

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



Addendum No. 8

To

REQUEST FOR PROPOSALS NO. DCAM-21-AE-0008
ARCHITECTURAL/ENGINEERING SERVICES
FOR

AITON ELEMENTARY SCHOOL SWING SPACE AT KENILWORTH

Issued: September 9, 2021

This Addendum No. 8 is issued and hereby published on the DGS website and effective as of the date shown above. Except as modified hereby, the Request for Proposals (“RFP”) remains unmodified.

Item No. 1: Attachment C (Form of Offer Letter) of the RFP is hereby revised and attached as **(Exhibit 1)**.

Item No. 2: Attachment F (Form of Contract) of the RFP is hereby revised and attached as **(Exhibit 2)**.

Item No. 3: Section 2 of Attachment N (Notice to Proceed and Letter Contract) of the RFP is hereby revised as follows:

Scope of Work. The [Insert Company] is hereby authorized to complete the concept and schematic design Task 1 as described in the RFP and all professional services, materials, tools, supplies and equipment necessary to advance the design and obtain the necessary permits for the Project.

Item No. 4: Section A.3 (Design Fees and Incentives) of the RFP is hereby revised as follows:

As will be more fully described in the Form of Contract, the A/E will be paid a fixed price for all design phase services. Construction Administration services will be charged on a Firm Fixed Price basis at agreed-upon rates with a not-to-exceed amount for each service. Offerors shall bid a design fee (the “Initial Design Fee”) that covers programming, preparation of 3 concept designs and schematic design. Upon selection of a preferred scheme, the Department and A/E shall negotiate a final design fee (“Final Design Fee”) for all of the Offeror’s costs associated with the preparation of the design development documents; a permit set of construction documents (“Permit Set”) which are sufficiently advanced to submit for, a permit from DCRA; and a set of issued for construction documents (“IFC Set”). The Offeror shall include appropriate fees that would be associated with early release work as further stated below. The Final Design Fee shall be fair and reasonable and subject to the Independent Government cost estimate. Such Final Design Fee will be added as a change order to the Contract with the Selected A/E following the Contracting Officer’s review and approval.

Item No. 5: The Proposals Due Date is hereby extended to **September 14, 2021, at 2:00 P.M.**

By: Eric Njonjo
Eric Njonjo
Contracting Officer

Date: 9/9/2021

EXHIBIT 1

ATTACHMENT C - FORM OF OFFER LETTER

[EXHIBIT WILL APPEAR ON THE FOLLOWING PAGE]

Attachment C

[Offeror's Letterhead]

[Insert Date]

District of Columbia Department of General Services
2000 14th Street, NW
Washington, D.C. 20009

Attention: George G. Lewis
Associate Director/ Chief Contracting Officer

Reference: Request for Proposals ("RFP") – DCAM-21-AE-0008
Architectural/Engineering Services For Aiton Elementary School Swing Space At
Kenilworth

Dear Mr. Lewis:

On behalf of [INSERT NAME OF Offeror] (the "Offeror"), I am pleased to submit this Proposal in response to the Department of General Services' (the "Department" or "DGS") RFP to provide Architectural/Engineering Services for Aiton Elementary School Swing Space At Kenilworth project. The Offeror has reviewed the RFP and the attachments thereto, any addenda thereto, and the proposed Form of Contract (collectively, the "Bid Documents") and has conducted such due diligence and analysis as the Offeror, in its sole judgment, has deemed necessary in order to submit its Proposal in response to the RFP.

The Offeror's Proposal including the Task 1 Design Fee (as describe in Section A.3 of the RFP) are based on the Bid Documents as issued and assume no material alteration of the terms of the Bid Documents (collectively, the Proposal, the Design Fee and the Hourly Rates are referred to as the "Offeror's Bid"). Upon completion of Phase 1 and selection of a preferred scheme the Department and Offeror will negotiate a final Design Fee to complete the work. As such, Offerors shall provide hourly rates for the personnel identified in paragraph B below.

The Offeror's Bid is as follows:

A. Programing, Concept Design and Schematic Design Phase (Task 1):

Three (3) Concept Designs and Schematic Design	\$ _____
Owner Directed Allowance	\$ 100,000
Total Design Fee	\$ _____

B. Hourly Rates (Full Design Services (Task 2)):

Design Development through Construction Administration

Position	Hourly Rate
Design Principal	\$ _____/hour
Project Architect (Project Manager)	\$ _____/hour
Project Designer	\$ _____/hour
Lead MEP Engineer	\$ _____/hour
Lead Structural Engineer	\$ _____/hour

The Offeror acknowledges and understands that the Task 1 Fee is a fixed fee and covers all of the Offeror's costs associated with the Scope of work described as Task 1 of (i) a preliminary assessment and refinement (if necessary) of the concept design and all portions of design and construction documents for the Swing Space. The Offeror acknowledges that upon a selection of a preferred scheme the Department will negotiate a design Fee with the Offeror that will included the scope of work described as Task 2 (i) design development documents; (ii) a permit set of construction documents; (iii) a complete, coordinated set of construction documents; and (iv) construction administration services.

The Offeror's Proposal is based on and subject to the following conditions:

The Offeror agrees to hold its proposal open for a period of at least one hundred twenty (120) days after the date of the bid.

1. Assuming the Offeror is selected by the Department and subject only to the changes requested in paragraph 5, the Offeror agrees to enter into a contract with the Department on the terms and conditions described in the Bid Documents within ten (10) days of the notice of the award.
2. Both the Offeror and the undersigned represent and warrant that the undersigned has the full legal authority to submit this bid form and bind the Offeror to the terms of the Offeror's Bid.
3. The Offeror further represents and warrants that no further action or approval must be obtained by the Offeror in order to authorize the terms of the Offeror's Bid.
4. The Offeror and its principal team members hereby represent and warrant that they have not: (i) colluded with any other group or person that is submitting a proposal in response

to the RFP in order to fix or set prices; (ii) acted in such a manner so as to discourage any other group or person from submitting a proposal in response to the RFP; or (iii) otherwise engaged in conduct that would violate applicable anti-trust law..

5. The Offeror's Proposal is subject to the following requested changes to the Form of Contract: **[INSERT REQUESTED CHANGES. OFFERORS ARE ADVISED THAT THE CHANGES SO IDENTIFIED SHOULD BE SPECIFIC SO AS TO PERMIT THE DEPARTMENT TO EVALUATE THE IMPACT OF THE REQUESTED CHANGES IN ITS REVIEW PROCESS. GENERIC STATEMENTS, SUCH AS "A MUTUALLY ACCEPTABLE CONTRACT" ARE NOT ACCEPTABLE. OFFERORS ARE FURTHER ADVISED THAT THE DEPARTMENT WILL CONSIDER THE REQUESTED CHANGES AS PART OF THE EVALUATION PROCESS.]**
6. The Offeror hereby certifies that neither it nor any of its team members have entered into any agreement (written or oral) that would prohibit any contractor, subcontractor or sub-consultant that is certified by the District of Columbia Office of Department of Small and Local Business Enterprises as a Local, Small, Resident Owned or Disadvantaged Business Enterprise (collectively, "LSDBE Certified Companies") from participating in the work if another company is awarded the contract.
7. This bid form and the Offeror's Bid are being submitted on behalf of [INSERT FULL LEGAL NAME, TYPE OF ORGANIZATION, AND STATE OF FORMATION FOR THE OFFEROR].

Sincerely,

By: _____
Name: _____
Title: _____

EXHIBIT 2

ATTACHMENT F - FORM OF CONTRACT

[EXHIBIT WILL APPEAR ON THE FOLLOWING PAGE]

**ARCHITECTURAL AND ENGINEERING SERVICES AGREEMENT
FOR
AITON ELEMENTARY SCHOOL SWING SPACE AT KENILWORTH**

BY AND BETWEEN

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

AND

[Insert A/E]

CONTRACT NO. DCAM-21-AE-0008

**AGREEMENT BETWEEN OWNER AND ARCHITECT/ENGINEER FOR
ARCHITECTURAL/ENGINEERING SERVICES
FOR
AITON ELEMENTARY SCHOOL SWING SPACE AT KENILWORTH
NO. DCAM-21-AE-0008**

THIS AGREEMENT (“Agreement” or “Contract”), effective on the date of the last signature of the Parties’ duly authorized representatives (“Effective Date”), is made by and between the **DISTRICT OF COLUMBIA GOVERNMENT**, acting by and through its **DEPARTMENT OF GENERAL SERVICES** (“Owner”, “District”, “DGS” or the “Department”) and **[INSERT A/E]** being duly organized under the laws of [Insert State of incorporated,] and with a place of business at [Insert the address] (the “Architect/Engineer”, “A/E”, “Prime Contractor” or “Contractor”, and collectively with the Department, the “Parties”, or individually, the “Party”).

WITNESSETH:

WHEREAS, the Department issued a Request for Proposals (“RFP”) dated July 29, 2021 for architectural and engineering services for the renovations and possible additions to the old former Kenilworth Elementary School (“Kenilworth ES”) located at 1300 44th Street NE, Washington, DC 20019 (the “Project”) to serve as a swing school for the Aiton Elementary School modernization project;

WHEREAS, The District of Columbia Public Schools (“DCPS”) recently decided to convert the former Kenilworth Elementary School to a permanent swing space to support the ongoing modernizations of the school portfolio. In 2020, improvements were made to Kenilworth ES to serve as a swing-space for Smothers Elementary School modernization project;

WHEREAS, the A/E submitted a proposal dated [INSERT], in response to the Department’s RFP to provide architectural and engineering services;

WHEREAS, the Department selected the A/E to provide all necessary design and related services for the Project pursuant to the terms and conditions set forth in this Agreement;

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

WHEREAS, the Department intends to procure a Construction Manager at Risk (“CMAR Contractor”) during the Design Development phase of the Project;

WHEREAS, the A/E is required to deliver to the Department the Design Development Documents (“DDs” or “Design Development Documents”) to serve as the basis for trade bidding by the CMAR Contractor to develop a Guaranteed Maximum Price (“GMP”) for the renovation and possible additions to the old former Kenilworth ES to serve as a swing school for Aiton Elementary School modernization project;

WHEREAS, the Department requires that the Project’s design be Substantially Complete within 10-weeks after Notice to Proceed (“NTP”) for the conceptual design and phasing plans and the full design of all the initial phase by 24-weeks after NTP (“**Substantial Completion Date**”);

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

WHEREAS, the Parties entered into a letter contract dated [INSERT], (the “Letter Contract”) pursuant to which the A/E was authorized to provide preliminary services in furtherance of the Project.

NOW, THEREFORE, the Department and A/E, for the consideration set forth herein, mutually agree as follows.

ARTICLE 1 GENERAL PROVISIONS

Section 1.1 Relationship of Parties. The A/E accepts the relationship of trust and confidence established with the Department by this Agreement, and covenants with the Department to furnish the A/E’s reasonable skill and judgment and to cooperate with the Program Manager in furthering the interests of the Department. The A/E shall use its best efforts to perform 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, A/E, CMAR Contractor and other persons or entities employed by the Department for the Project.

Section 1.2 Project Description. In general, the A/E shall provide a full range of architectural and engineering services necessary for the renovation of Kenilworth ES including the engagement of the necessary geotechnical consultants, traffic consultants and other sub-specialties as deemed necessary for the Project and as approved by the Department to assess the site conditions.

Installation of a new elevator are scheduled to begin by mid-2021 to prepare the facility to serve as the temporary home for Aiton Elementary School as it undergoes its modernization. After Aiton’s use, the building will continue to function as a long-term swing space to support the modernization of PACE Act schools in Ward 7 identified in the Capital Improvement Plan. The primary focus of the work will be designing a permanent kitchen and dining space for the Aiton Elementary School community. Currently, there is a temporary kitchen on a demountable trailer and a multipurpose tent onsite, but the District is looking to replace them with a permanent solution.

The A/E is required to provide a full range of architectural and engineering services necessary to determine the most feasible plan of action for the facility to meet the Department’s programmatic requirements. The modernization of the school design shall implement the latest applicable building codes for ADA accessibility, fire, and life safety systems. The design shall also meet or exceed the minimum threshold for Sustainability for District owned buildings that undergo major renovations. The A/E shall consider the historical nature of Kenilworth ES and consider all DGS FM Building Standards, such as Sustainability/High Performance Best Practices, Building Automation Systems (“BAS”), and Smart Roof Design Guide, where applicable. The Project design shall achieve, at a minimum, LEED for

Schools – Gold certification, if required by code and must meet the requirements of the recently adopted International Green Construction Code and Department of Energy & Environment (“DOEE”) storm water management requirements. As part of the LEED certification, if required, the District will require the innovation LEED Pilot Credit – Integrative Process for Health Promotion (<https://www.usgbc.org/credits/new-construction-core-and-shell-schools-new-construction-retail-new-construction-healthc-106>), the Green Roof Credit Program addressed, and Energy Star Certification. The A/E shall apply for and achieve Energy Start Certification, and file the DOEE Green Roof grant application. The A/E’s Design Development Documents will become the basis of the Department’s solicitation for the services of a Construction Management at Risk (“CMAR”) to modernize Kenilworth ES.

Section 1.3 Program Manager. At its discretion, the Department may hire a Program Manager to provide certain program management functions. The Program Manager shall, act solely for the benefit of the Department, not the A/E. The Program Manager shall not have the authority to modify any of the rights or obligations of the Department or the A/E pursuant to this Agreement, or to issue Change Orders, Contract Modifications or Change Directives. **The A/E hereby acknowledges and agrees that only a duly authorized Contracting Officer shall have the authority to issue Change Orders, Contract Modifications or Change Directives on the Department’s behalf. As of the date that this Agreement is signed, the Department’s duly authorized Contracting Officers are as set forth in Section 1.9 of the Agreement.** Unless otherwise provided herein, all deliverables hereunder shall be submitted to the PM.

The name of the Program Manager for this Project is, as follow:

Janice Szymanski, AIA
Capital Construction Services
Department of General Services
1250 U St NW, 3rd Floor
Washington, DC 20009

Section 1.4 General Description of A/E’s Duties. The Parties agree that the A/E is responsible to provide all architectural, engineering and other services necessary to develop a design for the Project that is consistent with the Department’s programmatic, budgetary and schedule requirements for the Project, and to produce the required deliverables. The A/E shall provide all required design services in a timely manner to submit 100% of the Construction Documents (“construction Documents”) no later than the Substantial Completion Date. Without limiting the generality of the foregoing, it is understood and agreed that the A/E shall be responsible for all aspects of the design. The A/E’s services shall include, but are not limited to: (i) engineering services including the civil, structural, mechanical, electrical and plumbing engineering disciplines as well as any appropriate specialty sub-consultants; (ii) the design of furniture, fixtures, and equipment requirements (“FF&E”); (iii) providing a site survey; (iv) engaging the services of an industrial hygienist or similar specialist to survey existing structures on the Project Site so as to identify hazardous materials that require abatement in the existing building; (v) sustainable design initiatives; (vi) engaging the services

of a geotechnical engineer; and (vii) engaging, consulting with, advising, and coordinating with the CMAR Contractor such that the Project is Substantially Complete for occupancy by Aiton Elementary School by the Fall 2022 school year, unless otherwise subsequently amended herein or in the CMAR Contractor's agreement with the Department for completion of the Project.

The A/E shall be responsible for the professional quality, technical accuracy, and the coordination of all studies, reports, recommendations, and other deliverables furnished by the A/E and its Subcontractors and Subconsultants under this Agreement. The A/E shall, without additional compensation, correct or revise any non-conforming deliverables that are a result of errors and omissions in its deliverables. The A/E shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The A/E shall also perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project, review laws, codes, and regulations applicable to the A/E's services and respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

The A/E shall also work with the CMAR Contractor selected by the Department in an active and collaborative manner to address schedule, constructability, budget, and Value Engineering ("Value Engineering" or "VE") issues.

The A/E shall manage the A/E's services, consult with the Department, provide requested services, communicate with members of the Project team and report progress to the Department.

The design shall also meet or exceed the minimum threshold for Sustainability for DC-owned buildings that undergo major renovations. Building Information Modeling ("BIM") is required to be used throughout the facility lifecycle, including all Project phases from project planning and Concept Design through construction, as built and into facilities management. The A/E must work collaboratively with all Project stakeholders. It is expected by DGS that all A/E team members are to be committed to the use of BIM in the Project, share their ideas of BIM expertise with the team, provide BIM data as requested by other team members, look for cost savings and schedule improvements during the entire Project duration, and endeavor to leave as a legacy a fully updated, as built, facility management ready building information model. Additional details regarding requirements for incorporating BIM into the Project are outlined in **Exhibit J**.

Section 1.5 Phases. In general, the A/E's work shall include services as fully described in Articles 2 and Article 3 of this Agreement. These services include, but not limited to: (i) development of the Permit Set for the Project that will serve as the basis of the CMAR Contractor's GMP for the Project; (ii) furthering the design documents for the Project into an Issued-For-Construction set of documents; and (iii) providing construction administration services. The services to be provided under Article 2 constitute the preliminary design and design phase services to be performed by the A/E (the "Design Phase Services"). The services to be provided under Article 3 constitute the Construction Documents and Construction Phase Services to be provided by the A/E (the "Construction Phase Services").

Section 1.6 Project Delivery Method. The Department intends to implement the construction of the Project through a CMAR delivery method. The Department will engage a CMAR Contractor who

will coordinate with the A/E to ensure that the design developed by the A/E is consistent with the Department's budget and schedule for the Project. The Department envisions that the Permit Set shall be completed, at which point the CMAR Contractor will provide a GMP. It is contemplated that the Project's GMP will be finalized by October 2022.

The A/E will work directly for the Department by supporting design oversight and implementation throughout the design and construction phases.

The A/E understands it may be required to prepare multiple bid packages, which may include, but is not necessarily limited to (i) Selective demolition plan; (ii) Utility and site work; (iii) Foundation to grade; and (iv) Early release structural drawings or long lead mechanical components. The A/E further acknowledges that its pricing includes sufficient funding to accommodate the division of the work into multiple packages and to address the coordination issues associated with such a delivery method as well as to meet the milestone schedule outlined in **Section 1.7**.

Section 1.7 Schedules. The schedule for the Project is set forth below. The A/E shall provide the services required hereunder in accordance with the following schedule:

- | | |
|--|--------------------------------|
| <input type="checkbox"/> Notice of Award and Notice to Proceed (A/E) | September 30, 2021 (projected) |
| <input type="checkbox"/> Submit Concept Designs | 4 weeks from NTP |
| <input type="checkbox"/> Submit Schematic Design | 8 weeks from NTP |
| <input type="checkbox"/> Submit 100% Design Development Documents | 14 weeks from NTP |
| <input type="checkbox"/> Permit Set | 18 weeks from NTP |
| <input type="checkbox"/> Submit 100% Construction Documents ("CDs") | 24 weeks from NTP |

Section 1.8 Time is of the Essence. Time is of the essence in the performance of the A/E's obligations under this Agreement.

Section 1.9 Department's Designated Representatives. The Department's duly authorized representatives for this Project are:

George Lewis
Chief Contracting Officer
Department of General Services
2000 14th Street NW, 4th Floor
Washington, DC 20009
george.lewis@dc.gov

Eric Njonjo
Contracting Officer
Department of General Services
1250 U Street, NW - 2nd Floor
Washington, DC 20009

Eric.Njonjo@dc.gov

Although day-to-day communications with the A/E shall be routed through the Program Manager, only the individuals specified in this **Section 1.9** have the authority to alter the terms of this Agreement. Without limiting the generality of the foregoing, **it is understood and agreed that the Program Manager shall not have the authority to: (i) increase the Phase 1 Design Fee or the Final Design Fee established herein; (ii) authorize any additional work; or (iii) increase the overall Project budget or the specified Design-to-Budget.**

Section 1.10 A/E's Representative. The A/E's duly authorized representative for this Project shall be:

[INSERT NAME & CONTACT INFORMATION]

The A/E hereby represents and agrees that the representative specified in this **Section 1.10** is duly authorized and has the full legal authority to bind the A/E and to agree to changes to the terms of this Agreement.

Section 1.11 Project Budget. The A/E has been advised that the District has established a Design-to-Construction budget of \$15,000,000 (inclusive of all construction costs, FF&E and exclusive of design fees). The term "Work" refers to any and all work done in performance of the architectural and engineering services necessary, at any and all phases of the Agreement, to fully complete the Project. Such Design-to-Construction budget is intended to cover construction costs, FF&E, and the CMAR Contractor's fees and general conditions cost, and all cost estimates shall be prepared based on such components. Any increases to such Design-to-Construction budget must be approved by the Department's Budget Representative. As used herein, the term "Budget Representative" shall mean a Contracting Officer. Any increase to the Design-to-Construction budget shall only be effective if such authorization is signed by the Budget Representative. For the avoidance of doubt and as more fully set forth herein, the A/E further understands and agrees that it will manage its work in accordance with the budget requirements set forth herein.

Section 1.12 Land Use Entitlements. The Parties acknowledge that the design for the Project may require various land use approvals. The Parties anticipate that the approval of the following bodies may be required:

- a. Commission of Fine Arts ("CFA").
- b. Office of Zoning ("OZ").
- c. Office of Planning ("OP").
- d. Historic Preservation Office ("HPO").

The A/E shall endeavor to obtain from the agencies listed above the approvals required in order for the Project to proceed. The A/E shall utilize as part of their team necessary consultants, including land use attorneys to prepare such materials and make such presentations as necessary to obtain the required land use and entitlement approvals. The A/E acknowledges that the aspects of the design for the Project may need to be revised or redesigned in order to obtain such approvals, and the fee set forth herein

includes sufficient amounts for such redesign.

Section 1.13 Permits. In addition to securing land use approvals, the Parties anticipate that permits will be required from the following bodies:

- a. District of Columbia Department of Consumer and Regulatory Affairs (“DCRA”).
- b. DOEE.
- c. District of Columbia Department of Transportation (“DDOT”).
- d. District of Columbia Water and Sewer Authority.

The A/E will be required to respond to comments provided by the regulatory agencies on the design documents as contemplated in this Agreement.

The A/E shall be responsible for preparing and submitting all of the required permit applications that are necessary to complete the Project. The A/E shall develop a list of the required permits and shall track the progress of all such permits through the review process. The A/E shall engage such permit expeditors as the A/E deems necessary or appropriate in light of the Project’s schedule. The A/E shall be responsible for obtaining any building permits and clearances.

Section 1.14 Letter Contract. It is understood and agreed that certain of the design services required by this Agreement may have been performed by the A//E while the Letter Contract was in place, and the terms of the Letter Contract shall automatically terminate and shall merge into and be superseded by the Agreement on its Effective Date; and any services provided or work performed pursuant to the merged Letter Contract, and prior to the Effective Date of this Agreement, shall be governed by the terms and conditions of this Agreement.

Section 1.15 Term of Agreement. The term of this Agreement shall commence on the date of execution of the Letter Contract and NTP as executed by the Department and run through the Administrative term. 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. Notwithstanding the foregoing, nothing herein shall be construed to: extend the Substantial Completion Date; extend the Final Completion Date; or, limit the Department’s ability to assess liquidated damages thereon.

ARTICLE 2 DESIGN PHASE SERVICES

Section 2.1 Programming, Concept Design and Schematic Design Phase (Task 1)

Section 2.1.1 Services: The first phase of the Project shall include program development and the preparation of multiple concept designs. The concept design documents shall be developed in three (3) schemes (“Concept Design”) in contemplation of the possible future expansion of the facility for additional uses, or programs. During this phase, the A/E may be required to complete the following tasks for each scheme as necessary:

1. Meet with the DGS and DCPS to kick-off the Project. The purpose of the meeting will be to review the Project scope, schedule, goals and objectives, and expectations for the Project.
2. Conduct workshops with DGS' and DCPS' staff, as well as other stakeholders, in order to further clarify the goals, objectives, performance targets, service standards, responsibilities, and key agency actions necessary throughout the Department in order to fully realize the vision for the new community center. The A/E shall provide report of findings.
3. Conduct two (2) community meetings to develop program and solicit input.
4. Conduct an overall building assessment.
5. Conduct life safety/building code analysis to verify compliance of design with all current applicable codes recently adopted and/or adopted by Washington, DC, including the 2013 District of Columbia Building Code, the 2013 District of Columbia Green Construction Code, the 2013 District of Columbia Energy Conservation Code, the 2013 District of Columbia Fire Code, the 2013 District of Columbia Mechanical Code, and the 2013 District of Columbia Plumbing Code.
6. Conduct LEED Workshops with the A/E' team and DGS representatives to identify sustainable design strategies to be included in design, to the greatest extent possible to achieve LEED Gold certification, if required.
7. Conduct Project introductory meetings with and prepare summary memo of outcomes with;
 - a. DOEE
 - b. DDOT
 - c. US Commission of Fine Arts (Staff Level)
 - d. DC Historic Preservation Office (Staff Level)
 - e. Pepco
 - f. Washington Gas
8. Survey existing facility to confirm locations and types of hazardous materials to be abated or mitigated.
9. Prepare and submit Environmental Impact Screening Form ("EISF").
10. Conduct a storm water management study.
11. Conduct a photometric analysis to maximize visibility, safety, and efficiency.
12. Request and receive hydrant flow test.
13. Perform alternative mechanical systems evaluation and recommend selection.
14. Confer with audio-visual and acoustic consultants to establish design requirements for the Project.
15. Confer with the DCPS IT representatives/consultants to verify technological requirements for the Project.
16. Confer with the DCPS to establish security and safety requirements.
17. Attend one (1) meeting with the Advisory Neighborhood commission ("ANC") Commissioner and Community to provide a presentation and receive feedback on the Concept Design and phasing plans.
18. Present the design to CFA, OP, and other regulatory agencies as required.
19. Draft Conceptual Plans
 - a. Based on input obtained through the process outlined in the Project scope of work, as well as information provided in the Program of Requirements, Stakeholder Interview, and Public Workshop, the selected A/E will work to determine the Concept Design.
 - b. Develop up to three (3) conceptual designs and cost estimates for the Kenilworth

swing site that provide phase alternatives to addressing the identified budgetary and time constraints. The selected A/E will make any appropriate modifications based on DGS comments prior to presenting the concept(s) to the public.

20. Draft final conceptual plan. The selected A/E will develop a draft final conceptual plan and cost estimate informed by the comments obtained throughout the program verification and Concept Design process. The A/E shall submit the draft final conceptual plan response and cost estimate to DGS for review before presenting it to the public. The selected A/E will make any appropriate modifications prior to presenting the concepts to the public.
21. Provide the following reports:
 - a. Historic resources survey.
 - b. Survey of existing conditions.
 - c. Flow test results.
 - d. Results of hazardous materials survey.
 - e. Geotechnical survey.
 - f. Topographic survey.
 - g. Record of accepted LEED strategies.
 - h. Zoning Analysis
 - i. Environmental Impact Screening Form (“EISF”) submission.
 - j. Summary memo of required agency review and timetables, including but not limited to OP, CFA, National Capital Planning Commission (“NCPC”), and HPO to include a preliminary archeological study.
 - k. Architectural Concept Development
 - i. Development of final master site plan.
 - ii. Building Plan.
 - iii. Preliminary cost estimates to include a Value Engineering options section.
 - iv. Second cost estimate to include a VE options section.
 - v. Project Schedule.

Section 2.1.2 Review and Revisions to Concept Design Submission. The A/E shall submit the Concept Design submissions to DGS for review and comment by DCPS and DGS. Following review of the Concept Design submissions by DCPS and the Department, the A/E shall make any further revisions to the Concept Designs submission as necessary to incorporate comments, feedback and other direction provided by DCPS and the Department. The A/E’s pricing shall assume that such revisions will be required, and such revisions shall not entitle the A/E to additional compensation.

Section 2.2 Schematic Design Phase and Phasing Plan (Task 1): During this phase, the A/E shall develop Schematic Design Documents (“Schematic Design Documents”, “SD Documents” or “Schematic Design”) that meet the Education Specifications set forth in **Exhibit A** and the Department’s schedules and budget requirements for the Project, (*i.e.* Design- to- Budget). For the avoidance of doubt, the Department, has established a Design-To-Budget of \$15,000,000. The SD Documents shall contain such detail as is typically required by standard industry practice for schematic designs.

Section 2.2.1 Services: In general, the A/E shall complete the following tasks during this phase:

1. Utilize findings and final concept plans, perform site visits as necessary, attend and/or facilitate meetings with stakeholders and District staff to review program of requirements, required utilities, drainage, zoning and traffic needs where/when necessary to develop Schematic Design Documents.
2. Coordinate security requirements with DCPS.
3. Coordinate IT and telecom requirements with DC Office of the Chief Technology Officer (“OCTO”) and DC Net.
4. Coordinate with HPO/CFA/NCPC for review and approval as necessary.
5. Attend one (1) community Meeting to provide a presentation and receive feedback of the Schematic Design Documents. Highlight changes since the Concept Design, identifying what has been incorporated based on feedback received and in cases where incorporation was not feasible, explaining why.
6. Prepare a presentation for the community meeting and present onsite if required. Presentation materials shall be in full color and include at least one (1) 3-D rendering.
7. LEED Certification work as required.
8. Prepare and submit three (3) hard-copy sets, and one (1) electronic copy in PDF, of Schematic Design Documents, Preliminary Specifications, Schematic Cost Estimate to the Project Manager for review and approval (30% plan review).
Components to include, but are not limited to:
 - a. Digital site plans, paving layouts, traffic circulation.
 - b. Digital floor plans, building circulation, ADA requirements.
 - c. Preliminary building elevations and sections.
 - d. Design Narrative.
 - e. Plan-to Program Comparison.
 - f. Exterior elevations, rendering and color palette.
 - g. Critical building sections and details.
 - h. Relevant right of way information such as easements, building setbacks, etc.
 - i. Location of utilities and sizes.
 - j. Storm water management.
 - k. Preliminary MEP systems.
 - l. LEED information as appropriate.
 - m. Copies of all surveys and reports.
 - n. Updated schedule and cost estimate. Submit an early estimate for the modernization with a magnitude of error of Not-to-Exceed +/- 10% of the Project hard cost budget.
 - o. Meeting minutes of preliminary design review meetings.
9. After receiving Schematic Design comments, meet and coordinate as necessary with:
 - a. Owner, stakeholders, and all relevant regulatory or reviewing agencies as necessary to review Project requirements.
 - b. Pepco, DC Water, DOEE and all others as necessary for infrastructure and utility requirements.
 - c. Private utilities and service providers if necessary.
10. Respond in writing to all District comments on plans.
11. Act as scribe for all design related meetings. Distribute meeting minutes to all attendees.

12. Perform comprehensive Value Engineering effort utilizing 30% plan review submission. Provide report of findings to DGS. Conduct a meeting with DGS and other stakeholders as necessary to present and discuss VE options.
13. Develop a proposed phasing plan to deliver the modernization over the course of multiple summers.
14. Upload all design documentation and deliverables as required utilizing the online DGS Project Management Information System (“ProjectTeam”) and guidelines.
15. Baseline Schedule bi-weekly updates.

Section 2.2.4 Value Engineering Memorandum. To the extent that the Schematic Design budget estimate exceeds the available funding or the A/E believes that there a Value Engineering ideas that could materially reduce the Project’s overall cost without adversely impacting the Project’s intended functionality, the A/E shall prepare and submit a memorandum that outlines potential Value Engineering ideas. Such memorandum shall be submitted to the Department no later than one (1) week after the submission of the Schematic Design Budget Estimate. The A/E shall meet with the Department as necessary to reach agreement on which, if any, of the Value Engineering options should be pursued. To the extent the Department directs the A/E to proceed with one or more of the Value Engineering options, the A/E shall revise its Schematic Design Budget Estimate to reflect the inclusion of such items, and to the extent requested by the Department, the Schematic Design shall also be revised to reflect such approved Value Engineering.

Section 2.3 Design Development Phase (Based on Approved phasing plan (Task 2)).

During this phase, the A/E shall progress the SDs into Design Development Documents. The DDs shall represent the logical development of the approved SDs any oral or written feedback provided by the Department and shall be advanced in a manner consistent with the Department’s budget for the Project. The DDs will require a greater level of detail than is typically required in DDs, and in particular, the Department will expect a greater level of detail with regard to Architectural, Structural, MEP, and Fire Suppression System designs. The A/E shall be required to work with the CMAR Contractor selected for this Project, and at a minimum shall meet with the CMAR Contractor twice a month to discuss the status of the design, any key issues, and the level of detail that will be required in the Design Development Documents to allow for accurate pricing by trade subcontractors. A complete set of coordinated drawings between each discipline is expected to be submitted at this stage of the Design Phase.

B.2.3.1 Services & Deliverables: In general, the A/E shall be required to undertake the following tasks and submit to the Department:

1. Perform site visits as necessary and attend/facilitate meetings with District staff as necessary to develop and progress Design Development Documents. Incorporate VE options chosen by DGS.
2. Complete code compliance analysis and drawing.
3. Meet and coordinate with regulatory, reviewing, and stakeholder agencies as necessary.
 - a. Present the design to HPO, CFA, NCPC, OP, and other regulatory agencies as required.
 - b. Achieve CFA approval and NCPC preliminary approval.

4. Progress LEED Certification work as required.
 - a. Register the Project with U.S. Green Building Council (“USGBC”) to obtain LEED certification and pay all registration fees.
5. 35% (minimum progress) documents for all technical disciplines, drawings, and specifications.
6. Prepare and submit three (3) hard-copy sets, and one (1) electronic copy in PDF of Design Development Documents including Detailed Specifications, Cost Estimate, and schedule to the District staff for review and approval (60% plan review). Components to include, but are not limited to:
 - a. Site plans, paving layouts, traffic circulation, lighting, signage and utilities.
 - b. Floor plans, Structural, Civil, Architectural, MEP, Fire Protection, and Landscaping.
 - c. Exterior elevations, renderings, and color palette.
 - d. Building sections and details as required.
 - e. Interior elevations, casework and millwork elevations as required.
 - f. Confirm space-by-space equipment layouts with representatives from DGS.
 - g. Storm water management.
 - h. Food service or other equipment as required.
 - i. LEED Information as appropriate.
 - j. Select and draft specifications for materials, systems, and equipment.
 - k. Plan-to-Program Comparison (Plan-to-Program Test Fit).
 - l. Phasing Plan.
 - m. Perform comprehensive VE effort utilizing 60% Plan Review submission. Provide report of findings to DGS. Conduct a meeting with DGS and other stakeholders as necessary to present and discuss VE options.)
7. A reconciliation report that address issues raised by the Contractor
8. Respond in writing to all District and NPS comments on plans.
9. Coordinate furniture, fixtures, and equipment requirements (“FF&E”).
10. Attend one (1) Community Meeting to provide a presentation and receive feedback of the Design Development documents. Highlight changes since the Schematic Design, identifying what has been incorporated based on feedback received and in cases where incorporation was not feasible, explaining why.
11. Prepare a presentation for the community meeting and present onsite if required. Presentation materials shall be in full color and include at least one (1) 3-D rendering.
12. Coordinate final utility plans as required.
13. Act as scribe for all design related meetings. Distribute meeting minutes to all attendees.
14. Upload all design documentation and deliverables as required utilizing the online DGS Project Management Information System (ProjectTeam) and guidelines.
15. Baseline Schedule bi-weekly updates.
16. Submit the A/E’s second estimate for the hard cost of the Project with a Maximum +/- 5% of the Project’s hard cost budget.
17. Plan-to-Program Comparison (Plan-to-Program Test Fit).

Section 2.4 A/E Key Personnel. The following individuals shall be considered Key Personnel: (i) the Design Principal; (ii) the Project Architect; (iii) the Project Designer or Manager; (iv) the lead MEP engineers; and (v) the lead structural engineer as identified in **Exhibit F (“Key Personnel”)**. **The A/E shall not be permitted to reassign or replace any of the key personnel unless the Department approves the proposed reassignment and the proposed replacement, in writing and by an authorized Contracting Officer (“CO”).** The Key Personnel specified in the Contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified Key Personnel, the A/E shall notify the CO at least thirty (30) calendar days in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact upon the Contract.

The A/E will not be permitted to reassign or replace any of the Key Personnel unless the Department approves the proposed reassignment and the proposed replacement. In the event that any of the Key Personnel become unavailable to work on this Project for reasons beyond the control of the A/E or its principal consultants (due to death, separation of employment or disability), the A/E shall propose a substitute for any such individual and obtain the Contracting Officer’s consent to such substitute.

All members of the A/E’s Key Personnel in **Exhibit F** shall be subject to a replacement disincentive fee for their removal or reassignment by the A/E except in circumstances arising from reasons beyond the A/E’s control (due to death, separation of employment or disability). In each instance where the A/E removes or reassigns one of the Key Personnel as being subject to such disincentive payment (but excluding instances where such personnel become unavailable (due to death, separation of employment or disability) without the prior written consent of the Contracting Officer, the A/E shall owe to the Department the sum of Twenty Five Thousand dollars (\$25,000) as a disincentive payment, to reimburse the Department for its administrative costs arising from the A/E’s failure to provide the Key Personnel and remittance of replacement disincentive fees may be effected via deductions from payments owed to the A/E. The foregoing disincentive payment 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 A/E in the event that a member of the Key Personnel has been removed or replaced by the A/E without the consent of the Department’s Contracting Officer. In the event the Department exercises the right to remove, replace or to reduce the scope of services of the A/E, the Department shall have the right to enforce the terms of this Agreement and to keep-in-place those members of the A/E’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 A/E’s team approved by the Department.

ARTICLE 3
CONSTRUCTION DOCUMENTS AND CONSTRUCTION PHASE SERVICES

Section 3.1 Permit Set

Section 3.1.1 Services:

The A/E shall be required to develop a permit set of construction documents (“Permit Set”). The Permit Set shall represent the further progression of the approved DDs together with any Value Engineering strategies approved by the Department. The Permit Set shall be construction documents progressed to approximately 90% completion of those required in a traditional Design/Bid/Build delivery method; however, the Permit Set shall nevertheless be code and permit ready, with all major systems sufficiently designed, detailed, specified, coordinated and developed.

It is anticipated that the Permit Set will serve as the basis of a GMP which is to be provided by the CMAR Contractor, selected by the Department, for the Project.

In General, the A/E shall be required to undertake the following tasks and submit to the Department:

1. Progress design and Design Development Documents and prepare construction documents.
2. Progress LEED Certification work as required.
3. Submit three (3) hard-copy and one (1) electronic PDF copy of the complete sets of Construction Documents, Specifications and the A/E Cost Estimate and schedule to DGS for review (90% plan review).
4. Attend follow up meetings and coordinate with regulatory agencies, Fire Marshall, DGS facilities personnel, and others as necessary.
5. Obtain all required signatures on plans.
6. Complete Platting and record Plat.
7. Complete final coordination with utilities and service providers as necessary.
8. Attend and participate in community meeting(s) to update community regarding the Project.
9. Prepare a presentation for the community meeting and present onsite if required. Presentation materials shall be in full color and include at least one (1) 3-D rendering.
10. Submit appropriate number of copies of plans to applicable DC regulatory agencies for permit review.
11. Coordinate with all DC regulatory agencies and permit reviewers as necessary.
12. Prepare an Environmental Impact Screening Form (“EISF”).
13. Correct plans to reflect issues noted by regulatory agencies and permit reviewers as required. Re-submit for additional review and approval as required.
14. Act as scribe for all design related meetings. Distribute meeting minutes to all attendees.
15. Upload all design documentation and deliverables as required utilizing the online DGS Project Management Information System (ProjectTeam) and guidelines.
16. Prepare application and submit documents for building permit.
17. Upload all documents to DCRA’s permit document review website in accordance with their instructions.

18. Prepare and submit early release packages for permitting, if required, based on the design. If new construction (i) hazardous materials abatement package; (ii) a demolition/raze package; and (iii) a foundation-to-grade package.
19. Prepare DDOT public space modifications package for submission to and approval by DDOT Public Space Committee, participate in Committee meetings as necessary.
20. Prepare and submit DC Water permit application packages (all permit types that may be required) and DOEE Storm Water Management and Green Area Ratio packages for review and approval.

Section 3.1.3 The A/E shall incorporate into the Permit Set the design requirements of governmental authorities having jurisdiction over the Project. In addition, the A/E shall (a) define, clarify, or complete the concepts and information contained in the Permit Set; (b) correct design errors or omissions, ambiguities, and inconsistencies in the Permit Set (whether found prior to or during the course of construction); and (c) correct any failure of the A/E to follow written instructions of the Department during any phase of design services or the construction of the Project provided they are compatible with industry standards.

Section 3.1.4 Following the Department's review and approval of the phased plan the Department shall solicit bids through its approved procurement methods. The A/E shall be required to respond to RFIs and provide ASIs during such bidding process without additional cost to the. Based upon the trade pricing received by the Contractor, the A/E may also be required to engage in additional value engineering efforts to return the Project to budget. The Permit Set Phase shall not be considered complete unless and until a GMP for the Project is agreed upon.

Section 3.1.5 Code Review. The A/E shall submit the Permit Set of documents to DCRA in order to obtain the necessary building permits to construct the Project. The A/E shall monitor the permit process and shall incorporate any changes or adjustments required by the Code Official. The A/E shall also issue any such changes to the Department for its review and approval. In this submittal, the A/E shall highlight (or bubble) any aspect of the design that represents a material deviation from the Permit Set documents and shall address in a narrative format the impact, if any, such departure shall have on the Project's aesthetics, functionality or performance

Section 3.2 Issued for Construction ("IFC") Documents. Upon review and approval of the Permit Set, the CMAR Contractor will construct the Project. The A/E shall provide such additional design services as are requested by the Department, including, but not limited to, the preparation of more developed CDs ("IFC Set"). The IFC Set shall represent the further progression of the approved Permit Set together with any Value Engineering strategies approved by the Department. The IFC Set shall be progressed to One Hundred Percent (100%) completion of those required in a traditional Design-Bid-Build delivery method. The CDs shall be coordinated and shall contain at a minimum the level of detail typically required by standard industry best practices for CDs. The A/E shall respond to, and revise the CDs as may be necessary in order to address any concerns raised by the Code Official.

Section 3.2.1 If it should become necessary to amend any of the approved Construction Documents, the A/E shall prepare an amendment to the drawings and shall submit such amendment to the

Department for its review and approval. In this submittal, the A/E shall highlight (or bubble) any aspect of the design that represents a material deviation from the Permit Set documents and shall address in a narrative format the impact, if any, such departure shall have on the Project's aesthetics, functionality or performance.

Section 3.3 Bidding and Construction Administration Services

Section 3.3.1 Bidding. The A/E shall provide support to the CMAR Contractor and the Department as necessary to support the bidding of trade subcontracts. These services shall include, but are not necessarily limited to:

- a. Prepare and issue bidding addenda.
- b. Respond to bidding questions and issue clarification, as needed.
- c. Consider and evaluate request for substitutions
- d. Assist the CMAR Contractor with distribution of documents, as needed.

Section 3.3.2 Construction Administration.

The A/E shall provide support to the CMAR Contractor and the Department as may be necessary to support the construction phase of the Project (the "Construction Phase"). These services will include, but are not necessarily limited to:

1. Attend biweekly progress meetings. The A/E's site visits shall be included within the Offeror's Price Proposal.
2. Review and process shop drawing submissions, RFI's, etc.
3. Prepare meeting notes and records of decisions/changes made.
4. Conduct punch list inspections.
5. Review closeout documents for completeness, such as As-Built Drawings based on the CMAR Contractor's red line drawings and/or coordinated set developed during the subcontractor coordination process. As-Built Drawings shall be transmitted to DGS in hard copy, PDF and CAD formats.
6. Conduct site visits at least once per week and shall document any deficiencies or variances from the construction documents

In addition, the A/E shall provide the following deliverables during this phase:

1. Meeting minutes.
2. ASI's or other clarification documents.
3. Punch Lists.
4. Closeout document review.
5. As-Built (if authorized).
6. RFI Responses

The A/E shall assume that there will be up to three (3) distinct mobilizations for the completion of the construction work during the DCPS summer break, which typically lasts from late June through mid-August. This means that construction may take place over three years. The A/E shall assume that

preconstruction activities will need to take place outside of the summer break.

Section 3.5 Design Changes. If, should become necessary to amend any of the approved construction drawings, the A/E shall prepare an amendment to the drawings and shall submit such amendment to the Department for its review and written approval. In this submittal, the A/E shall highlight (or bubble) any aspect of the design that represents a material deviation from the Permit Set documents and shall address in a narrative format the impact, if any, such departure shall have on the Project's aesthetics, functionality or performance.

Section 3.6 Liquidated Damages. The A/E acknowledges that the Department is engaging the A/E to provide design support services to minimize the potential for cost overruns, schedule delays or the need for extensive Value Engineering/re-design late in the Project and that the reports and/or deliverables required under Articles 2 and 3 of this Agreement are key to realize the value of such services. In the event the A/E fails to deliver any of the reports or key design deliverables required in Articles 2 and 3 (and unless such failure is the result of any event of Force Majeure), the A/E shall be subject to liquidated damages in an amount of Five Thousand Dollars (\$5,000) plus Five Hundred Dollars (\$500) per day after receiving written notice from the CO of failure to submit such deliverable.

ARTICLE 4 COMPENSATION

Section 4.1 Compensation.

Section 4.1.1 Value of Agreement The initial value of this Agreement is **[\$[Insert Amount]]**. This value includes a fixed fee of **[\$[Insert Amount]]** for phase 1 design fee which includes three (3) Concept Designs/schemes ("**Phase 1 Design Fee-Concept Design**"). Upon selection of a preferred scheme, the Department and A/E shall negotiate a final design fee for all of the A/E's costs associated with: a) the preparation of the Schematic Design; b) Design Development Documents; c) a Permit Set of Construction Documents; d) a set of issued for construction documents, and e) construction administration services cost (such negotiated fee and cost are referred to as the "**Final Design Fee**"). The Final Design Fee will be negotiated by utilizing the hourly rates for phase 2 and construction administration as further described in **Exhibit B**. The Final Design Fee shall be fair and reasonable and subject to the Independent Government cost estimate. Such Final Design Fee will be added as a change order to the Agreement with the A/E, following the Contracting Officer's review and approval.

Section 4.1.2 Owner Directed Allowance. An Owner Directed Allowance in the amount of **\$100,000.00** is established for reimbursable expenses. In the event reimbursable expenses reach this allowance amount, A/E shall notify the District, and shall not incur any additional Reimbursable Expense unless the District authorizes an increase in the allowance amount via Change Order, Change Directive or Contract Modification executed by an authorized Contracting Officer. Such expenses shall be reimbursed without markup of any kind and records of Reimbursable Expenses and services performed on the basis of hourly rates herein established shall be available to the Department at mutually convenient times. Reimbursable expenses shall include the following:

- a. Transportation and authorized out-of-town travel and subsistence, provided, however, that local transportation costs (i.e. taxis, parking, etc.) shall not be reimbursable;
- b. Fees paid for securing approval of authorities having jurisdiction over the Project;
- c. Reproductions, plots, standard form documents;
- d. Postage, handling and delivery;
- e. Expense of overtime work requiring higher than regular rates, if authorized in advance by the Department, provided, however, that such expenses shall only be reimbursable to the extent that they were caused by the failure of the Department to act within timeframes agreed to by the Parties in advance and in writing;
- f. Additional renderings, models, and mock-ups, requested by the Department; and
- g. Permit fees.

Pre-authorization by the Department is required to use the Allowance.

Section 4.2 Retention/Incentive. Five percent (5%) of the Final Design Fee (but not expenses) shall be withheld as retention from all progress payments that are due to the A/E. In addition, the Department agrees to provide an incentive amount equal to 5% of the Final Design Fee (but not expenses). This 5% retention and 5% incentive will only be due to the A/E if: (i) the Project's complete design is Substantially Complete on or before 24-weeks after NTP and (ii) the total estimated hard construction costs (inclusive of the CMAR Contractor's fees, general conditions cost and FF&E cost) do not exceed One Hundred Three Percent (103%) of the GMP from the CMAR Contractor's agreement. The determination as to whether these goals have been achieved shall be measured irrespective of fault, only if both goals are met irrespective of whether the reason these goals were not met was caused by the A/E, the CMAR Contractor, the Department, the District, the Code Official or any other person or cause. In the event the Project does not meet the requirements detailed in this section, the A/E will forfeit the retention amount and the incentive amount will not be provided to the A/E.

Section 4.3 Payments. Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the A/E's invoice. Amounts unpaid thirty (30) days after a proper invoice is received shall bear interest in accordance with the Quick Payment Act

Section 4.4 Payment Disputes. Disputes or questions regarding a portion of an invoice shall not be cause for withholding payment for the remaining portion of the invoice.

ARTICLE 5 INSURANCE

Section 5.1 GENERAL REQUIREMENTS.

A. The A/E 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.

All required policies 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.

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.

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

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.
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 this paragraph 3 shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.

4. 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.
5. 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.
6. Sexual/Physical Abuse & Molestation - The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate of affirmative abuse and molestation liability coverage. Coverage should include physical abuse, such as sexual or other bodily harm and non-physical abuse, such as verbal, emotional or mental abuse; any actual, threatened or alleged act; errors, omission or misconduct. This insurance requirement will be considered met if the general liability insurance includes an affirmative sexual abuse and molestation endorsement for the required amounts. So called “silent” coverage or “shared” limits under a commercial general liability or professional liability policy will not be acceptable. Limits may not be shared with other lines of coverage. The applicable policy may need to be submitted to the Office of Risk Management (ORM) for compliance review.
7. 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) \$5,000,000 per occurrence and \$5,000,000 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.

B. 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.

- C. **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.
- D. **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.
- E. **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.
- F. **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.
- G. **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.
- H. **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:

Eric Njonjo
Contracting Officer
Department of General Services
1250 U Street, NW - 2nd Floor
Washington, DC 20009
Eric.Njonjo@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).

- I. 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.
- J. 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 6
OWNERSHIP OF DOCUMENTS

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

other clients.

The Department shall be under no obligation to account to the A/E for any profits obtained by the Department as a result of the Project, or the use of such drawings, specifications and other documents in connection with the Project. In the event that the Agreement is terminated prior to completion of the Project or the A/E is unable to complete this Project for any reason, the Department shall have the right to use without the A/E's consent, and the A/E shall deliver to the Department and/or its designee within two (2) calendar days after such termination or inability, all such drawings, specifications and other documents as well as design concepts and details in connection with the Project or necessary for the Department's completion of this Project (including subsequent phases thereof), so long as the Department has paid the A/E the fees then owed to the A/E under this Agreement up to the date of termination or inability. The Department's rights hereunder shall extend to its successors and assigns and the A/E's obligation to deliver such drawings, specifications, and documents. Any use of the documents without the A/E or the A/E's consultants' involvement shall be at the Department's sole risk and without liability to the A/E or the A/E's consultants. The Department shall be deemed the Owner of such drawings, specifications, and other documents and shall have and retain all rights therein. In the event Department is adjudged to have failed hereunder to pay A/E for such drawings, specifications or other documents, ownership thereof, and all rights therein, shall revert to the A/E. This provision shall survive termination of this Agreement.

ARTICLE 7 MISCELLANEOUS PROVISIONS

Section 7.1 This Agreement shall be governed by the laws of the District of Columbia.

Section 7.2 Terms in this Agreement shall have the same meaning as construed under District law.

Section 7.3 The Department and A/E, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns of such other party with respect to all covenants of this Agreement. The A/E shall not assign this Agreement without the written consent of the Department.

Section 7.4 If the Department requests the A/E to execute certificates, the proposed language of such certificates shall be submitted to the A/E for review at least fourteen (14) days prior to the requested dates of execution. The A/E shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

Section 7.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Department or the A/E.

Section 7.6 Unless otherwise required in this Agreement, the A/E shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

Section 7.7 The A/E shall have the right to include photographic or artistic representations of the design of the Project among the A/E's promotional and professional materials. The A/E shall be given reasonable access to the completed Project to make such representations. However, the A/E's materials shall not include the Department's confidential or proprietary information if the Department has previously advised the A/E in writing of the specific information considered by the Department to be confidential or proprietary. The Department shall provide professional credit for the A/E in the Department's promotional materials for the Project.

Section 7.8 If the A/E receives information specifically designated by the Department as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to: (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

Section 7.9 The A/E shall utilize the Department's ProjectTeam system to submit any and all documentation required to be provided by the A/E 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 A/E shall also require all subcontractors and subconsultants to utilize ProjectTeam for the Project.

Section 7.10 The A/E agrees to indemnify and hold the Department, the Department's Representative and the Department's officers, agents and employees harmless from and against all claims, liabilities, demands, losses, damages, judgments, costs, or expenses, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the A/E, its employees and its consultants in the performance of services pursuant to this Agreement.

Section 7.11 The A/E agrees to indemnify and hold the Department and the Department's Representative harmless from and against any and all claims, liabilities, demands, losses, damages, costs, or expenses arising from the A/E's failure to perform its obligations pursuant to agreements with third parties, including, but not limited to, Subcontractors and Subconsultants, made in order to provide the services required of the A/E under this Agreement.

Section 7.12 The A/E shall pay for and defend all such suits or claims arising out of the Work for infringement of any patent rights or copyrights and hold the Department and Department's Representative harmless from loss on account thereof.

Section 7.13 Extent of Agreement. This Agreement represents the entire and integrated agreement between the Department and the A/E and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Department and the A/E.

Section 7.14 Confidentiality. The A/E shall maintain the confidentiality of information specifically designated as confidential by the Department, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the A/E from establishing a claim or defense in an adjudicatory proceeding. The A/E shall require of the A/E's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Department.

Section 7.15 Except with the knowledge and consent of the Department's designated representative, the A/E shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the A/E's professional judgment with respect to this Project.

Section 7.16 The A/E shall manage the A/E's services, consult with the Department, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Department. The A/E shall review the Department's program and other information furnished by the Department, and shall review laws, codes, and regulations applicable to the A/E's services.

Section 7.17 Upon request of the Department, the A/E shall make periodic presentations to explain the design of the Project to representatives of the Department and to others in support of the Department's efforts for the Project.

Section 7.18 Notices. All notices or communications required or permitted under the Agreement shall be in writing and shall be hand delivered or sent by tele-copier 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 tele-copier, on confirmation of successful transmission, and if sent by recognized overnight carrier, the next business day.

If to the Department:

George G. Lewis
Associate Director/Chief Contracting Officer
Department of General Services
2000 14th St, NW – 4th Floor
Washington, DC 20009

If to the A/E:

[INSERT]

This **Section 7.18** 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.

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

ARTICLE 8 GOVERNMENTAL PROVISIONS

Section 8.1 Buy American Act Provision. The A/E shall not design or specify a proprietary product that does not comply with the provisions of the Buy American Act (41 U.S.C. §§ 10a-10d). The Trade Agreements Act and the North American Free Trade Agreement (“NAFTA”) provide that designated country (as defined in FAR 25.401) and NAFTA country construction materials are exempted from application of the Buy American Act and are therefore acceptable hereunder.

Section 8.1.1 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 A/E agrees that only domestic construction material will be used by the A/E and its Subcontractors specified in the performance of the Agreement, except for non-domestic material listed in the Agreement.

“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 A/E shall specify 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.

Section 8.1.2 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.

Section 8.1.3 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.

Section 8.1.4 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 8.2 False Claims Act. The A/E 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 D.C. Official Code §§ 22-2405 and 2-381.02 et seq. In the event that it is discovered that the A/E has made a false, fraudulent or unsupported statement or claim to the District or the Department, the Department may terminate this Contract without liability.

Section 8.3 Retention of Records: Inspections and Audits.

8.3.1 As used in this clause, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

8.3.2 Examination of Costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price re-determinable contract, or any combination of these, the A/E shall maintain and the CO, or an authorized representative of the CO, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Contract. This right of examination shall include inspection at all reasonable times of the A/E’s plants, or parts of them, engaged in performing the Contract.

8.3.3 Cost or pricing data. If the A/E has been required to submit cost or pricing data in connection with any pricing action relating to this Contract, the CO, or an authorized representative of the CO, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the A/E’s records, including computations and projections, related to:

- a. The proposal for the contract, subcontract, or modification;
- b. The discussions conducted on the proposal(s), including those related to negotiating;
- c. Pricing of the contract, subcontract, or modification; or
- d. Performance of the contract, subcontract or modification.

8.3.4 Comptroller General

- a. The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the A/E's directly pertinent records involving transactions related to this Contract or a subcontract hereunder.
- b. This paragraph may not be construed to require the A/E or subcontractor to create or maintain any record that the A/E or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

8.3.5 Reports. If the A/E is required to furnish cost, funding, or performance reports, the CO or an authorized representative of the CO shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating:

- a. The effectiveness of the A/E's policies and procedures to produce data compatible with the objectives of these reports; and
- b. the data reported.

8.3.6 Availability. The A/E shall make available at its office at all reasonable times the records, materials, and other evidence described in **Section 8.3**, for examination, audit, or reproduction, until three (3) years after final payment under this Contract or for any shorter period specified in the RFP, or for any longer period required by statute or by other section of this Contract. In addition:

- a. If this Contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until three (3) years after any resulting final termination settlement; and
- b. The A/E shall make available records relating to appeals under Article 11 of this Contract (Disputes and Claims) or to litigation or the settlement of claims arising under or relating to this Contract until such appeals, litigation, or claims are finally resolved.

8.3.7 The A/E shall insert a clause containing all the terms of this **Section 8.3**, including this **Section 8.3.7** in all subcontracts under this Contract that exceed the small purchase threshold of \$100,000.00 and:

- a. That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price re-determinable type or any combination of these;
- b. For which cost or pricing data are required; or
- c. That requires the subcontractor to furnish reports as discussed in **Section 8.3.5** of this Contract.

8.3.8 The Inspector General, District of Columbia Auditor, or Director shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract, other than a firm fixed-price contract, to the extent that the books and records relate to the performance of the contract or subcontract. Books and records shall be maintained by the contractor for a period of three (3) years from the date of final

payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing. The Inspector General, District of Columbia Auditor, or Director may, at reasonable times, inspect the part of the place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the District.

Section 8.4 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 A/E, or any agent or representative of the A/E, 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 Agreement, the Department may, by written notice to the A/E, terminate the right of the A/E to proceed under the Agreement and may pursue such other rights and remedies provided by law and under the Agreement.

Section 8.4.1 In the event the Agreement is terminated as provided in Section 8.4, the Department shall be entitled:

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

Section 8.4.2 No member of, nor delegate to Congress, Mayor or City Council Member, nor the Department nor employee of the District or employee of the Department shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom, and all agreements entered into by the CO of the Department in which he or she be personally interested as well as all agreements made by the Department in which the Mayor or City Council Member or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department; but this provision shall not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or employee of the District is de minimis.

Section 8.5 Ethical Standards for the Department's Employees And Former Employees. The Department expects the A/E to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the A/E, nor any person associated with the A/E, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The A/E shall not engage the services of any person or persons in the employment of the Department or the District for any work required, contemplated or performed under the Agreement. The A/E may not assign to any former employee or District employee or agent who has joined the A/E's firm any matter on which the former employee, while employed by the Department, had material or substantial involvement in the matter. The A/E may request a waiver to permit the assignment of such matters to former personnel on a case-by-case basis. The A/E shall include

in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each A/E or vendor.

Section 8.6 Anti-Deficiency Acts. The obligations and responsibilities of the Department under the terms of the Agreement, or any subsequent agreement entered into pursuant to this Agreement or referenced herein (to which the Department is a party), are and shall remain subject to the provisions of: (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351, 1511-1519 (2004) (the “**Federal ADA**”), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2001); (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (2004 Supp.)(the “**D.C. ADA**” and (i) and (ii) collectively, as amended from time to time, the “**Anti-Deficiency Acts**”); and (iii) Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2001). Pursuant to the Anti-Deficiency Acts, nothing in this Agreement shall create an obligation of the Department in anticipation of an appropriation by Congress for such purpose, and the Department’s legal liability for payments and other charges under this Agreement shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress. **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 8.6.1 The Department agrees to exercise all lawful authority available to it to satisfy the financial obligations of the Department that may arise under this Agreement. During the term of this Agreement, the Mayor of the District of Columbia or other appropriate official shall, for each fiscal period, include in the budget application submitted to the Council of the District of Columbia the amount necessary to fund the Department’s known potential financial obligations under this Agreement for such fiscal period. In the event that a request for such appropriations is excluded from the budget approved by the Council and submitted to Congress by the President for the applicable fiscal year or if no appropriation is made by Congress to pay any amounts due under this Agreement for any period after the fiscal year for which appropriations have been made, and in the event appropriated funds for such purposes are not otherwise lawfully available, the Department will not be liable to make any payment under this Agreement upon the expiration of any then-existing appropriation, the Department shall promptly notify the A/E , and this Agreement shall immediately terminate upon the expiration of any then-existing appropriation.

Section 8.6.2 Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of the District or Department shall have any personal liability in connection with the breach of the provisions of this Section or in the event of non-payment by the Department under this Agreement.

Section 8.6.3 This Agreement shall not constitute an indebtedness of the District and/or 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 District has levied or pledged any form of taxation. No District of Columbia Official or employee is authorized to obligate or expend any amount under this Agreement unless such amount has been appropriated by Act of Congress and is lawfully available.

Section 8.8 RESERVED

Section 8.9 Laws and Regulations Incorporated by Reference. All federal and District of Columbia laws and regulations, and all Department procedures now or hereafter in effect, whether or not expressly provided for or referred to in the Agreement, are incorporated by reference herein and shall be binding upon the A/E and the Department. It shall be the responsibility of the A/E to perform the Agreement in conformance with the Department's procurement regulations and all statutes, laws, codes, ordinances, regulations, rules, requirements, and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the A/E to determine the procurement regulations, statutes, laws, codes, ordinances, regulations, rules, requirements, and orders that apply and their effect on the A/E's obligations thereunder. However, if the application of a future law or regulation requires the A/E to undertake additional Work that is materially different in scope than that presently contemplated or required, the A/E shall be entitled to an equitable adjustment for such additional Work.

Section 8.10 Tax Exemption Provision. Any tax exemptions applicable to the District of Columbia, including the gross receipts sales tax exemption for the sale of tangible personal property to the District, codified in D.C. Code § 47-2005, shall apply to the performance of the Agreement.

Section 8.11 Covenant Against Contingent Fees Provisions. The A/E warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the A/E for the purpose of securing business. For breach or violation of this warranty, the Department shall have the right to terminate the Agreement without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the Department, percentage, brokerage of contingent fee.

Section 8.12 Non-Discrimination in Employment Provisions.

8.12.1 District of Columbia Human Rights Act

a. The A/E 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 § 2-1401.01 *et seq.*) ("Act", as used in this clause). The A/E shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. In addition, the A/E 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.

b. 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 A/E shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap.
2. The A/E agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. The affirmative action shall include, but not be limited to, the following:
 - i. Employment, upgrading, or transfer;
 - ii. Recruitment or recruitment advertising;
 - iii. Demotion, layoff, or termination;
 - iv. Rates of pay, or other forms of compensation; and
 - v. Selection for training and apprenticeship.
3. Unless otherwise permitted by law and directed by the Department, the A/E agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Department setting forth the provisions paragraphs 1 and 2 of Section 8.12.1(b) of this Agreement, concerning non-discrimination and affirmative action.
4. The A/E shall, in all solicitations or advertisements for employees placed by or on behalf of the A/E, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in **Section 8.12.1**.
5. The A/E 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 Department, advising each labor union or workers' representative of the A/E's commitments under this **Section 8.12.1**, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
6. The A/E agrees to permit access by the Department to all books, records and accounts pertaining to its employment practices for purposes of investigation to ascertain compliance with this **Section 8.12.1**, and to require under terms of any Subcontractor agreement each Subcontractor to permit access of the Subcontractors, books, records, and accounts for such purposes..
7. The A/E shall include in every subcontract this **Section 8.12.1** so that such provisions shall be binding upon each subcontractor or vendor.
8. The A/E 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 A/E becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the Department, the A/E may request the District to enter into such litigation to protect the interest of the District.

Section 8.12.2 PREGNANT WORKERS FAIRNESS

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

b. The A/E shall not:

1. Refuse to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding for an employee, unless the A/E can demonstrate that the accommodation would impose an undue hardship;
2. 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:
 - i. Pay;
 - ii. Accumulated seniority and retirement;
 - iii. Benefits; and
 - iv. Other applicable service credits;
3. 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;
4. 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;
5. Require an employee to take leave if a reasonable accommodation can be provided; or
6. 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.

c. The A/E 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.

d. The A/E shall provide an accurate written translation of the notice of rights to any non-English or non-Spanish speaking employee.

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

8.12.3 UNEMPLOYED ANTI-DISCRIMINATION

- a. The A/E shall comply with the Unemployed Anti-Discrimination Act of 2012, D.C. Official Code § 32-1361 *et seq.* (“Anti- Discrimination Act”).
- b. The A/E shall not:
 - 1. 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
 - 2. 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:
 - i. Any provision stating or indicating that an individual's status as unemployed disqualifies the individual for the job; or
 - ii. 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.
- c. Violations of the Unemployed Anti-Discrimination Act shall be subject to civil penalties as described in the Anti- Discrimination Act.

8.13 RESERVED

Section 8.14 Interpretation of Contract. 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 should be construed in favor of a broader scope of work for the A/E, as the intent of the Agreement is, with specific identified exceptions, to require the A/E 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: this Agreement and its Exhibits, the General Conditions, and the Construction Documents released by the Department. Any Change Order issued and executed by the Department shall supersede those portions of earlier dated Contract documents to which it pertains.

Section 8.15 Independent Contractor. The A/E and the A/E’s employees: (1) shall perform the services specified herein as independent contractors, not as employees or agent of the District, or joint venture or partner with the District; (2) shall be responsible for their own management and administration of the work required and bear sole responsibility for complying with any and all technical, schedule, financial requirements or constraints attendant to the performance of this Agreement; (3) shall be free from supervision or control by any government employee with respect to the manner or method of performance of the service specified; but (4) shall, pursuant to the government’s right and obligation to inspect, accept or reject work, comply with such general direction of the CO, or the duly authorized representative of the CO as is necessary to ensure accomplishment of the Agreement objectives. The A/E shall have exclusive authority to manage, direct, and control the work, and shall be responsible for all means, methods, techniques, sequences, and procedures, as well as for Project safety.

Section 8.16 Confidentiality of Information. The A/E shall keep all information relating to any employee or customer of the District in absolute confidence 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, in accordance with the District and federal laws governing the confidentiality of

records. In the course of the A/E's performance of the Work, the Department may make available to the A/E information that the Department designates as trade secrets or other confidential engineering, technical and business information. As long as, and to the extent that, such information remains confidential and available to others only with the consent of the Department, or is not generally available to the public from other sources, the A/E shall maintain such information in strict confidence and shall not disclose any such information to others (including its employees or Subcontractors), except to the extent necessary to enable the A/E to carry out the Project. The A/E shall similarly obligate any and all persons to whom such information is necessarily disclosed to maintain the information in strict confidence. The A/E agrees that, in the event of any breach of this confidentiality obligation, the Department shall be entitled to equitable relief, including injunctive relief or specific performance, in addition to all other rights or remedies otherwise available.

Section 8.17 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 8.18 Media Releases. Neither the A/E, 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 8.19 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 8.20 Limitations. The A/E 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 8.21 Binding Effect; Assignment. The Agreement shall inure to the benefit of, and be binding upon and enforceable by, the parties and their respective successors and permitted assigns. The A/E acknowledges that, in entering into the Agreement, the Department is relying on the particular qualifications of the A/E, and the A/E therefore shall not delegate or assign any of its duties or obligations under the Agreement, except in accordance with the Agreement's provisions relating to subcontracting, or pursuant to the Department's prior written consent. The A/E shall not assign its rights under the Agreement, including the right to all or a portion of its compensation per Section 8.21.1, without the Department's prior written consent. Any delegation or assignment made contrary to the provisions of this Section shall be null and void.

Section 8.21.1 ASSIGNMENT OF CONTRACT PAYMENTS

- a. Subject to **Section 8.21** of this Contract, in accordance with Title 27 DCMR Section 3250, the A/E may assign due or to become due as a result of the performance of this A/E to a bank, trust company, or other financing institution funds.
- b. Any assignment shall cover all unpaid amounts payable under this Agreement and shall not be made to more than one party.

- c. Notwithstanding an assignment of Contract payments, the A/E, not the assignee, is required to prepare invoices. Where such an assignment has been made, the original copy of the invoice must refer to the assignment and must show that payment of the invoice is to be made directly to the assignee as follows:

“Pursuant to the instrument of assignment dated _____, make payment of this invoice to (name and address of assignee).”

Section 8.22 Survival. All agreements warranties, and representations of the A/E contained in the Agreement or in any certificate or document furnished pursuant to the Agreement shall survive termination or expiration of the Agreement.

Section 8.23 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 affected only by an express written waiver signed by the Department.

Section 8.24 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 A/E or any other person or entity.

Section 8.25 Headings/Captions. The headings or captions used in this Agreement or its table of contents are for convenience only and shall not be deemed to constitute a part of the Contract, nor shall they be used in interpreting the Contract.

Section 8.26 Entire Agreement; Modification. The Contract supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to the Contract shall be effective against the Department unless made in writing signed by both the Department and the A/E, unless otherwise expressly provided to the contrary in the Contract. Notwithstanding the foregoing, nothing herein shall be construed to limit the Department's ability to unilaterally modify the Contract. The Agreement, which includes the terms set forth in the RFP, the Exhibits hereto, and other documents incorporated herein by reference, represents the entire and integrated agreement between the Department and A/E.

Section 8.27 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 8.28 The Quick Payment Act

Section 8.28.1 Interest Penalties to Contractors

Section 8.28.1.1 The District will pay interest penalties on amounts due to the A/E under the Quick Payment Act, D.C. Official Code §2-221.01 *et seq.*, as amended, 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 1.5% 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 the required payment date. The required payment date shall be:

- a. The date on which payment is due under the terms of the Contract;
- b. Not later than 7 calendar days, excluding legal holidays, after the date of delivery of meat or meat food products;
- c. Not later than 10 calendar days, excluding legal holidays, after the date of delivery of a perishable agricultural commodity; or
- d. 30 calendar days, excluding legal holidays, after receipt of a proper invoice for the amount of the payment due, if a specific date on which payment is due is not established by contract;

Section 8.28.1.2 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.

Section 8.28.1.3 No interest penalty shall be due to the A/E if payment for the completed delivery of goods or services is made on or after:

- a. 3rd day after the required payment date for meat or a meat food product;
- b. 5th day after the required payment date for an agricultural commodity; or
- c. 15th day after any other required payment date in the case of any other item.

Section 8.28.2 Payments to Subcontractors

Section 8.28.2.1 The A/E must take one of the following actions within seven (7) days of receipt of any amount paid to the A/E 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 Contracting Officer and the subcontractor, in writing, of the A/E's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

Section 8.28.2.2 The A/E 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 1.5% 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 3rd day after the required payment date for meat or a meat product;
- b. The 5th day after the required payment date for an agricultural commodity; or
- c. The 15th day after the required payment date for any other item.

Section 8.28.2.3 Any amount of an interest penalty which remains unpaid by the A/E 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.

Section 8.28.2.4 A dispute between the A/E 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 may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

Section 8.28.3 Subcontractor Quick Payment Clause Flow-Down Requirements

Section 8.28.3.1 The A/E shall include in each subcontract under this Contract a provision requiring the subcontractor to include in its contract with any lower-tier subcontractor or supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code §2-221.02(d).

Section 8.28.4 Requirements for Change Order Payments

Section 8.28.4.1 The Department and the A/E are prohibited from requiring the 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:

- a. Agrees with the Prime Contractor and, if applicable, the subcontractor on a price for the additional work;
- b. 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;
- c. 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 CO; and
- d. Gives written notice of the funding certification from the Chief Financial Officer to the Prime Contractor;

Section 8.28.4.2 The A/E is required to include in its subcontracts a clause that requires the Prime Contractor to:

- a. 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;
- b. 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
- c. 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 CO.

Section 8.28.4.3 The Department, A/E, CMAR 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 8.28.4.4 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER

- a. The CO is the only person authorized to approve changes in any of the requirements of this Contract.
- b. The A/E shall not comply with any order, directive or request that changes or modifies the requirements of this Contract, unless issued in writing and signed by the CO.
- c. In the event the A/E effects any change at the instruction or request of any person other than the CO, the change will be considered to have been made without authority and no adjustment will be made in the Contract price to cover any cost increase incurred as a result thereof.

Section 8.29 General Conditions. To the extent that this Agreement is silent on an action or requirement of the A/E the Department's Standard Contract Provisions for Architectural and Engineering Services dated October 2018 attached as **Exhibit G** ("General Conditions" or "Standard Contract Provisions") shall govern the A/E's obligations with respect to such action or requirement under this Agreement.

Section 8.30 FREEDOM OF INFORMATION ACT ("FOIA")

The District of Columbia Freedom of Information Act, at *D.C. Official Code § 2-532 (a-3)*, requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the A/E receives a request for such information, the A/E shall immediately send the request to the PM designated in **Section 1.3** of this Agreement who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the A/E pursuant to the Contract, the PM will forward a copy to the A/E. In either event, the A/E is required by law to provide all responsive records to the PM within the timeframe designated by

the PM. The FOIA Officer for the agency with programmatic responsibility will determine the releasability of the records. The District will reimburse the A/E for the costs of searching and copying the records in accordance with *D.C. Official Code §2-532* and Chapter 4 of Title 1 of the *D.C. Municipal Regulations*.

Section 8.31 AMERICANS WITH DISABILITIES ACT OF 1990 (“ADA”)

During the performance of this Contract, the A/E 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 8.32 CONTRACTS IN EXCESS OF ONE MILLION DOLLARS

Any contract in excess of \$1,000,000 shall not be binding or give rise to any claim or demand against the District until approved by the Council of the District of Columbia and signed by the Contracting Officer.

Section 8.33 COVID-19 Vaccination Certification Requirement For District Contractors And Grantees In Accordance With Mayor’s Order 2021-099 (“Order”)

8.33.1. All District government contractors and grantees shall ensure that each of their employees, agents, and subcontractors who provide goods or perform services in person in District of Columbia facilities or worksites, or who have in-person contact with other persons in order to complete their work under the contract or grant have been either: (i) fully vaccinated against COVID-19, or (ii) granted one of the exemptions identified this Order by the contractor or grantee, are undergoing weekly COVID-19 testing and only reporting to the workplace when such test result is negative, and are wearing masks while working.

8.33.2 Each District government agency under the administrative control of the Mayor with procurement authority independent of the Chief Procurement Officer, and each grant-making agency may issue change orders, enter into amendments to grant agreements or grant award notifications, and include terms in new contracts, grant agreements, or grant award notifications that include the requirement set forth in **Section 8.33.1**.

8.33.3 Contractors and grantees shall be responsible for ensuring compliance with this Order by their employees, agents, and subcontractors, and failure to do so may result in adverse consequences. Each District government contractor and grantee shall, at the request of the District government, provide to the District government a certification of its compliance with this requirement.

8.33.4 Nothing in this Order shall be deemed to prevent contractors or grantees from imposing stronger vaccination requirements on their employees, agents, or subcontractors, subject to applicable federal and local laws and regulations.

8.33.5 Contractors or grantees may be required to demonstrate further proof of vaccination,

exemption documentation, and/or COVID-19 test results upon request of the City Administrator, the relevant agency's contracting office, or other investigative authorities.

8.33.6 Limitation. This Order does not vest any rights in constituents to have government services delivered by fully vaccinated employees, contractors, interns, or grantees, nor does it vest any rights in employees, contractors, interns, or grantees to interact only with fully vaccinated colleagues. Employees, contractors, interns, grantees, colleagues, and constituents are not entitled to know whether someone is at work because they have certified that they have been fully vaccinated or because they have obtained an exemption from the vaccination requirement imposed by this Order.

8.33.7 Privacy. Completed vaccination certification forms and exemption requests shall be treated as private records exempt from disclosure under section 204(a)(2) of the Freedom of Information Act of 1976, effective March 29, 1977, D.C. Law 1-96; D.C. Official Code § 2-534(a)(2); however, the information included on those forms and requests may be used internally for verification, staffing, payroll, and assignments, and as any other operational needs may require, consistent with local and federal laws and regulations.

ARTICLE 9 ECONOMIC INCLUSION

Section 9.1 LSDBE Utilization Under the provisions of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, D.C. Law 16-33 (codified at D.C. Code § 2-218.01 et seq.), preferences shall be given to Offerors that are certified by the District of Columbia Department of Small and Local Business Development (“DSLBD”) as being a small business enterprise, having resident business ownership, having a longtime resident business, being a local business enterprise, being a disadvantaged business enterprise, being a local business enterprise with its principal office located in an enterprise zone, being a veteran-owned business enterprise, or being a local manufacturing business enterprise. (A copy of the certification acknowledgment letter must be submitted with the Offeror's Proposal.) In accordance with these laws, the following preferences shall be awarded in evaluating an Offeror's Proposal:

- Three (3) preference points shall be awarded if the Offeror is certified as having a small business enterprise.
- Five (5) preference points shall be awarded if the Offeror is certified as having a resident business ownership.
- Five (5) points shall be awarded if the Offeror is certified as having a longtime resident business.
- Two (2) preference points shall be awarded if the Offeror is certified as a local business enterprise.
- Two (2) preference points shall be awarded if the Offeror is certified as being a local business enterprise with its principal office located in an enterprise zone.
- Two (2) preference points shall be awarded if the Offeror is certified as a disadvantaged business enterprise.
- Two (2) preference points shall be awarded if the Offeror is certified as a veteran-owned business enterprise.
- Two (2) preference points shall be awarded if the Offeror is certified as a local manufacturing business

enterprise.

- Five (5) preference points shall be awarded if the Offeror is certified as an equity impact enterprise.

Offerors may qualify for more than one of these categories, so that the maximum number of points available under this Section is 12 points.

Section 9.2 Mandatory Subcontracting Requirements.

DC. Code § 2-218.91. Certified Business Enterprise assistance:

(a) Notwithstanding subchapter IX-A of this chapter, or any other provision of District law or regulation, during the period from March 11, 2020, until November 5, 2021, any contract for a government-assisted project in excess of \$250,000 that is unrelated to the District's response to the COVID-19 emergency but entered into during the COVID-19 emergency, absent a waiver pursuant to § 2-218.51, shall provide that:

(1) At least 50% of the dollar volume of the contract be subcontracted to small business enterprises; or

(2) If there are insufficient qualified small business enterprises to meet the requirement of paragraph (1) of this subsection, the subcontracting requirement may be satisfied by subcontracting 50% of the dollar volume ("CBE minimum expenditure") to any qualified certified business enterprises; provided, that best efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.

(b) Notwithstanding subsection (a) of this Section 9.2, a certified business enterprise awarded a contract for a government-assisted project in excess of \$250,000 that is unrelated to the District's response to the COVID-19 emergency but entered into during the COVID-19 emergency shall:

(1) Perform at least 35% of the contracting effort with its own organization and resources if the certified business enterprise is granted points or a price reduction pursuant to § 2-218.43 or selected through a set-aside program; and

(2) If the certified business enterprise subcontracts, ensure that 50% of the dollar volume of the subcontracted effort be with certified business enterprises unless a waiver is granted pursuant to § 2-218.51.

(c) Notwithstanding subsection (a) of this Section 9.2, a certified joint venture awarded a contract for a government-assisted project in excess of \$250,000 that is unrelated to the District's response to the COVID-19 emergency but entered into during the COVID-19 emergency shall:

(1) Perform at least 50% of the contracting effort with its own organization and resources if

the certified joint venture is granted points or a price reduction pursuant to § 2-218.43 or selected through a set-aside program; and

(2) If the certified joint venture subcontracts, 50% of the dollar volume of the subcontracted effort shall be with certified business enterprises unless a waiver is granted pursuant to § 2-218.51.

(d)(1) For every dollar expended by a beneficiary with a resident-owned business, the beneficiary shall receive a credit for \$1.10 against the CBE minimum expenditure.

(2) For every dollar expended by a beneficiary with a disadvantaged business enterprise, the beneficiary shall receive a credit for \$1.25 against the CBE minimum expenditure.

(3) For every dollar expended by a beneficiary that uses a company designated as both a disadvantaged business enterprise under § 2-218.33 and as a resident-owned business under § 2-218.02(15), the beneficiary shall receive a credit for \$1.30 against the CBE minimum expenditure.

(e) For the purposes of this section, the term:

(1) "Beneficiary" has the same meaning as set forth in § 2-218.02(1B).

(2) "Best efforts" means that a beneficiary is obligated to make its best attempt to accomplish the agreed-to goal, even when there is uncertainty or difficulty.

(3) "COVID-19 emergency" means the emergencies declared in the Declaration of Public Emergency (Mayor's Order 2020-045) together with the Declaration of Public Health Emergency (Mayor's Order 2020-046), declared on March 11, 2020, including any extension of those declared emergencies.

(4) "Disadvantaged business enterprise" has the same meaning as set forth in § 2-218.33.

(5) "Government-assisted project" has the same meaning as set forth in § 2-218.02(9A).

(6) "Longtime resident business" has the same meaning as set forth in § 2-218.02(13).

(7) "Resident-owned business" has the same meaning as set forth in § 2-218.02(15).

(8) "Small Business Enterprises" has the same meaning as set forth in § 2-218.32.

(f) Contracts entered into on an emergency basis or that are made in furtherance of, or that are related to, the District's response to the COVID-19 emergency shall not be subject to the requirements of subchapter IX-A of this chapter or subchapter X of this chapter.

Section 9.3 Subcontracting Plan Requirements.

If the A/E required by law to subcontract under this Contract, it shall submit a subcontracting plan as part of its Proposal in accordance with D.C. Official Code § 2–218.91, and Section 9.2 of this Agreement. The SBE Subcontracting Plan must list all subcontractors at every tier and shall include the following:

- (a) The name and address of each subcontractor;
- (b) A current certification number of the small or certified business enterprise;
- (c) The scope of work to be performed by each subcontractor;
- (d) The price to be paid by the Prime Contractor to each subcontractor; and
- (e) Meet the subcontracting requirements as further described in Section 9.2 of this Agreement.

Once the Subcontracting Plan is approved by the Department’s CO, changes to the plan will only occur with the prior written approval of the CO and the Director of DSLBD.

Section 9.4 Copies of Subcontracts. Within twenty-one (21) days of the date of award, the Prime Contractor shall provide fully executed copies of all subcontracts identified in the subcontracting plan to the CO, District of Columbia Auditor, and the Director of Department of Small and Local Business Development.

Section 9.5 Subcontracting Plan Compliance Reporting

- a) The Prime Contractor has a subcontracting plan required by law for this Agreement; the Prime Contractor shall submit a quarterly report to the CO, 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:
 - 1. The price that the Prime Contractor will pay each subcontractor under the subcontract;
 - 2. A description of the goods procured, or the services subcontracted for;
 - 3. The amount paid by the Prime Contractor under the subcontract;
 - 4. A copy of the fully executed subcontract, if it was not provided with an earlier quarterly report.
- b) 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 9.6 Annual Meetings. Upon at least 30-days written notice provided by DSLBD, the Prime Contractor shall meet annually with the CO, contract administrator (“CA”), District of Columbia Auditor and the Director of Department of Small and Local Business Development to provide an update on its subcontracting plan.

Section 9.7 DSLBD Notices. The Prime Contractor shall provide written notice to the DSLBD and the District of Columbia Auditor upon commencement of the Agreement and when the Agreement is completed.

Section 9.8 Enforcement and Penalties for Breach of Subcontracting Plan. A Prime Contractor shall be deemed to have breached a subcontracting plan required by law, if the Prime 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. A Prime 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. If the CO determines the Prime Contractor's failure to be a material breach of the Agreement, the CO shall have cause to terminate the Agreement under the default provisions in the Standard Contract Provisions. Neither the Prime Contractor nor its subcontractor may remove a subcontractor or tier-subcontractor if such subcontractor or tier-subcontractor is certified as a Local Small Disadvantaged Business Enterprise ("LSDBE") business unless the Department approves of such removal, in writing. The Department may condition its approval upon the Prime 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 9.9 Residency Hiring Requirements for Contractors and Subcontractors.

9.9.1 For contracts for services in the amount of \$300,000 or more, the A/E shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code § 2-219.01 et seq. ("First Source Act").

9.9.2 The A/E shall enter into and maintain during the term of the Contract, a First Source Employment Agreement (Employment Agreement) (**Exhibit D**) with the District of Columbia Department of Employment Services ("DOES"), in which the A/E shall agree that: (a) The first source for finding employees to fill all jobs created in order to perform the contract shall be the First Source Register; and (b) The first source for finding employees to fill any vacancy occurring in all jobs covered by the Employment Agreement shall be the First Source Register.

9.9.3 If applicable, the A/E shall comply with subchapter X of Chapter II of Title 2, and all successor acts thereto, including by not limited to the **Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011**, and the rules and regulations promulgated thereunder, including, but not limited to the following requirements:

- a) At least twenty percent (20%) of journey worker hours by trade shall be performed by District residents;
- b) At least sixty percent (60%) of apprentice hours by trade shall be performed by District residents;
- c) At least fifty one percent (51%) of the skilled laborer hours by trade shall be performed by District residents; and
- d) At least seventy percent (70%) of common laborer hours shall be performed by District residents.

9.9.4 The A/E shall not begin performance of the Contract until its Employment Agreement has been accepted by DOES. Once approved, the Employment Agreement shall not be amended except with the approval of DOES.

9.9.5 The A/E agrees that at least 51% of the new employees hired to perform the Contract shall be

District residents. The A/E shall ensure that at least fifty-one percent (51%) of the A/E's team and every sub-consultant'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 A/E, 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.

9.9.6 The A/E's hiring and reporting requirements under the First Source Act and any rules promulgated thereunder shall continue for the term of the Contract.

9.9.7 The CO may impose penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the Contract, for a willful breach of the Employment Agreement, failure to submit the required hiring compliance reports, or deliberate submission of falsified data.

9.9.8 If the A/E does not receive a good faith waiver, the CO may also impose an additional penalty equal to 1/8 of 1% of the total amount of the direct and indirect labor costs of the contract for each percentage by which the A/E fails to meet its hiring requirements.

9.9.9 Any contractor which violates, more than once within a 10-year timeframe, the hiring or reporting requirements of the First Source Act shall be referred for debarment for not more than five (5) years.

9.9.10 The A/E may appeal any decision of the CO pursuant to this clause to the D.C. Contract Appeals Board located at 441 4th Street, N.W., Suite 350N, Washington, D.C. 20001.

9.9.11 The provisions of the First Source Act do not apply to nonprofit organizations which employ 50 employees or less.

Section 9.10 Apprenticeship Act. The District of Columbia Apprenticeship Act of 1946, D.C. Official Code §§ 32-1401 *et seq.* ("Apprenticeship Act"), as amended, may apply to this Project. All subcontractors selected to perform work on the Project on a craft-by-craft basis shall be required to comply with this Apprenticeship Act. All terms and conditions of the Apprenticeship 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 9.11 Equal Employment Opportunity and Hiring of District Residents

Section 9.11.1 In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985, "on compliance with Equal Opportunity Requirements in District government contracts," each contracting shall submit the forms for completion of the Equal Employment Opportunity Information Report incorporated herein as **Exhibit H**. Failure to comply with the implementing rules shall result in rejection of the respective proposal. An award cannot be made to any contractor who has not satisfied the Equal Employment Requirements. The A/E 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 H**. A contract award cannot be made to any contractor that has not satisfied the equal employment requirements.

Section 9.11.2 The A/E shall ensure that at least fifty-one percent (51%) of the A/E's team and every sub-consultant'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 A/E, to work on the Project shall be residents of the District of Columbia. This percentage shall be applied in the aggregate, and not trade by trade.

Section 9.12 Economic Inclusion Reporting Requirements

Section 9.12.1 Upon execution of the Agreement, the A/E 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 9.12.2 The A/E 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 A/E and its Subcontractors shall execute a First Source Agreement (**Exhibit D**) with the District of Columbia Department of Employment Services ("DOES") prior to beginning work at the Project site.

Section 9.12.3 The A/E shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

Section 9.12.4 The A/E shall be responsible for: (i) including the provisions of Section 9.12 in all subcontracts; (ii) collecting the information required in Section 9.12 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in the reports required to be submitted by the A/E pursuant to Section 9.12.

Section 9.13 Service Contract Act Provision. The A/E agrees that the work performed under this Agreement shall be subject to the Service Contract Act Wage Determination in effect on the date this Agreement is executed by an authorized Contracting Officer. The A/E shall be bound by the wage rates for the term of the Contract. Service Contract Wage Schedules are available at wdol.gov, **Exhibit E**. Notwithstanding the terms of the Standard Contract Provisions, the Davis-Bacon Act is not applicable to this Agreement.

Section 9.14 Living Wage Act. In addition to the requirements set forth in the First Source Employment Agreement, the A/E shall comply with all applicable provisions of the Living Wage Act of 2006, **Exhibit C**, as amended (codified at D.C. Official Code §§ 2-220.01 et seq.) and its implementing regulations. The Living Wage Act is applicable to this Contract. As such, the A/E and its subcontractors shall comply with the wage and reporting requirements imposed by that Act **Exhibit C**.

Section 9.15 WAY TO WORK AMENDMENT ACT OF 2006

9.15.1. Except as described in **Section 9.15.8** below, the A/E shall comply with Title I of the Way to Work Amendment Act of 2006, effective June 8, 2006 (D.C. Law 16-118, D.C. Official

Code §2-220.01 et seq.) (“Living Wage Act of 2006”), for contracts for services in the amount of \$100,000 or more in a 12-month period.

9.15.2 The A/E shall pay its employees and subcontractors who perform services under the Contract no less than the current living wage.

9.15.3 The A/E shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to pay its employees who perform services under the Contract no less than the current living wage rate.

9.15.4 The DOES may adjust the living wage annually and A/E will find the current living wage rate on its website at www.does.dc.gov.

9.15.5 The A/E shall provide a copy of the Fact Sheet attached as **Exhibit C** to each employee and subcontractor who performs services under the contract. The A/E shall also post the Notice attached as **Exhibit C** in a conspicuous place in its place of business. The A/E shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to post the Notice in a conspicuous place in its place of business.

9.15.6 The A/E shall maintain its payroll records under the Contract in the regular course of business for a period of at least three (3) years from the payroll date, and shall include this requirement in its subcontracts for \$15,000 or more under the Contract.

9.15.7 The payment of wages required under the Living Wage Act of 2006 shall be consistent with and subject to the provisions of D.C. Official Code §32-1301 et seq.

9.15.8 The requirements of the Living Wage Act of 2006 do not apply to:

- (1) Contracts or other agreements that are subject to higher wage level determinations required by federal law;
- (2) Existing and future collective bargaining agreements, provided, that the future collective bargaining agreement results in the employee being paid no less than the established living wage;
- (3) Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;
- (4) Contracts for services needed immediately to prevent or respond to a disaster or imminent threat to public health or safety declared by the Mayor;
- (5) Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services; provided that the trainees do not replace employees subject to the Living Wage Act of 2006;
- (6) An employee under 22 years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than 25 hours per week; provided that he or she does not replace employees subject to the Living Wage Act of 2006;
- (7) Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail

establishment did not receive direct government assistance from the District;

(8) Employees of nonprofit organizations that employ not more than 50 individuals and qualify for taxation exemption pursuant to section 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3));

(9) Medicaid provider agreements for direct care services to Medicaid recipients, provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501); and

(10) Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

9.15.9 The Mayor may exempt a contractor from the requirements of the Living Wage Act of 2006, subject to the approval of Council, in accordance with the provisions of Section 109 of the Living Wage Act of 2006.

ARTICLE 10 CHANGES

Section 10 Changes In The Work

Section 10.1 Changes Authorized. In accordance with the Standard Contract Provisions, the Department may, without invalidating the Agreement, and without notice to or approval of any surety, order changes in the design service, including additions, deletions or modifications. Any such change must be conveyed by the Department to the A/E via written Change Directive or Change Order.

Section 10.2 Executed Change Directive/Change Order Required. Only a written Change Directive 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 Final Design Fee.

Section 10.3 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 A/E a written Change Directive, either directing the A/E 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 A/E believes that Substantial or Final Completion Dates and/or the Design Fee should be adjusted to take the Change Order or Change Directive into account.

2. Within ten (10) days of receiving a Change Directive, the A/E 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 Final Design Fee to which the A/E 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 Final Design Fee 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 A/E 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.

3. If the Department has not yet directed the A/E 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 A/E to proceed, the A/E shall immediately proceed with the changed Work and, the Department and the A/E shall use their good faith best efforts to reach an agreement upon the modifications to the Substantial or Final Completion Dates, and/or the Final Design Fee that are justified by the Change Directive. If the Department and the A/E reach agreement, the agreement shall be set forth in a Change Order and the A/E 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 A/E's detailed cost statement, and such other documentation as the Department may request, the A/E 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 A/E such adjustments, if any, to the Substantial or Final Completion Dates, or the Final Design Fee as the Department has judged to be appropriate.

Section 10.4 Notice of Change Event. The A/E must give the Department written notice of any Change Event within ten (10) calendar days of the date on which the A/E 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 A/E 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 Final Design Fee arising from the Change Event and, if the notice is not given within the required time, the A/E will have waived the right to any adjustment to the Substantial or Final Completion Dates, or the Final Design Fee arising from the Change Event.

Section 10.5 Detailed Change Request. Within twenty (20) days after giving notice of a Change Event, the A/E 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 Final Design Fee as a result of the Change Event. The Change Request shall include the same information as described in **Section 10.3** with respect to any Agreement changes the A/E seeks due to the Change Event, and the amount of any requested adjustment to the Final Design Fee shall be limited in accordance with that **Section 10.3**.

Section 10.6 Changes to the Final Design Fee. Subject to the condition precedent that the A/E has complied with the notice and documentation provisions of this Article 10, and subject to the limitations stated in this Agreement, the A/E is entitled to an adjustment to the Final Design Fee if the Department issues a Change Directive or Change Order that directs the A/E to proceed with work which is beyond the scope of Work included within this Agreement.

Section 10.7 Deductive Change Orders. The Department reserves the right to issue deductive Change Orders (reducing the Final Design Fee or modifying the Substantial or Final Completion Dates to an earlier date) when changes are effected, by Change Directive or otherwise, which will decrease the cost of completing the Work or the time within which it can be completed.

Section 10.8 Executed Change Orders Final. The A/E agrees that any Change Order executed by the Department and the A/E constitutes its full and final adjustment for all costs, delays, disruptions, inefficiencies, accelerations, schedule impacts, or other consequences arising from the change in question, whether a Change Directive, or a Change Event, or from any claimed cumulative effect of changes made to the date of the Change Order, and that no further adjustments in compensation or time shall be sought or made with respect to the Change Directive or the Change Event giving rise to the Change Order.

Section 10.9 Failure to Agree. If the A/E 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 A/E shall proceed with the work and the Department's directives, without interruption or delay, and shall make a claim as provided in Article 11 of this Agreement. 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.

ARTICLE 11 CLAIMS & DISPUTES

All claims or disputes arising out of or under this Agreement shall be governed by the terms of the Standard Contract Provisions (**Exhibit G**), Article 9.

ARTICLE 12 TERMINATION OR SUSPENSION

Any terminations or suspensions arising out of or under this Agreement shall be governed by the terms of the Standard Contract Provisions (**Exhibit G**), Article 8.

ARTICLE 13
DEFINITIONS

Section 13.1 Administrative Term. The Agreement shall have an Administrative Term that runs from the date of execution of the Letter Contract and NTP by the Department and shall terminate on the earlier of the following: (i) (DATE); or (ii) the A/E obtaining a minimum certification of LEED Gold for the Project, which shall be no later than eight months after the Substantial Completion Date, and submitting a Final release of Liens and Claims in the form and format required by the Contracting Officer.

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. Notwithstanding the foregoing, nothing herein shall be construed to: extend the Substantial Completion Date; extend the Final Completion Date; or, limit the Department's ability to assess liquidated damages thereon.

Section 13.2 Agreement or Contract. The term "Agreement" or "Contract" shall mean this entire, integrated agreement between the Department and the A/E with respect to the Project, consisting of this document and the Exhibits thereto, including but not limited to the Standard Contract Provisions, and any Change Orders, Contract Modifications or Change Directives executed by the Department's CO.

Section 13.3 District of Columbia Public Schools. The governmental or quasi-governmental entity, represented by the Department, requesting the Project.

Section 13.4 Construction Phase Services. Services provided by the A/E during the Construction Phase as further described throughout this Agreement and Article 3.

Section 13.5 Design Phase Services. Services provided by the A/E during the Design Phase as further described throughout this Agreement and Article 2.

Section 13.6 Final Completion Date. The Final Completion Date is 30 days from the Substantial Completion Date. The Final Completion Date may be modified only by Change Order or Change Directive in accordance with the Agreement.

Section 13.7 Guaranteed Maximum Price or GMP. The maximum amount the CMAR Contractor will be paid to complete the Project as set forth in the CMAR Contractor's agreement.

Section 13.8 Notice to Proceed. A written notice to proceed, signed by the Department's CO, directing the A/E to proceed with the Project or any portion of the Project ("Notice to Proceed" or "NTP").

Section 13.9 Project Schedule. The schedule for the Project agreed to by the Department and all relevant Parties, including the Client Agency, the A/E and the CMAR Contractor. The Substantial Completion Date and Final Completion Date upon which the Project Schedule are premised shall not be changed except by a Change Order, Contract Modification or Change Directive issued by the

Department's CO. The Project Schedule shall be in a form and contain such detail as may be agreed upon by the Parties.

Section 13.10 Subcontractor. Any person, natural or legal, to whom the A/E delegates performance of any portion of the Work required by the Agreement. The term "Subcontractor," used without a qualifier, shall mean a subcontractor and subconsultant in direct privity with the A/E at all tiers, to include, but not limited to, those Subcontractors performing Work pursuant to sub-subcontracts, subsubsubcontracts, 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. For purposes of this Agreement, Subconsultant shall be synonymous with Subcontractor.

**ARTICLE 14
EXHIBITS**

- Exhibit A** Educational Specifications
- Exhibit B** A/E's price proposal
- Exhibit C** 2021 Living Wage Act
- Exhibit D** First Source Employment Agreement and Employment Plan
- Exhibit E** Service Contract Act Wage Schedule
- Exhibit F** Key Personnel
- Exhibit G** Standard Contract Provisions for Architectural and Engineering Services contracts
- Exhibit H** Equal Employment Opportunity
- Exhibit I** SBE Subcontracting Plan
- Exhibit J** BIM Requirements

IN WITNESS WHEREOF, the Parties duly authorized representatives have executed this Agreement (No. DCAM-21-AE-0008) as of the dates signed below:

DEPARTMENT OF GENERAL SERVICES

INSERT A/E

An agency within the executive branch of the Government of the District of Columbia

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

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