipment, and the roof replacement effort. Existing utilities shall be extended to serve two (2) new pantry sinks on the second floor, one (1) new ice maker on the first floor, one (1) new washing machine and floor drain in the basement, and natural gas piping shall be extended to serve new mechanical dedicated outdoor air system (DOAS) units requiring gas heating. All restrooms are undergoing renovation as part of this Project, and new ADA compliant fixtures shall replace the existing and reconnect to existing utilities serving the previous fixtures. Details for the upgrade and replacement are included in the specifications document.

**D. Fire Protection**

The existing automatic wet pipe sprinkler system serving the building is to be reconfigured as required to accommodate the new programming and space layout intentions. All major existing fire suppression infrastructure, including incoming water supply, standpipes, and main branches, is to remain. Minor relocation and/or provision of new sprinkler heads is to be completed per NFPA 13 and DC Fire Code requirements. Fire Alarm systems, sprinkler systems, Fire code compliance, Fire Extinguishers should be upgraded, replaced or corrected per the attached specifications document.

**E. Electrical**

Electrical will be designing to include new LED lighting throughout the facility as indicated on the drawings. The electrical distribution system will be verified to be designed per code and modified to meet NEC as necessary such as circuit breaker (CB) sizes properly set and three phase CBs providing power to one three phase CB. Adjustments to the power distribution will be made to support the additional operations room workstations power requirements for normal and UPS outlets as necessary. All electrical work shall follow the attached specifications document.

### **Section 2.5. Program Manager.**

The Department has engaged a Program Manager to provide certain program management functions. Such Program Manager and Project Manager shall, at all times, be acting solely for the benefit of the Department, not the Contractor. **The Contractor hereby acknowledges and agrees that only a duly authorized and designated Contracting Officer shall have the authority to issue Change Orders or Change Directives on the Department's behalf.** The Contracting Officer's Technical Representative ("COTR")/ Program Manager is as follows:

Satish Bagai  
Program Manager  
Capital Construction Division  
Department of General Services  
1250 U Street, NW 4th Floor  
Washington, DC 20009  
[satish.bagai@dc.gov](mailto:satish.bagai@dc.gov)

### **Section 2.6. General Description of Contractor's Duties.**

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

### **Section 2.7. Warranties and Representations**

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

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

**2.7.3.** The terms and conditions of this Section 2.7 shall apply during both the Preconstruction and Construction Phases.

**Section 2.8. Responsibility for Agents and Subcontractors.**

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

**Article 3 - CONTRACTOR'S SERVICES**

**Section 3.1. Preconstruction Services.**

During the Preconstruction Phase, the Contractor shall be required to complete certain preconstruction activities prior to mobilizing to the Project site and commencing work. The preconstruction activities include (i) obtaining the necessary permits; (ii) submitting the necessary shop drawings and other submittals required pursuant to the Drawings and Specifications; (iii) submitting and acceptable safety plan; and (iv) developing a plan for the manner in which the work will be implemented. A list of preconstruction deliverables is set forth in **Exhibit C**.

**Section 3.1.1 Detailed Schedule.**

Within seven (7) days of the issuance of a Notice to Proceed, the Contractor shall submit to the Department for its approval a schedule of the Project. Such schedule shall include a schedule for submittals that is reasonably acceptable to the Program Manager. The Program Manager shall have five (5) business days to review such submittal.

**Section 3.1.2 Construction Management Plan.**

The Contractor shall submit a draft of its construction management plan ("Construction Management Plan") within thirty (30) days after the Notice to Proceed is issued to include, but is not limited to, noise control, hours for construction and deliveries, truck routes, trash and debris removal plan, traffic and parking control, communications procedures, emergency procedures, quality control procedures, dust control, public street cleaning and repair, planned occupancy of public ways, erosion control, tree protection plan, vibration monitoring, temporary fire protection measures, Project signage, pest control, construction staging plan, and construction logistics plan.

**Section 3.1.3 Constructability/Sole Source/Long-Lead Time Memorandum.**

Concurrently with the Construction Management Plan, the Contractor shall prepare a memorandum identifying key construction concerns related to the Project. Such memorandum shall: (i) assess the constructability issues related to the Project, including site logistics; (ii) identify any items where the design is predicated on a single manufacturer and, if so, identify at least two (2) comparable products; and (iii) identify any long-lead delivery items that could adversely affect the schedule. To the extent any such long-lead items are identified, the memorandum shall make recommendations for addressing such items.

#### **Section 3.1.4 Permits.**

The Contractor shall prepare and submit all permits (with the exception of the building permit, which the Department shall provide) and applications for other approvals that are necessary for the construction of the Project. No later than ten (10) days after the notice to proceed for Preconstruction Services, the Contractor shall prepare and submit a matrix that identifies all permits and land use approvals that are required for the Project to proceed. The matrix should include zoning and other land use entitlements, building permits, as well as trade permits and lane closure permits. The matrix shall identify the specific permit, the date by which such is needed to maintain the Project's Schedule, and a status column. The matrix shall be updated monthly.

#### **Section 3.1.5 Testing Plan.**

The Contractor shall submit a Testing Plan that lists what tests and inspections should be performed throughout each phase of the construction where applicable.

#### **Section 3.1.6 Disincentive Fee for Failure to Timely Submit Deliverables.**

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

#### **Section 3.2. Construction Services.**

The Contractor shall construct the Work described on the Drawings and Specifications, including any work 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 a timely fashion. All materials and equipment to be incorporated into the Project shall be new and previously unused, unless otherwise specified, and shall be free of manufacturing or other defects. The Work shall be accomplished in accordance with the following:

- a. Participate and assist in Project/Planning meetings;
- b. Maintain full-time on-site construction supervision and provide daily inspections, quality control, monitoring, coordination of various trades, record drawings, and daily work log;
- c. Coordinate work with any on-site OUC personnel so as to ensure that their activities are not adversely affected;
- d. Conduct periodic progress meetings following a Contractor generated agenda with the Program Manager;

- e. 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;
- f. 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;
- g. Prepare payment requests, verify accuracy, and forward them to Department for approval and payment;
- h. Assemble close-out documents required;
- i. Provide assistance to the Department through all applicable warranty periods;
- j. Coordinate its work with all third parties so as not to delay the critical path of the Project; and
- k. 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 3.3. Unsafe Materials and Hazardous Materials**

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

**3.3.2.** The Contractor shall abate Hazardous Materials on the site as necessary to complete the Work contemplated by this Agreement. The Contractor shall comply with all laws, including, without limitation, the requirements of the EPA and all jurisdictional agencies as well as all laws relating to safety, health welfare, and protection of the environment, in removing, treating, encapsulating, passivating, and/or disposing of Hazardous Materials, including, but not limited to, removal, treatment, encapsulation, passivation, and/or disposal of the Hazardous Materials. If any notices to governmental authorities are required, the Contractor shall also give those notices at the appropriate times. The Contractor shall ensure abatement subcontractors and disposal sites are appropriately licensed and qualified.

**3.3.3.** The Contractor shall be entitled to submit a Change Request in accordance with Article 4 of the SCP in the event the Contractor encounters Hazardous Materials beyond those contemplated in the Contract Documents.

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

## **Article 4 - CONTRACT SUM**

### **Section 4.1. Lump Sum Price.**

The Contractor shall be paid a Lump Sum Price in the amount set forth in the Project Information Section of this Contract 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 obtain the final Certificate of Occupancy for the Project from the District of Columbia; submit final lien releases from the Contractor and Subcontractors and material suppliers; complete all punchlist items to the Department's approval and sign-off; and cause all representations, warranties, and guarantees to be honored and otherwise fulfill all requirements set forth in the Contract.

The Lump Sum Price includes sufficient funds to cover all expenses necessary to complete the Project based on the Drawings and Specifications, including but not limited to profit, home and field office overhead, supervision, labor, materials, equipment, bonds, insurance and other services that may be required to obtain the necessary permits, and construct the work, including any preconstruction services identified herein. The initial Lump Sum Price also includes sufficient funding to fund items not specifically identified in the Drawings and Specifications but which are reasonably inferable therefrom.

### **Section 4.2. Nature of the Lump Sum Price.**

The Contractor acknowledges and understands that the Lump Sum Price is based on the Drawings and Specifications included as Exhibit A. It is understood and agreed that the Lump Sum Price represents the Contractor's offer to fully complete the Project. The Parties acknowledge and agree that it is their intent to have the Contractor to construct and deliver a fully functional Project site as contemplated in the Construction Documents for the Lump Sum Price and consistent with the Project Schedule. In furtherance of such intent, the Contractor hereby assumes the risks associated with and shall be responsible for (i) any changes in market conditions that affect the cost of labor or materials; (ii) coordination issues between the Construction Documents; (iii) elements of work not shown on the Construction Documents, but which are reasonably inferable from the Construction Documents; (iv) costs associated with the acceleration of the work and expediting of materials necessary to meet the Project Schedule which are the result of anything other than an excusable delay; and (v) the risk of subcontractor default.



**Section 4.3. Risks Assumed by Contractor.**

Execution of the Contract by the Contractor is a representation that the Contractor 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 Contractor further represents that it has satisfied itself that it can undertake the work for the state cost. Among other things, by entering into this Contract, the Contractor assumes the following risks: (1) the nature of the land and subsoil; (2) the form and nature of the Project site and surrounding areas; (3) details and levels of existing pipelines, 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 Project; (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, familiar with local conditions under which the work is to be performed.

**Section 4.4. 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.

**Article 5 - CONSTRUCTION PHASE**

**Section 5.1. General.**

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

**5.1.1. Unrenovated Portions of the Structure.** In constructing the Project, the Contractor shall ensure that unrenovated portions of existing structures, if any, including, but not limited to, the mechanical, plumbing, electrical systems and other building systems are not adversely affected. All unrenovated portions of the structures should function, at a minimum, at the level of functionality that existed immediately prior to the construction of the Project. If any unrenovated portion of the Project functions at a lower level of functionality as a result of the Contractor's

Work, the Contractor shall be back-charged the costs incurred by the Department in addressing the decreased functionality.

**Section 5.2. Subcontracting and Administration.**

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

**5.2.2.** In addition to the open book reporting requirements set forth in Section 5.9, the Contractor shall provide to the Department a copy of all quotes or proposals submitted by potential subcontractors.

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

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

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

- 5.2.6.** The Department must approve all Subcontractors and suppliers. The Department may elect to review the form of any subcontract or agreement with a material supplier to ensure that such contract incorporates the contractual provisions required by this Agreement.
- 5.2.7.** The Contractor shall manage the Change Order process with all subcontractors to verify the validity, purpose, and cost.
- 5.2.8.** The Contractor must contract for provision of all services and materials for the Project (other than Self-Performed Work which must be authorized in advance and in writing by the Department via written subcontracts or, for contracts requiring provision of materials or equipment only, and not labor, via written supply agreements. All subcontracts and supply agreements shall include the following provisions:
- 5.2.8.1.** that, to the extent of the work or supply within the agreement's scope, the Subcontractor or supplier is bound to the Contractor for the performance of all obligations which the Contractor owes the Department under the Agreement;
- 5.2.8.2.** that the Subcontractor or supplier is not in privity with the Department and shall not seek compensation directly from the Department on any third-party beneficiary, quantum meruit, or unjust enrichment claim, or otherwise, except as may be permitted by any applicable mechanic's lien law;
- 5.2.8.3.** that the Department is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit;
- 5.2.8.4.** that the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Contractor is terminated for default;
- 5.2.8.5.** that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Contractor to suspend or stop work;
- 5.2.8.6.** that the Subcontractor or supplier shall maintain records of all Work it is requested or authorized to do on a time and material or cost-plus basis, or with respect to claims that it has asserted on a time and materials or cost-plus basis, during the Project and for a period of time specified in the General Conditions and requiring the Subcontractor or supplier to

make those records available for review or audit by the Department during that time;

- 5.2.8.7.** that the Subcontractor shall obtain and maintain, throughout the Project, workers' compensation insurance in accordance with the laws of the District of Columbia (this provision is not applicable to supply agreements);
- 5.2.8.8.** that, if the Department terminates the Agreement for convenience, the Contractor may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) days' written notice to the Subcontractor or supplier, and that the Subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in Article 6 of the SCP;
- 5.2.8.9.** that the Department shall have the right to enter into a contract with the Subcontractor or supplier for the same price as its subcontract or supply agreement price less amounts already paid, if the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;
- 5.2.8.10.** that the Subcontractor or supplier shall not be entitled to payment for defective or non-conforming work, materials or equipment, and shall be obligated promptly to repair or replace non-conforming work, materials or equipment at its own cost;
- 5.2.8.11.** a provision requiring that Subcontractors and suppliers promptly pay Subcontractors and suppliers at lower tiers, imposing upon the Subcontractors and suppliers a duty to pay interest on late payments, and barring reimbursement for interest paid to lower tier Subcontractors or suppliers due to a Subcontractor's or supplier's failure to pay them in timely fashion;
- 5.2.8.12.** a provision requiring that all Subcontractors at all tiers comply with the provisions of Article 9 (Economic Inclusion Goals); provided, however, that the Contractor 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 Contractor from using its best efforts to achieve the LSDBE subcontracting goal on an aggregate basis for the Project;
- 5.2.8.13.** a provision which allows the Contractor to withhold payment from the Subcontractor if the Subcontractor does not meet the requirements of the Subcontract;

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

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

**5.2.10.** The Contractor shall not substitute or replace any Subcontractor or supplier approved by the Department without the Department's prior written consent.

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

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

**5.2.13.** The Contractor shall be required to provide an evaluation of each of its subcontractors' performance by completing and submitting to the Department the Subcontractor Performance Evaluation Form, as follows:

- (a) Within ninety (90) days of initiating the Construction Phase; and
- (b) Within thirty (30) days after Final Completion of the Project.

**Section 5.3. Weekly Progress Meetings & Schedule Updates.**

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

#### **Section 5.4. Written Reports.**

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

- 5.4.1. Construction Progress Update.** Each monthly update shall contain a narrative description of the Project progress and a critical path method schedule in Primavera format, including any plans to correct defective or deficient work or for time lost due to delays.
- 5.4.2. Economic Inclusion Report.** The monthly report shall include a detailed summary of the Contractor's efforts and results with respect to the economic inclusion goals set forth in this Agreement. Such report shall be in a format acceptable to the Department and shall include, at a minimum: (i) the Contractor's overall performance with respect to the goals; (ii) a listing of subcontracts and agreements with material suppliers during the month and the percentage of those subcontracts and agreements with material suppliers awarded to LSDBEs; (iii) a listing of subcontracts during the month and the estimated percentage of the labor hours to be worked by District of Columbia residents pursuant to those subcontracts; and (iv) a description of the major subcontracting and

supply opportunities that will be solicited during the next three (3) months and the actions being taken to meet the subcontracting goals.

- 5.4.3. Cash Flow Update.** If there have been any changes to the anticipated cash flow for the Project, such changes shall be disclosed and explained in the monthly report. If there are no such changes, the report shall so state.
- 5.4.4. Quality Assurance Report.** The monthly report shall include a detailed summary of the steps that are being employed to ensure quality construction and workmanship. Each report shall specifically address issues that were raised by the Department and/or its Program Manager during the prior month and outline the steps that are being taken to address such issues.
- 5.4.5. Progress Photos.** The monthly report shall include updated progress photos that shall detail changes in the Work during the month.
- 5.4.6. Daily Log.** The Contractor 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 and the Program Manager, and on a monthly basis a copy of the log shall be submitted to the Department.

#### **Section 5.5. Cost Control System.**

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

#### **Section 5.6. Key Personnel.**

- 5.6.1** To carry out its duties, the Contractor shall provide at least the key personnel identified in **Exhibit I** to this Agreement (“Key Personnel”), who shall carry out the functions identified in **Exhibit I**. Among other things, the Key Personnel shall include the: (i) the Project Executive; (ii) the Field Superintendent; (iii) the Project Manager; and (iv) Safety/Quality Assurance/Quality Control Manager. The Contractor will not be permitted to reassign any of the Key Personnel unless the Department approves the proposed reassignment and the proposed replacement.

The Contractor's obligation to provide adequate staffing is not limited to providing the Key Personnel, but is determined by the needs of the Project. The Contractor shall not replace any of the Key Personnel without the Department's prior written approval, which shall not be unreasonably withheld. If any of the Key Personnel become unavailable to perform services in connection with the Agreement due to death, disability or separation from the employment of the Contractor or any affiliate of the Contractor, then the Contractor shall promptly appoint a replacement acceptable to the Department. The Department shall be entitled to complete information on each such replacement, including a current resume of his or her qualifications and experience.

**5.6.2.** The Contractor's Key Personnel shall be subject to Replacement Fees for their removal or reassignment by the Contractor. The Key Personnel subject to the Replacement Fees provisions in **Section 5.7.1** shall be identified in **Exhibit I** as subject to the Replacement Fee provisions. In the event there is no delineation in **Exhibit I** of those members of the Contractor's Key Personnel subject to the Replacement Fee provisions of this Agreement, then all of the Key Personnel shall be subject to the Replacement Fee provisions of this Agreement.

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

#### **Section 5.7. Qualified Personnel/Cooperation.**

The Contractor shall employ on the Project only those employees and Subcontractors who will work together in harmony and who will cooperate with one another on the Project. The Contractor shall enforce strict discipline, good order and harmony among its employees and its Subcontractors and shall remove from the site any person who is unfit for the work or fails to conduct herself or himself in a proper and cooperative manner. If the Department requests removal of any person as unfit or as having behaved inappropriately, the Contractor shall promptly comply.

**5.7.1 Removal or Replacement of Key Personnel.** If the Contractor removes or reassigns one of the Key Personnel (excluding, however, instances where such personnel become unavailable due to death, disability, or separation from the employment of the Contractor or any affiliate of the Contractor) without the prior written consent of the Department's Contracting



Officer, the Contractor shall pay to the Department the sum of \$25,000 for each replacement as a replacement fee and not as a penalty, to reimburse the Department for its administrative costs arising from the Contractor's failure to provide the Key Personnel. The foregoing replacement fee amount shall not bar recovery of any other damages, costs or expenses other than the Department's internal administrative costs. 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 Contractor in the event that a member of the key personnel has been removed or replaced by the Contractor without the consent of the Department. In the event the Department exercises the right to remove, replace or to reduce the scope of services of the Contractor, the Department shall have the right to enforce the terms of the Agreement and to keep-in-place those members of the Contractor's team not removed or replaced and the remaining members shall complete the services required under the Agreement in conjunction with the new members of the Contractor's team approved by the Department.

**Section 5.8. Warranty.**

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

**Section 5.9. Open Book Reporting.**

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

**Section 5.10. Claims for Additional Time.**

**5.10.1.** Time is of the essence of this Agreement. The Project must be Substantially Complete no later than the Substantial Completion Date set forth within the Project Information Section above.

**5.10.2.** The Contractor will perform the Work so that it shall achieve Substantial Completion by the Substantial Completion Date. Unless the failure to achieve Substantial Completion by the Substantial Completion

Date is a result of an Excusable Delay, as defined in Section 5.10.3, the delay shall be deemed Non-Excusable and the Contractor shall not be entitled to an extension of time. Without limiting the generality of the foregoing, delays for the following reasons shall be regarded as Non-Excusable and shall not entitle the Contractor to an extension of time:

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

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

**5.10.2.3.** Delays due to the failure of the Contractor or Subcontractors or material suppliers at any tier to perform in timely or proper fashion, without regard to concepts of negligence or fault; or

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

**5.10.3.** The Contractor shall be entitled to an adjustment in the Substantial Completion Date due to an Excusable Delay. The term “Excusable Delay” shall mean:

**5.10.3.1.** Delays due to adverse weather other than those that are classified as a Non-Excusable delay in accordance with Section 5.10.2 of this Agreement; the Contractor sends a written notice within three (3) days from such adverse weather and the Department approves such request.

**5.10.3.2.** Delays due to acts of God, war, unavoidable casualties, civil unrest, and other similar causes of delay that are beyond the control of the Contractor; provided, however, that in no event shall a Non-Excusable

Delay or the action or inaction of the Contractor, or any of its employees, agents, Subcontractors or material suppliers be deemed an Excusable Delay; or

**5.10.3.3.** Delays caused by differing Site Conditions as permitted by Article 4, Section A of the SCP, or Hazardous Materials Remediation as contemplated in Section 3.5 of this Agreement;

**5.10.3.4.** Delays due to suspensions of work by the Department;

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

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

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

## **Section 5.11. Site Safety and Clean-Up.**

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

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

complying with the plan shall not entitle the Contractor to an increase in the Lump Sum Price. In the event the Contractor fails to provide the Safety Plan, the Contractor will not be permitted to commence the Construction Phase until the Safety Plan is submitted and in no event shall any resulting delay constitute an Excusable Delay. Additionally, the Contractor shall comply with the requirements of Article 27, Section A of the SCP.

**5.11.3 Safety Barriers/Fences.** As part of its responsibility for Project safety, the Contractor shall install such fences and barriers as may be necessary to separate the construction areas of the site from those areas that are then being used by Client Agency for educational purposes. The Contractor shall describe in the Safety Plan the proposed separation and the specific nature of the fences and barriers that will be used. The Contractor's storage/laydown area will be limited to the limits of disturbance shown on the approved construction plans.

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

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

**5.11.6 Temporary Power.** The Contractor shall 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 to bring power to the site. The Contractor shall also be responsible for the cost of all temporary construction necessary on the site.

## **Section 5.12. Workhours, Site Office, and Coordination with Client Agency and Community.**

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

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

**5.12.3. Parking.** The Contractor shall organize its work in such a manner so as to minimize the impact of its operations on the surrounding community. To the extent that the number of workers on the site is likely to have an adverse impact on neighborhood parking, the Contractor shall

develop a parking plan for those individuals working on the site that is reasonably acceptable to the Department.

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

**5.12.5. Outreach Plan.** The Contractor shall keep the Department informed of the construction activities and their potential impact on the community and shall develop a community outreach plan (the “Outreach Plan”). The Contractor shall submit the Outreach Plan to the Department prior to its implementation which shall be subject to the Department’s review and approval.

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

**Section 5.13. Close-out & FF&E.**

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

**5.13.2. Punchlist.** Promptly after Substantial Completion, the Contractor shall develop a punchlist. Once the punchlist is prepared, the Contractor shall inspect the Work along with representatives from the Department. The punchlist shall be revised to reflect additional work items that are discovered during such inspection. The Contractor shall correct all punchlist items no later than ninety (90) days after Substantial Completion is achieved.

**5.13.3. Warranties & Manuals.** Subsequent to Substantial Completion Date and no later than fifteen (15) days following the Substantial Completion Date, the Contractor shall prepare and submit the following documentation: (i) a complete set of product manuals (O&M), training videos, warranties, etc.; (ii) attic stock; (iii) an equipment schedule; (iv) a proposed schedule of maintenance for the renovated building; (v) environmental, health and safety documents for the renovated building; and (vi) all applicable inspection certificates/permits (boiler, elevator, emergency evacuation plans, health inspection, etc.) for the renovated building.

No later than thirty (30) days following the Substantial Completion Date, the Contractor shall prepare and submit: (i) a complete set of its Project files; (ii) a set of record drawings; and (iii) any additional documentation required by the Turnover Protocol Document listed in **Exhibit O**.

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

**5.13.5. Training.** The Contractor shall provide training to OUC and the Department staff on all of the building systems, as applicable. The Contractor shall be required to schedule such training sessions and shall use commercially reasonable efforts to ensure all such training occurs prior to the Final Completion Date.

**5.13.6. Move-in Assistance.** The Contractor shall assist Client Agency in relocating FF&E and other items as necessary within the renovated building, as well as for cleaning and other move-in services as directed by the Department.

**Section 5.14. Salvaged and Stored Items.**

The Contractor 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 5.15. Sediment and Erosion Control.**

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

**Section 5.16. Quality Control.**

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

**5.16.2. Quality Control Plan.** The Contractor shall develop a quality control plan for the Project (the "Quality Control Plan"). A draft of the Quality Control Plan shall be submitted to the Department and shall be

subject to the Department's review and approval. The Quality Control Plan shall be tailored to the specific products/type of construction activities contemplated in the Design Development Documents, and in general, shall include a table of contents, quality control team organization, duties/responsibilities of quality control personnel, submittal procedures, inspection procedures, deficiency correction procedures, documentation process, and a list of any other specific actions or procedures that will be required for key elements of the Work.

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

**Section 5.17. Acceleration.**

Subject to the terms of this Section, the Department shall have the right to direct the Contractor to accelerate the Work if, in the reasonable judgment of Department: (i) the Contractor fails to supply a sufficiency of workers or to deliver the materials or equipment with such promptness as to prevent the delay in the progress of the Work; or (ii) the progress of the Work otherwise materially falls behind the projections contained in the then currently approved Project Schedule. In the event that the Department or its Program Manager determine that either of the events specified in the preceding sentence have occurred, the Department shall provide the Contractor with written notice of such event and the Contractor shall be required to provide the Department with a schedule recovery plan ("Recovery Plan") that is reasonably designed to address the concerns raised in such notice within three (3) days after receipt of such notice. If the Department and the Contractor are unable to agree on the terms of the Recovery Plan within five (5) days after the issuance of the notice (i.e. within forty eight (48) hours after the receipt of the proposed Recovery Plan), the Department shall have the right to direct such acceleration as the Department, in its reasonable judgment, deems necessary. Provided Department complies with the notice provisions of this Section, the cost of any acceleration directed under this Section shall not justify an adjustment to the Lump Sum Price on the Substantial Completion Date.

Given the nature of the Project and the fact that there is a fixed date upon which the Client Agency plans to occupy the building, the Contractor hereby: (i) acknowledges that this provision is a material inducement upon which the Department has relied in entering into this Agreement; and (ii) represents and warrants that it has included sufficient funding in the Lump Sum Price in order to comply with the requirements of this Section.

**Section 5.18. Corrective Action Plan.**

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

**Section 5.19. Conformance with Laws.**

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

**Section 5.20. Construction Phase Deliverables.**

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

**Section 5.21. Close-Out Deliverables.**

The deliverables set forth in **Exhibit M** are required during the Project’s Close-Out and prior to Final Payment, as set forth in Article 7.

- 1) a complete set of the Contractor’s Project files.
- 2) a complete set of product manuals (O&M), training videos, warranties, etc.
- 3) as built record drawings and building information model(s).
- 4) attic stock and schedule.
- 5) equipment schedule.



- 6) proposed schedule of maintenance.
- 7) environmental, health & safety documents.
- 8) all applicable inspection certificates/permits (boiler, elevator, emergency evacuation plans, health inspection, etc.).

**Section 5.22 Licensing, Accreditation and Registration.**

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

**Section 5.23 Protection of Existing Elements.**

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

**Section 5.24 ProjectTeam.**

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

**Section 5.25 Supervision and Coordination.**

The Contractor will be required to properly supervise and coordinate its work. At a minimum, it is envisioned that the Contractor will be required to undertake the following tasks:

- a. Participate and assist in Project/Planning meetings;
- b. Maintain full-time on-site construction supervision and provide daily inspections, quality control, monitoring, coordination of various trades, record drawings, and daily work log;
- c. Coordinate work with any on-site OUC personnel so as to ensure that their activities are not adversely affected;
- d. Conduct periodic progress meetings following a Contractor generated agenda with the Program Manager;
- e. 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;
- f. 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;

- g. Prepare payment requests, verify accuracy, and forward them to Department for approval and payment;
- h. Assemble close-out documents required;
- i. Provide assistance to the Department through all applicable warranty periods;
- j. Coordinate its work with all third parties so as not to delay the critical path of the Project; and
- k. 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).

## **Article 6 - DESIGNATED REPRESENTATIVES**

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

The Department designates the individual(s) identified in **Exhibit K** as its representative with express authority to bind the Department with respect to all matters requiring the Department's approval or authorization. Subject to the limitations on their authority specified in **Exhibit K**, these representative(s) shall have the exclusive authority to make decisions on behalf of the Department concerning estimates and schedules, construction budgets, changes in the Work, and execution of Change Orders or Change Directives, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or performance of the Work of the Contractor. In order for the Department to effectively manage the Project and assure that the Contractor does not receive conflicting instructions regarding the Work, the Contractor shall promptly notify the Department's representative upon receiving any instructions or other communication in connection with the Contractor's Work from any employee of the Department or other purported agent of the Department other than the Department's designated representative.

### **Section 6.2. Contractor's Designated Representative.**

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

## **Article 7 - PAYMENT PROVISIONS**

### **Section 7.1. Compensation.**

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

### **Section 7.2. Schedule of Values.**

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

### **Section 7.3 Retention.**

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

### **Section 7.4 Documents Required with Application for Payment.**

Each Application for Payment shall be accompanied by the Contractor's job cost ledgers in a form satisfactory to the Department, the Subcontractors' and Suppliers' Applications for Payment on AIA Documents G702 and G703 or other form acceptable to the Department, and such other supporting documentation as the Department may reasonably request. Each Application for Payment shall include detailed documentation of costs as a condition to approving progress payments, but the Contractor shall nevertheless maintain complete documentation of the costs. An executed Release of Liens and Claims in the format required by the Contracting Officer must accompany each Application for Payment.

### **Section 7.5 Timely Payment of Subcontractors.**

Within seven (7) days of receiving any payment from the Department including amounts attributable to Work performed, or materials or equipment supplied by a Subcontractor or supplier, the Contractor shall either pay the Subcontractor or supplier for its proportionate share of the amount paid to the Contractor for the Subcontractor or supplier's work or materials or equipment, or notify the Department and Subcontractor or supplier, in writing, of the Contractor's intention to withhold all or part of the payment and state the reason for withholding. All monies paid to the

Contractor under the Contract shall be used first to pay amounts due to Subcontractors or suppliers supplying labor or materials for the Project and only money remaining after such payments are made may be retained by the Contractor. Monies paid by joint check shall be deemed to have been paid fully to the Subcontractor or supplier named as a joint payee, unless the Department agrees to otherwise in writing. Any interest paid to Subcontractors or suppliers because the Contractor has failed to pay them in timely fashion shall not entitle the Contractor to a change order.

**Section 7.6 Lien Waivers.**

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

**Section 7.7 Submission.**

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

**Section 7.8 Right to Withhold Payments.**

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

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

**7.8.2.** the Department has determined that the Contractor's progress has fallen behind the Project Schedule, and the Contractor fails, within ten (10) calendar days of the Department's written demand, to provide the Department with a realistic and acceptable Recovery Plan in accordance with Section 5.17; or

**7.8.3.** the Contractor's monthly schedule update reflects that the Contractor has fallen behind the Project Schedule, and the Contractor fails to include, in the same monthly report, a realistic and acceptable Recovery Plan in accordance with Section 5.17; or

**7.8.4.** the Contractor has failed to provide reports in full compliance with Section 5.4 of this Agreement; or

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

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

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

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

**7.8.9.** the Contractor is otherwise in substantial breach of this Agreement (including, without limitation, failures to comply with LSDBE Utilization requirements); or

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

**Section 7.9 Payment Not Acceptance.**

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

**Section 7.10 Stored Materials.**

The Department shall not be required to pay for materials stored at the site or stored at other locations absent prior written authorization to do so, which authorization may be withheld at the Department's sole discretion. If the Department expressly agrees to pay for materials stored at the site but not yet incorporated into the Work, the Application for Payment may also include a

request for payment of the cost of such materials, if the materials have been delivered to the site, and suitably stored. Such requests shall be documented by appropriate invoices and bills of sale. Payment for stored materials shall be conditioned also on the Contractor's representation that it has inspected the material and found it to be free from defect and otherwise in conformity with this Agreement, and on satisfactory evidence that the materials are insured under the Contractor's risk policy. Further, if the Contractor requests the Department to allow payments for storage of materials offsite, the Contractor shall be required, inter alia, to agree to execution of proper documentation to afford the Department a secured interest in the materials upon payment.

**Section 7.11. Contractor's Certification.**

Each Application for Payment shall be accompanied by the Contractor's signed certification that:

**Section 7.11.1.** all amounts paid to the Contractor on the previous Application for Payment that were attributable to Subcontractor Work or to materials or equipment being supplied by any supplier have been paid over to the appropriate Subcontractors and suppliers;

**Section 7.11.2.** that all amounts currently sought for Subcontractor Work or supply of materials or equipment are currently due and owing to the Subcontractors and material or equipment suppliers;

**Section 7.11.3.** that all Work, materials or equipment for which payment is sought is, to the best of the Contractor's knowledge, free from defect and meets all of the requirements set forth in the Agreement: and that

**Section 7.11.4.** that the Contractor's subcontracts include the clauses required by subparagraphs (1) through (4) of D.C. Official Code §2-221.02(d) (2017); and

**Section 7.11.5.** The Contractor shall not include in an Application for Payment amounts for Work for which the Contractor does not intend to pay.

**Section 7.12. Warranty of Title.**

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

**Section 7.13 Invoice Submittal.**

The Contractor shall create and submit payment requests in an electronic format through the DC Vendor Portal, <https://vendorportal.dc.gov>. The Contractor shall submit proper invoices on a monthly basis. To constitute a proper invoice, the Contractor shall enter all required information into the Portal after selecting the applicable purchase order number which is listed on

the Contractor's profile.

**Section 7.14. Department Not Obligated to Others.**

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

## **Article 8 - INSURANCE**

### **Section 8.1. GENERAL REQUIREMENTS.**

The Contractor at its sole expense shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A- / VII or higher. Should the Contractor decide to engage a subcontractor for segments of the work under this contract and wish to propose different insurance requirements than outlined below, then, prior to commencement of work by the subcontractor, the Contractor shall submit in writing the name and brief description of work to be performed by the subcontractor on the Subcontractors Insurance Requirement Template provided by the CA, to the Office of Risk Management (ORM). ORM will determine the insurance requirements applicable to the subcontractor and promptly deliver such requirements in writing to the Contractor and the CA. The Contractor must provide proof of the subcontractor's required insurance prior to commencement of work by the subcontractor. If the Contractor decides to engage a subcontractor without requesting from ORM specific insurance requirements for the subcontractor, such subcontractor shall have the same insurance requirements as the Contractor.

General liability, commercial auto, workers' compensation and property insurance policies (if applicable to this agreement) shall contain a waiver of subrogation provision in favor of the Government of the District of Columbia.

The Government of the District of Columbia shall be included in all policies required hereunder to be maintained by the Contractor and its subcontractors (except for workers' compensation and professional liability insurance) as an additional insureds for claims against The Government of the District of Columbia relating to this contract, with the understanding that any affirmative obligation imposed upon the insured Contractor or its subcontractors (including without limitation the liability to pay premiums) shall be the sole obligation of the Contractor or its subcontractors, and not the additional insured. The additional insured status under the Contractor's and its subcontractors' Commercial General Liability insurance policies shall be effected using the ISO Additional Insured Endorsement form CG 20 10 11 85 (or CG 20 10 07 04 and CG 20 37 07 04) or such other endorsement or combination of endorsements providing coverage at least as broad and approved by the CO in writing. All of the Contractor's and its subcontractors' liability policies (except for workers' compensation and professional liability insurance) shall be endorsed using ISO form CG 20 01 04 13 or its equivalent so as to indicate that such policies provide primary coverage (without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an Additional Insured) for all claims against the additional insured arising out of the performance of this Statement of Work by the Contractor



or its subcontractors, or anyone for whom the Contractor or its subcontractors may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

If the Contractor and/or its subcontractors maintain broader coverage and/or higher limits than the minimums shown below, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor and subcontractors.

## **Section 8.2. INSURANCE REQUIREMENTS**

**8.2.1. Commercial General Liability Insurance (“CGL”)** – The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. (“ISO”) form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor, including ongoing and completed operations under all subcontracts, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$1,000,000 each occurrence, a \$2,000,000 general aggregate (including a per location or per project aggregate limit endorsement, if applicable) limit, a \$1,000,000 personal and advertising injury limit, and a \$2,000,000 products-completed operations aggregate limit including explosion, collapse and underground hazards.

The contractor should be named as an additional insured on the applicable manufacturer’s/distributor’s Commercial General Liability policy using Insurance Services Office, Inc. (“ISO”) form CG 20 15 04 13 (or another occurrence-based form with coverage at least as broad).

DGS should collect, review for accuracy and maintain all warranties for goods and services.

**8.2.2. Automobile Liability Insurance** – The Contractor shall provide evidence satisfactory to the CO of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the CO in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Contractor, with minimum per accident limits equal to the greater of (i) the limits set forth in the Contractor’s commercial automobile liability policy or (ii) \$1,000,000 per occurrence combined single limit for bodily injury and property damage

**8.2.3. Workers’ Compensation Insurance** – The Contractor shall provide evidence satisfactory to the CO of Workers’ Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

**Employer’s Liability Insurance** - The Contractor shall provide evidence satisfactory to the CO of employer’s liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.

All insurance required by paragraphs 1,2 and 3 shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.

**8.2.4 Crime Insurance (3rd Party Indemnity)** - The Contractor shall provide a Crime policy including 3<sup>rd</sup> party fidelity to cover the dishonest acts of Contractors, its employees and/or volunteers which result in a loss to the District. The Government of the District of Columbia shall be included as loss payee. The policy shall provide a limit of \$25,000 per occurrence.

**8.2.5. Cyber Liability Insurance** – The Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. Limits may not be shared with other lines of coverage. A copy of the cyber liability policy must be submitted to the Office of Risk Management (ORM) for compliance review.

**8.2.6. Environmental Liability Insurance/Contractors Pollution Liability Insurance-** The Contractor shall provide evidence satisfactory to the CO of environmental liability insurance covering losses caused by pollution or other hazardous conditions arising from ongoing or completed operations of the Contractor. Such insurance shall apply to bodily injury, property damage (including loss of use of damaged property or of property that has been physically injured), clean-up costs, transit and non-owned disposal sites. Coverage shall extend to defense costs and expenses incurred in the investigation, civil fines, penalties and damages or settlements. There shall be neither an exclusion nor a sublimit for mold or fungus-related claims. The minimum limits required under this paragraph shall be equal to the greater of (i) the limits set forth in the Contractor's pollution liability policy or (ii) \$2,000,000 per occurrence and \$2,000,000 in the annual aggregate. If such coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverages under the policy precedes the Contractor's performance of any work under the Contract and that continuous completed operations coverage will be maintained for at least ten (10) years or an extended reporting period shall be purchased for no less than ten (10) years after completion.

The Contractor also must furnish to the CO - Owner certificates of insurance evidencing environmental liability insurance maintained by third party transportation and disposal site operators(s) used by the Contractor for losses arising from facility(ies) accepting, storing or disposing hazardous materials or other waste as a result of the Contractor's operations. Such coverages must be maintained with limits of at least the amounts set forth above.

**8.2.7. Employment Practices Liability** – The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the operations performed to cover the defense of claims arising from employment related wrongful acts including but not limited to: Discrimination, Sexual Harassment, Wrongful Termination, Workplace Torts, "Bullying" in "any location" and

"by any means," including the Internet, whether between employees of contractor or against third parties. Employment Practices Liability coverage must specifically state Third Party Liability coverage is included. Contractor will indemnify and defend the District of Columbia should it be named co-defendant or be subject to or party of any claim. Coverage shall also extend to Temporary Help Firms and Independent Contractors hired by Contractor. The policy shall provide limits of not less than \$1,000,000 for each wrongful act and \$2,000,000 annual aggregate for each wrongful act.

**8.2.8. Installation-Floater Insurance** – For projects not involving structural alterations, the contractor shall provide an installation floater policy with a limit equal to the Property values being installed as part of the project. The policy shall cover property while located at the project site, at temporary locations, or in transit; deductibles will be the sole responsibility of the contractor.

**8.2.9. Professional Liability Insurance (Errors & Omissions)** – The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of \$1,000,000 per claim or per occurrence for each wrongful act and \$2,000,000 annual aggregate. The Contractor warrants that any applicable retroactive date precedes the date the Contractor first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services. Limits may not be shared with other lines of coverage.

**8.2.10. Riggers Liability** – **(If applicable; e.g Crane operations)**. Addresses a contractor's liability arising out of the moving of property and equipment that belongs to others. May be added by endorsement to the General Liability form - \$5,000,000 per occurrence.

**8.2.11. Commercial Umbrella or Excess Liability** - The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits equal to the greater of (i) the limits set forth in the Contractor's umbrella or excess liability policy or (ii) \$10,000,000 per occurrence and \$10,000,000 in the annual aggregate, following the form and in excess of all liability policies. **All** liability coverages must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.

### **Construction Projects Controlled by the District**

For construction projects controlled by the District, the District will procure the following policies with the District listed as the first named insured. Since the District will control the placement of the policies, the District should not contractually bind itself to secure coverage broader than the minimum that satisfy the interests of the Contractor.

**Builders Risk** – The District shall purchase and maintain, in a company authorized to do business in the jurisdiction in which the project is located, builders risk insurance, written on an "all risk", special causes of loss or equivalent form. Builders risk coverage will include boiler and machinery / equipment breakdown, earthquake and flood perils. Building ordinance and terrorism coverage

will be included.

The deductible shall not exceed \$25,000 except for earthquake, flood, windstorm, water damage or other perils at the discretion of the District and as available in the insurance industry.

The project limit shall equal the replacement value of the structure, including coverage for property in transit and stored off premises.

At the discretion of the District, builders risk coverage will extend to soft costs and delayed completion.

Builders risk insurance shall include the interests of The Government of the District of Columbia, the Contractor, Subcontractors and Sub – subcontractors in the project.

**Section 8.3. PRIMARY AND NONCONTRIBUTORY INSURANCE.**

The insurance required herein shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the Government of the District of Columbia.

**Section 8.4. DURATION.**

The Contractor shall carry all required insurance until all contract work is accepted by the District of Columbia and shall carry listed coverages for ten years for construction projects following final acceptance of the work performed under this contract and two years for non-construction related contracts.

**Section 8.5. LIABILITY.**

These are the required minimum insurance requirements established by the District of Columbia. However, the required minimum insurance requirements provided above will not in any way limit the contractor's liability under this contract.

**Section 8.6. CONTRACTOR'S PROPERTY.**

Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.

**Section 8.7. MEASURE OF PAYMENT.**

The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.

**Section 8.8. NOTIFICATION.**

The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. The Contractor will also

provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract.

**Section 8.9. CERTIFICATES OF INSURANCE.**

The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Certificates of insurance must reference the corresponding contract number. Evidence of insurance shall be submitted to:

**The Government of the District of Columbia**

**And mailed to the attention of:**

James H. Marshall  
Contracting Officer  
Department of General Services  
Contracts and Procurement Division  
2000 14<sup>th</sup> Street NW, 4th Floor  
Washington, DC 20009  
[james.marshall@dc.gov](mailto:james.marshall@dc.gov)

The CO may request and the Contractor shall promptly deliver updated certificates of insurance, endorsements indicating the required coverages, and/or certified copies of the insurance policies. If the insurance initially obtained by the Contractor expires prior to completion of the contract, renewal certificates of insurance and additional insured and other endorsements shall be furnished to the CO prior to the date of expiration of all such initial insurance. For all coverage required to be maintained after completion, an additional certificate of insurance evidencing such coverage shall be submitted to the CO on an annual basis as the coverage is renewed (or replaced).

**Section 8.10. DISCLOSURE OF INFORMATION.**

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

**Section 8.11. CARRIER RATINGS.**

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

## ARTICLE 9 - ECONOMIC INCLUSION REQUIREMENTS

### **Section 9.1 LSDBE Utilization.**

**Section 9.1.1** If the Contractor subcontracts any Work, 35% of the subcontracted effort must be subcontracted to small business enterprises (SBEs). For subcontracted work, pass through entities will not count toward this goal. In order to count toward the subcontracting requirement, the SBE must perform at least thirty five percent (35%) of the work that is being counted toward the goal with its own forces. The Local, Small and Disadvantaged Business Enterprise (“LSDBE”) certification shall be, in each case, as of the effective date of the applicable subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal. The Contractor has developed a Subcontracting Plan that is attached hereto as **Exhibit G**. The Contractor shall comply with the terms of the SBE Subcontracting Plan in making purchases and administering its subcontracts and supply agreements.

### **Section 9.1.2 Mandatory Subcontracting Plan and Requirements.**

**Section 9.1.2.1** Unless the Director of the Department of Small and Local Business Development (DSLBD) has approved a waiver in writing in accordance with D.C. Official Code § 2-218.51, for all contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted to qualified small business enterprises (SBEs).

**Section 9.1.2.2** If there are insufficient SBEs to completely fulfill the requirement of Section 9.1.2.1, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.

**Section 9.1.2.3** A prime contractor that is certified by DSLBD as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections 9.1.2.1 and 9.1.2.2.

**Section 9.1.2.4** Except as provided in 9.1.2.5 and 9.1.2.6, a prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

**Section 9.1.2.5** A prime contractor that is a certified joint venture and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a

set-aside program, shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A certified joint venture prime contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

**Section 9.1.2.6** Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.

**Section 9.1.2.7** A prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the on-site work with its own organization and resources if the contract is \$1 million or less.

**Section 9.1.2.8 Subcontracting Plan**

The Contractor shall perform at least 35% of the contracting effort with its own forces, and if the Contractor subcontracts any work, 35% of the subcontracted effort must be subcontracted to CBEs in accordance with the provisions of section 12.1.2 of this clause. For subcontracted work, pass through entities will not count toward this goal. In order to count toward the subcontracting requirement, the SBE must perform at least thirty five percent (35%) of the work that is being counted toward the goal with its own forces. The LSDBE certification shall be, in each case, as of the effective date of the subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal. The Contractor has developed a Subcontracting Plan that is attached hereto as **Exhibit G**. The Contractor shall comply with the terms of the Subcontracting Plan in making purchases and administering its Subcontracts and Supply Agreements.

The Subcontracting Plan shall be submitted as part of the proposal and may only be amended after award with the prior written approval of the CO and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the plan after award shall inure to the benefit of the District.

Each subcontracting plan shall include the following:

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

**Section 9.1.2.9 Copies of Subcontracts**

Within twenty-one (21) days of the date of award, the Contractor shall provide fully executed copies of all subcontracts identified in the subcontracting plan to the Contracting

Officer (CO), City Administrator (CA), District of Columbia Auditor and the Director of DSLBD.

**Section 9.1.2.10 Subcontracting Plan Compliance Reporting**

**Section 9.1.2.10.1** If the Contractor has a subcontracting plan required by law for this contract, the Contractor shall submit a quarterly report to the CO, CA, District of Columbia Auditor and the Director of DSLBD. The quarterly report shall include the following information for each subcontract identified in the subcontracting plan:

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

**Section 9.1.2.10.2** If the fully executed subcontract is not provided with the quarterly report, the prime contractor will not receive credit toward its subcontracting requirements for that subcontract.

**Section 9.1.2.11 Annual Meetings**

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

**Section 9.1.2.12 DSLBD Notices**

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

**Section 9.1.2.13 Enforcement and Penalties for Breach of Subcontracting Plan**

**Section 9.1.2.13.1** A contractor shall be deemed to have breached a subcontracting plan required by law, if the contractor (i) fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information in a reasonably timely manner; (ii) submits a monitoring or compliance report or other required subcontracting information containing a materially false statement; or (iii) fails to meet its subcontracting requirements.

**Section 9.1.2.13.2** A contractor that is found to have breached its subcontracting plan for utilization of CBEs in the performance of a contract shall be



subject to the imposition of penalties, including monetary fines in accordance with D.C. Official Code § 2-218.63.

**Section 9.1.2.14** If the CO determines the Contractor's failure to be a material breach of the Contract, the CO shall have cause to terminate the Contract under **Article 8 of the SCP, Default.**

**Section 9.1.2.15** Neither the Contractor nor a Subcontractor may remove a Subcontractor or tier-Subcontractor if such Subcontractor or tier-Subcontractor is certified as an LSDBE company unless the Department approves of such removal, in writing. The Department may condition its approval upon the Contractor developing a plan that is, in the Department's sole and absolute judgment, adequate to maintain the level of LSDBE participation on the Project.

**Section 9.2 Equal Employment Opportunity and Hiring of District Residents.**

**Section 9.2.1** The Contractor shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs. In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985, the forms for completion of the Equal Employment Opportunity Information Report are incorporated herein as **Exhibit P**. A contract award cannot be made to any contractor that has not satisfied the equal employment requirements.

**Section 9.2.2** The Contractor shall ensure that at least fifty-one percent (51%) of the Contractor's team and every subconsultant's and subcontractor's employees hired after the effective date of the Agreement, or after such subconsultant or subcontractor enters into a contract with the Contractor, to work on the Project shall be residents of the District of Columbia. This percentage shall be applied in the aggregate, and not trade by trade. In addition, the Contractor shall use commercially reasonable best efforts to comply with the workforce percentage goals established by the recently adopted amendments to the First Source Employment Agreement Act of 1984 (D.C. Code §§ 2-219.01 *et seq.*) and any implementing regulations, including, but not limited to the following requirements:

- (i) At least 20% of journey worker hours by trade shall be performed by District residents;
- (ii) At least 60% of apprentice hours by trade shall be performed by District residents;
- (iii) At least 51% of the skilled laborer hours by trade shall be performed by District residents; and
- (iv) At least 70% of common laborer hours shall be performed by District residents.

**Section 9.2.3** Thirty five percent (35%) of all apprentice hours worked on the Project shall be worked by District residents.

**Section 9.3 Economic Inclusion Reporting Requirements.**

**Section 9.3.1** Upon execution of the Agreement, the Contractor and all its member firms, if any, and each of its Subcontractors shall submit to the Department a list of current employees and apprentices that will be assigned to the Agreement, the date they were hired and whether or not they live in the District of Columbia.

**Section 9.3.2** The Contractor and its constituent entities shall comply with subchapter X of Chapter II Title 2, and subchapter II of Chapter 11 of Title 1 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The Contractor and all member firms and Subcontractors shall execute a First Source Agreement with the District of Columbia Department of Employment Services (“DOES”) prior to beginning Work at the Project site.

**Section 9.3.3** The Contractor shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

**Section 9.3.4** The Contractor shall be responsible for: (i) including the provisions of Section 5.2.8 in all subcontracts; (ii) collecting the information required in Section 5.2.8 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in the reports required to be submitted by the Contractor pursuant to Section 5.2.8.

**Section 9.4 Compliance with the Apprenticeship Act.**

The Contractor agrees to comply with the requirements of the Apprenticeship Act of 1946, D.C. Code §§ 32-1431, *et seq.*, as amended. The Contractor shall ensure that all of its subcontractors selected to perform work on the Project on a craft-by-craft basis shall be required to comply with this Act. All terms and conditions of the Act, D.C. Apprenticeship Council Rules and Regulations, as well as any federal requirements, shall be implemented. The Prime Contractor shall be liable for any subcontractor non-compliance.

**Section 9.5 Living Wage Act.** In addition to the requirements set forth in the First Source Employment Agreement, the Contractor shall comply with all applicable provisions of the Living Wage Act of 2006, **Exhibit Q**, as amended (codified at D.C. Official Code §§ 2-220.01 *et seq.*) and its implementing regulations.

**Article 10 - LIQUIDATED DAMAGES**

**Section 10.1 Delay in Substantial Completion.**

If the Contractor fails to achieve Substantial Completion of the Project by the Substantial Completion Date, the Parties acknowledge and agree that the actual damage to the Department for

the delay will be impossible to determine, and in lieu thereof, the Contractor shall pay to the Department, as fixed, agreed and liquidated delay damages in the amount set forth in the Project Information Section of this Agreement per day for each calendar day of delay for failure to meet the applicable Substantial Completion Date.

The Contractor and the Department agree that the liquidated damages set forth in this Article do not constitute, and shall not be deemed, a penalty but represent a reasonable approximation of the damages to the Department associated with a delay in the Project. These damages shall not apply if the delay is the result of force majeure and the Contractor otherwise complies with the provisions set forth in the SCP. In the event the Contractor fails to meet the Substantial Completion Date for more than thirty (30) days, the Contractor consents to a Termination for Default.

**Section 10.2 Early Completion.**

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

**ARTICLE 11 - MISCELLANEOUS PROVISIONS**

**Section 11.1. Ownership and Use of Documents.**

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

**Section 11.2 Assignment.**

The Department and the Contractor respectively bind themselves, their partners, members, joint venturers, constituent entities, successors, assigns and legal representative to the other party hereto and to partners, members, joint venturers, constituent entities, successors, assigns and legal representatives of such other Party in respect to covenants, agreements and obligations contained in the Agreement. Neither Party to the Agreement shall assign the Agreement or its rights and obligations under the Agreement, without written consent of the other Party. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement or shall constitute a breach of contract.

**Section 11.3 Buy American Act Provision.**

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

**11.3.1** In accordance with the Buy American Act (41 U.S.C. § 10a-10d), and Executive Order 10582, December 17, 1954 (3 CFR, 1954-58 Comp., p. 230), as amended by Executive Order 11051, September 27, 1962 (3 CFR, 1059—63 Comp., p.

635), the Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, material men and suppliers in the performance of the Agreement, except for non-domestic material listed in the Agreement.

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

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

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

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

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

The Contractor shall deliver only domestic end products, except those:

- i. For use outside the United States;
- ii. That the District determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
- iii. For which the District determines that domestic preference would be inconsistent with the public interest; or
- iv. For which the District determines the cost to be unreasonable.

**11.3.3 Domestic Component.** A component shall be considered to have been “mined, produced, or manufactured in the United States” regardless of its source, in fact, if the article, material or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Government

to be not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

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

**Section 11.4 Davis-Bacon Act Provision.**

The Contractor 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 R**. The Contractor further agrees that it and all of its subcontractors shall comply with the regulations implementing the Davis-Bacon Act and such regulations are hereby incorporated by reference.

**Section 11.5 The Quick Payment Clause**

**11.5.1 Interest Penalties to Contractors**

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

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

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

**11.5.2 Payments to Subcontractors**

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

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

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

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

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

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

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

### **11.5.3 Subcontractor Quick Payment Clause Flow-Down Requirements**

**11.5.3.1** The Contractor shall include in each subcontract under this contract a provision requiring the subcontractor to include in its contract(s) with any lower-tier subcontractor or supplier the payment and interest clauses required under 11.4.2.1 and 11.4.2.2 hereinabove and paragraphs (1) and (2) of D.C. Official Code §2-221.02(d).

### **11.5.4 Requirements for Change Order payments**

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

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

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

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

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

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

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

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

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

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

**Section 11.6 Contract Work Hours And Safety Standards Act Provision.**

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

**Section 11.7 False Claims Act.**

The Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to DC government, including the prescriptions set forth in District of Columbia Code §22-2514 and §§2-381.01 et seq. In the event that it is discovered that the

Contractor has made a false, fraudulent or unsupported statement or claim to the Department, the Department may terminate this Agreement without liability.

**Section 11.8 Interpretation of Contract and Order of Precedence.**

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

1. This Agreement and its Modifications, Change Orders, Change Directives and any Exhibits thereto;
2. The Department's SCP, as amended, and any missing term in this Agreement shall be addressed in accordance with the SCP; and
3. The Construction Documents released or approved by the Department.

**Section 11.9 Independent Contractor.**

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

**Section 11.10 No Third-Party Beneficiary Rights.**

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

**Section 11.11 Media Releases.**

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

**Section 11.12 Construction.**

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

**Section 11.13 Notices.**

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



If to the Department:

If to Contractor:

James H. Marshall  
Contracting Officer  
Department of General Services  
2000 14<sup>th</sup> Street, NW, 8<sup>th</sup> Floor  
Washington, DC 20009

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

**Section 11.14 Limitations.**

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

**Section 11.15 Survival.**

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

**Section 11.16 No Waiver.**

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

**Section 11.17 Remedies Cumulative.**

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

**Section 11.18 Headings/Captions.**

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

**Section 11.19 Entire Agreement; Modification.**

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

**Section 11.20 Severability.**

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

**Section 11.21 Anti-Deficiency Acts.**

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

**Section 11.22 Time.**

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

**Section 11.23 Special Provisions Related to the COVID-19 Emergency.**

**11.23.1** The Contractor is required to comply with Mayor's Order 2021-099, COVID-19 Vaccination Certification Requirement for District Government Employees, Contractors, Interns, and Grantees, dated August 10, 2021, and all substantially similar vaccine requirements, including any modifications to this Order, unless and until they are rescinded or superseded. At the request of the District government, Contractors may be asked to provide certification of compliance with this requirement and/or documents and records in support of this certification.

**11.23.2** The Contractor is required to comply with City Administrator’s Order 2021-4, Resumption of Requirement for All Persons to Wear a Mask Inside District Government Buildings and While on Duty as a District Government Employee or Contractor, dated July 30, 2021, and all substantially similar mask requirements including any modifications to this Order, unless and until they are rescinded or superseded.

#### **Section 11.24 Campaign Finance Reform Act**

Prior to the execution of this Contract, the Contractor shall complete and submit to the Department a completed Campaign Finance Reform Act Self-Certification Form, **Exhibit S**, pursuant to D.C. Official Code § 1-1161.01.

#### **Section 11.25 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)**

During the performance of this contract, the Contractor and any of its subcontractors shall comply with the ADA. The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability. See 42 U.S.C. §12101 et seq.

#### **Section 11.26 NON-DISCRIMINATION CLAUSE**

**11.26.1** The Contractor shall not discriminate in any manner against any employee or applicant for employment that would constitute a violation of the District of Columbia Human Rights Act, effective December 13, 1977, as amended (D.C. Law 2-38; D.C. Official Code § 2-1402.01.01 et seq.) (“Act”, as used in this Section). The Contractor shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. In addition, the Contractor agrees, and any subcontractor shall agree, to post in conspicuous places, available to employees and applicants for employment, a notice setting forth the provisions of this non-discrimination clause as provided in section 251 of the Act.

**11.26.2** Pursuant to Mayor’s Order 85-85, (6/10/85), Mayor’s Order 2002-175 (10/23/02), Mayor’s Order 2011-155 (9/9/11) and the rules of the Office of Human Rights, Chapter 11 of Title 4 of the D.C. Municipal Regulations, the following clauses apply to the Contract:

- (1) The Contractor shall not discriminate against any employee or applicant for employment because of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act.
- (2) The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without

regard to their actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income or place of residence or business. The affirmative action shall include, but not be limited to the following:

- (a) employment, upgrading or transfer.
  - (b) recruitment, or recruitment advertising.
  - (c) demotion, layoff, or termination.
  - (d) rates of pay, or other forms of compensation; and
  - (e) Selection for training and apprenticeship.
- (3) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency, setting forth the provisions in Sections I.13.1 and I.13.2 concerning non-discrimination and affirmative action.
  - (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor; state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in Section I.12.4.
  - (5) The Contractor agrees to send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of that contractor's commitments under this nondiscrimination clause and the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - (6) The Contractor agrees to permit access to its books, records, and accounts pertaining to its employment practices, by the Chief Procurement Officer or designee, or the Director of the Office of Human Rights or designee, for purposes of investigation to ascertain compliance with the Act, and to require under terms of any subcontractor agreement each subcontractor to permit access of such subcontractors' books, records, and accounts for such purposes.
  - (7) The Contractor agrees to comply with the provisions of the Act and with all guidelines for equal employment opportunity applicable in the District of Columbia adopted by the Director of the Office of Human Rights, or any authorized official.

- (8) The Contractor shall include in every subcontract the equal opportunity clauses Sections I.13.3 through I.13.11, so that such provisions shall be binding upon each subcontractor or vendor.

The Contractor shall take such action with respect to any subcontract as the CO may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the District to enter into such litigation to protect the interest of the District.

### **Section 11.27 PREGNANT WORKERS FAIRNESS**

**11.27.1** The Contractor shall comply with the Protecting Pregnant Workers Fairness Act of 2016, D.C. Official Code § 32-1231.01 et seq. (PPWF Act).

**11.27.2** The Contractor shall not:

(a) Refuse to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding for an employee, unless the Contractor can demonstrate that the accommodation would impose an undue hardship;

(b) Take an adverse action against an employee who requests or uses a reasonable accommodation in regard to the employee's conditions or privileges of employment, including failing to reinstate the employee when the need for reasonable accommodations ceases to the employee's original job or to an equivalent position with equivalent:

- (1) Pay;
- (2) Accumulated seniority and retirement;
- (3) Benefits; and
- (4) Other applicable service credits;

(c) Deny employment opportunities to an employee, or a job applicant, if the denial is based on the need of the employer to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding;

(d) Require an employee affected by pregnancy, childbirth, related medical conditions, or breastfeeding to accept an accommodation that the employee chooses not to accept if the employee does not have a known limitation related to pregnancy, childbirth, related medical conditions, or breastfeeding or the accommodation is not necessary for the employee to perform her

duties;

(e) Require an employee to take leave if a reasonable accommodation can be provided; or

(f) Take adverse action against an employee who has been absent from work as a result of a pregnancy-related condition, including a pre-birth complication.

**11.27.3** The Contractor shall post and maintain in a conspicuous place a notice of rights in both English and Spanish and provide written notice of an employee's right to a needed reasonable accommodation related to pregnancy, childbirth, related medical conditions, or breastfeeding pursuant to the PPWF Act to:

(a) New employees at the commencement of employment;

(b) Existing employees; and

(c) An employee who notifies the employer of her pregnancy, or other condition covered by the PPWF Act, within 10 days of the notification.

**11.27.4** The Contractor shall provide an accurate written translation of the notice of rights to any non-English or non-Spanish speaking employee.

**11.27.5** Violations of the PPWF Act shall be subject to civil penalties as described in the Act.

## **Section 11.28 UNEMPLOYED ANTI-DISCRIMINATION**

**11.28.1** The Contractor shall comply with the Unemployed Anti-Discrimination Act of 2012, D.C. Official Code § 32-1361 *et seq.*

**11.28.2** The Contractor shall not:

(a) Fail or refuse to consider for employment, or fail or refuse to hire, an individual as an employee because of the individual's status as unemployed; or

(b) Publish, in print, on the Internet, or in any other medium, an advertisement

or announcement for any vacancy in a job for employment that includes:

- (1) Any provision stating or indicating that an individual's status as unemployed disqualifies the individual for the job; or
- (2) Any provision stating or indicating that an employment agency will not consider or hire an individual for employment based on that individual's status as unemployed.

**11.28.3** Violations of the Unemployed Anti-Discrimination Act shall be subject to civil penalties as described in the Act.

### **Section 11.29 ELECTRONIC COPY OF BIDS FOR FREEDOM OF INFORMATION ACT REQUESTS**

In addition to other bid submission requirements, the bidder must submit an electronic copy of its bid, redacted in accordance with any applicable exemptions from disclosure in D.C. Official Code §2-534, in order for the District to comply with §2-536(b) that requires the District to make available electronically copies of records that must be made public. The District's policy is to release documents relating to District bids following award of the Contract, subject to applicable FOIA exemption under §2-534(a) (1).

### **Section 11.30 Gratuities Not to Benefit Provisions.**

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

## **Article 12 - TERMINATION OR SUSPENSION**

**Section 12.1** All terminations or suspensions arising out of or under this Agreement shall be in accordance with the terms of the SCP.

## **Article 13 - OTHER CONDITIONS AND SERVICES**

This Agreement and the rights and obligations of the Department and the Contractor herein are subject to the approval of the Council of the District of Columbia.

## **Article 14 – CHANGES IN THE WORK**

### **Section 14.1 Changes Authorized.**

In accordance with the SCP, the Department may, without invalidating the Agreement, and without notice to or approval of any surety, order changes in the Work, including additions, deletions or modifications. Any such change must be conveyed by the Department to the Contractor via written Change Directive or Change Order.

### **Section 14.2 Executed Change Directive/Contract Modification/Change Order Required.**

Only a written Change Directive, Contract Modification, or change order, executed by the Department, may make changes to the Agreement. In particular, but without limitation, a written Change Directive or Change Order executed by the Department is the only means by which changes may be made to the Substantial or Final Completion Dates or the Lump Sum Price.

### **Section 14.3 Department-Initiated Changes.**

- (1) If the Department wishes to make a change in the Work or to accelerate the Work, it will execute and issue to the Contractor a written Change Directive, either directing the Contractor to proceed at once with the changed Work or directing it to not to proceed, but to inform the Department, in writing, of the amount, if any, by which the Contractor believes that Substantial or Final Completion Dates and/or the Lump Sum Price should be adjusted to take the Change Order or Change Directive into account.
- (2) Within ten (10) calendar days of receiving a Change Directive, the Contractor shall provide the Department with a written statement of all changes in the Agreement, including, without limitation, any changes to the Substantial or Final Completion Dates or the Lump Sum Price to which it believes it is entitled as a result of the Change Directive. If additional time is sought, a schedule analysis supporting the requested extension should be included. The schedule analysis should include a written narrative explanation. If a change in the Lump Sum Price is sought (or if the Department has requested a deduct change), the statement should include a breakdown, by line item, of the estimated cost changes attributable to the proposed change. The Department may request, and the Contractor shall provide, further cost breakdowns, clarifications, documentation or back-up if the Department reasonably believes such additional information is needed to understand and evaluate the request. The additional information required may include cost and pricing data in accordance with the Department's regulations. Any requested adjustment to the



Lump Sum Price shall be limited to increased Cost of the Work due to the Change Directive. The Contractor is not entitled to any markup on any kind of Change Orders except as authorized in Section 14.7, and if so authorized, any mark-up shall be in accordance with Section 14.7.

- (3) If the Department has not yet directed the Contractor to proceed with the change described by a Change Directive, the Department may rescind it. If the Department wishes to proceed, or has already directed the Contractor to proceed, the Contractor shall immediately proceed with the changed Work and, the Department and the Contractor shall use their good faith best efforts to reach an agreement upon the modifications to the Substantial or Final Completion Dates, and/or the Lump Sum Price that are justified by the Change Directive. If the Department and the Contractor reach agreement, the agreement shall be set forth in a Change Order and the Contractor shall also execute it, at which point it will become binding on both Parties.
- (4) If the parties fail to reach an agreement within sixty (60) days after the Department receives the Contractor's detailed statement pursuant to Section 14.3.2, and such other documentation as the Department may request, the Contractor may assert a claim in accordance with the Agreement. In such a case, and subject to adjustment via the claims and disputes process, the Department shall unilaterally grant the Contractor such adjustments, if any, to the Substantial or Final Completion Dates or the Lump Sum Price.

#### **Section 14.4 Notice of Change Event.**

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

#### **Section 14.5 Detailed Change Request.**

Within twenty (20) days after giving notice of a Change Event, the Contractor shall submit a written Change Request to the Department describing, in reasonable detail, all adjustments it seeks to the Substantial or Final Completion Dates or the Lump Sum Price as a result of the Change Event. The Change Request shall include the same information as described in Section 14.3 with respect to any Agreement changes the Contractor seeks due to the Change Event, and the amount of any requested adjustment to the Lump Sum Price shall be limited in accordance with that Section 14.3.

**Section 14.6 Failure to Agree.**

If the Contractor claims entitlement to a change in the Agreement, and the Department does not agree that any action or event has occurred to justify any change in time or compensation, or if the Parties fail to agree upon the appropriate amount of the adjustment in time or compensation, the Department will unilaterally make such changes, if any, to the Agreement, as it determines are appropriate pursuant to the Agreement. The Contractor shall proceed with the Work and the Department's directives, without interruption or delay, and shall make a claim as provided in Article 19 herein. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Contract and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

**Section 14.7 Markups.**

For changes to the Lump Sum Price, the following conditions shall apply:

- (1) For increases in the Work which the Contractor is permitted to perform with their 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, field supervision, general conditions and profit) equal to fifteen percent (15%) of the sum due under (i) above for the Subcontractor performing such Work; and (iii) a fee (covering the Contractor's home office overhead, field supervision, general conditions and profit) of five percent (5%) of the sum of items (i) and (ii). Intervening tier Subcontractors shall be entitled to a markup 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 markup on the Direct Cost of the Work shall be twenty five percent (25%) and provided, further, that the Contractor shall not be entitled to the markup referred to in item (iii) on changes unless such changes exceed, either individually or in the aggregate, five percent (5%) of the Lump Sum Price;
- (3) When both additions and credits are involved in any one change in the Work, the Contractor's change order and markup shall be figured on the basis of the net increase, if any;
- (4) Fee will not be paid by the Department for overtime or weekend work unless overtime is requested in writing and approved by the Department;

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

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

(c) **Contractor's Equipment.** Payment for required equipment owned by the Contractor or an affiliate of the Contractor 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.

## Article 15 – BONDS

### Section 15.1. Performance Bond and Payment Bond.

The Contractor shall, before commencing the Construction Phase, provide to the Department a payment bond and performance bond, each with a penal sum equal to the full value of the Lump Sum Price. In addition to the delivery of the performance and payment bonds, the Contractor must deliver to the Contracting Officer a copy of the executed Agreement of Indemnity under which the bonds were issued. Such bond shall remain in full force and effect until Final Completion is achieved and the Department shall be able to draw upon such bond regardless of

the amount paid by the Department to the Contractor, even if such amount exceeds the penal value of such bond. Unless otherwise directed by the Department, the Contractor 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 Contractor 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 Contractor and the Department as dual obligees. If the Lump Sum 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 Contractor shall promptly comply. The Contractor 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 Contractor shall promptly provide substitute security acceptable to the Department. If the Contractor intends to exercise its rights as dual obligee under any trade Subcontractor's bond, it shall first give the Department twenty (20) days written notice, so that the Department may lodge any objection it may reasonably have to the proposed action.

#### **Article 16 – CLAIMS & DISPUTE RESOLUTION**

All claims or disputes arising out of this Agreement shall be governed by the terms of the SCP.

#### **Article 20 – EXHIBITS**

The below list of Exhibits is for reference purpose only. Final list of attachments and exhibit names will be incorporated into the agreement between the Department and Contractor.

<b>Exhibit A</b>	Scope of Work
<b>Exhibit B</b>	Schedule of Values
<b>Exhibit C</b>	Preconstruction & Construction Phase Deliverable List
<b>Exhibit D</b>	List of Assumptions and Clarifications
<b>Exhibit E</b>	Standard Contract Provisions for Construction Contracts
<b>Exhibit F</b>	Construction Phase Schedule
<b>Exhibit G</b>	SBE Subcontracting Plan
<b>Exhibit H</b>	First Source Employment Agreement and Employment
<b>Exhibit I</b>	Key Personnel
<b>Exhibit J</b>	Contractor's Designated Representative
<b>Exhibit K</b>	Department's Designated Representatives
<b>Exhibit L</b>	List of FF&E
<b>Exhibit M</b>	Close-Out Deliverables
<b>Exhibit N</b>	Lien Waivers

- Exhibit O** DGS Project Turnover Protocol
- Exhibit P** Equal Employment Opportunity Plan
- Exhibit Q** Living Wage Act
- Exhibit R** Davis Bacon Act
- Exhibit S** Campaign Finance Reform Act Self-Certification Form

**IN WITNESS WHEREOF**, the Parties duly authorized representatives have executed this Agreement (DCAM-22-CS-RFP-0026) as of the date written below.

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

**By:** \_\_\_\_\_  
**Name:** James H. Marshall  
**Title:** Contracting Officer  
**Date:** \_\_\_\_\_

**[Contractor]**

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