

AGREEMENT

FOR

ARCHITECTURAL/ENGINEERING SERVICES

BY AND BETWEEN

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

AND

[Insert A/E]

FOR

NEW YORK AVENUE MEN'S SHELTER RENOVATIONS

DCAM-19-AE-0006

**AGREEMENT BETWEEN OWNER AND
ARCHITECT/ENGINEER FOR
ARCHITECTURAL/ENGINEERING SERVICES FOR
NEW YORK AVENUE MEN’S SHELTER RENOVATIONS
DCAM-19-AE-RFP-0006**

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

WITNESSETH:

WHEREAS, the Department issued a Request for Proposals (“RFP”) dated June 13, 2019 for architectural/engineering services for the New York Avenue Men’s Shelter Renovation (“New York Avenue Men’s Shelter”) located at 1355 New York Avenue, NE, Washington, DC 20002 (the “Project”);

WHEREAS, the A/E submitted a proposal dated [], 2019 in response to the Department’s RFP to provide such services;

WHEREAS, the Department wishes to retain 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 for the A/E to deliver 100% complete Construction Documents to serve as the basis of a solicitation for Design-Bid-Builder contract to renovate New York Avenue Men’s Shelter;

WHEREAS, the Department requires that the Project, including the requisite construction, be Substantially Complete by June 1, 2020 (the “Substantial Completion Date”); and

WHEREAS, the Department has retained the services of a Program Manager to advise it concerning the Project.

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

ARTICLE 1 GENERAL PROVISIONS

Section 1.1 Relationships 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 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, the A/E, Program Manager, and other persons or entities employed by the Department for the Project.

Section 1.2 Project Descriptions. In general, the A/E shall provide a full range of architectural and engineering services necessary to complete the renovations of the Men's Shelter at New York Avenue, NE, Washington, DC 20002.

The A/E shall provide an assessment of the New York Avenue Men's Shelter and address life safety and code deficiencies as well as provide functional building systems and upgraded facilities while staying within the stated construction budget. The A/E shall provide Title I and Title II design services, including the preparation and submittal of construction documents, submit a cost estimate during the development of the construction documents at each submission, and upon completion of the construction documents, submit a final detailed construction cost estimate to accomplish the work. It will be the responsibility of the A/E to review all existing documentation, interview key personnel, and conduct site visits and assessments as required to prepare the final documents. The focus of this design shall be on providing maximum value, durability, and functionality for the facility while minimizing maintenance requirements, utility costs, programmatic changes, and disruption of services. The construction associated with the Project shall be completed no later than June 1, 2020 ("**Substantial Completion Date**").

The A/E services are to provide the Department of Human Services ("DHS")/DGS with initial designs, construction documents, cost estimates, and preliminary construction schedule (bid package). The bid package will be used to solicit bids from construction and construction related contractors needed to complete the Project. In addition to Title I and Title II services, the A/E will obtain the general building permit for the project. The fee for the building permit will be reimbursed to the A/E at cost.

All work shall be in accordance with applicable codes of the District of Columbia, including but not limited to all applicable building codes, fire code, life safety code, Uniform Federal Accessibility Standards ("UFAS"), American with Disability Act Accessibility Guidelines ("ADAAG"), and the applicable requirements of the 2013 District of Columbia Construction Codes.

Section 1.3 Program Manager. The Department has retained the services of a Program Manager (or "PM"), at its discretion, 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**

Officers 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 Program Manager for this Agreement is:

Dave Antoine
DC Department of General Services
1250 U Street, NW, 4th Floor
Washington, DC 20009
Office: (202) 698-4141
Cell: (202) 345-0767
Email: dave.antoine@dc.gov

Section 1.4 General Description of A/E's Duties. It is the intent of the Parties that the A/E provides 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 services in a timely manner to permit the DHS to occupy the facility 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 may 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) surveying the site; (iii) performing cost estimates; and (iv) providing construction administration services.

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 under this Agreement. The A/E shall, without additional compensation, correct or revise any non-conforming deliverables that are a result of errors and or 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 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.

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 a set of design documents for the Project (including a permit set of construction documents and an issued-for-construction set of documents); (ii) furthering the design documents for the Project;

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 design-bid-build delivery method. The Department will engage a general contractor based on the completed construction documents.

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

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

- Submit 20% Pre-Preliminary Design - 10 weeks after NTP
- Submit 35% Schematic Design - 8 weeks after receipt of 20% comments
- Submit 60% Design Development - 6 weeks after receipt of 35% comments
- Submit 100% Construction Documents - 6 weeks after receipt of 60% comments
- Submit Bid and Permit Set - 2 weeks after receipt of 100% comments

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 Authorized Representatives and Contracting Officers. The Department’s authorized representatives and contracting officers for this Project are:

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

Franklin Austin
Contracting Officer
Department of General Services
1250 U Street, NW 3rd Floor
Washington, DC 20009
Franklin.Austin5@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 A/E’s fee or the not-to-exceed amount established herein; (ii) authorize any additional work; or (iii) increase the overall Project budget or the specified design-to-budget.

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

[Insert Name]
[Address]
[Address]
[Tel]
[Email]

The A/E hereby represents and agrees that the representative specified in this Section 1.10 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 a construction budget of \$7.5 Million for the Work required to complete Project (“Design-to-Budget”). The A/E shall propose a lump sum fee for Title I and Title II services for the project listed above. In addition, the A/E shall provide a schedule confirmation and applicable issues of methodology that may impact providing the services requested. The term “Work” refers to any and all work done in constructing the Project necessary, at any and all phases of the Agreement, to Fully Complete the Project. Such Budget is intended to cover construction costs, the Contractor’s fee, and general conditions. Any increases to such 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 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 A/E shall endeavor to obtain 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 fixed 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
- b. District of Columbia Department of Energy and the Environment

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 this 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 1.14.1 Term of Agreement. The term of this Agreement shall commence on the date of execution of the Letter Contract and Notice to Proceed (“NTP”) by the Department, if applicable, or on the Effective Date, as defined in this Agreement, and such term shall continue to be in effect through the Final Completion Date, as defined in this Agreement.

Section 1.14.2 Administrative Term. The Agreement shall have an Administrative Term that runs from the Substantial Completion Date through the earlier of the following: (i) the Final Completion Date; or (ii) the date the A/E executes and submits 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 District’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 Project Schedule or deliverable due dates; extend the Substantial Completion Date; extend the Final Completion Date; and, limit the Department’s ability to assess liquidated damages thereon.

Section 1.14.3 Deliverables Dates. The A/E shall complete Title I Services as described in Article 2 by [_ _], 2019 (“**Title I Services Completion Date**”). The Title II Services (Construction Administration) shall be completed by the Substantial Completion Date. The final completion date for the Project shall be August 1, 2020 (“**Final Completion Date**”).

ARTICLE 2
SCOPE OF WORK
DESIGN PHASE SERVICES (TITLE I)

Section 2.1 Assessment and Construction Documents Phase

Section 2.1.1 Services: The first phase, Title I Services shall include Pre-Preliminary Design (including existing conditions and program), Schematic Design (including concept package, rough order magnitude construction cost estimate), Design Development (including preliminary construction cost estimate, full delineation of design decisions, including equipment and controls, summary specifications), Construction Documents (including acquiring building permit from DCRA, full specifications, final cost estimate, and bid documents sufficient to obtain general construction services), and Construction Administration Services.

During this phase, the A/E shall complete the following tasks:

2.1.1.1 Pre-Preliminary Design

The work during Pre-Preliminary Design shall include but not be limited to following:

2.1.1.1.1 Existing Condition Report

- a. Review Condition Assessment Reports prepared by DGS, and critically review and assess their findings. See Exhibit B-1 for the Facility Condition Assessment.
- b. Site visits to verify existing site information and data collection.
- c. Provide drawings that fully describe existing conditions, and location of existing utilities. See Exhibit B-2 for single line drawings of the First and Second Floors.
- d. Provide digital and hard copy graphic documentation of existing site conditions. (i.e. photos).
- e. Identify areas that require additional investigation, e.g. geotechnical, structural defects, etc.

2.1.1.1.2 Hazardous Materials Report

- a. Provide surveys of Hazardous Materials and provide assessments of abatement of all asbestos containing materials (ACM) and related treatment required to support intended uses. Develop acceptable Engineering solutions to be included within the Construction Documents.
- b. Utilize any existing hazardous materials surveys to develop abatement requirements.

2.1.1.1.3 MEP Assessment

- a. Prepare detailed MEP Systems Assessments, including deficiencies, electrical capacity, plumbing capacity, lifecycle assessment and existing energy utilization (baseline) assessment. Develop Engineering solutions to be included within the Construction Documents.
- b. Utilize any existing mechanical assessment reports to aid in determination of requirements.

2.1.1.1.4 Program

To address the program the A/E shall:

- a. Hold programming meeting with DHS, DGS, and other stakeholders as necessary, to review and define scope and functional requirements to provide for the facility. See Attachment A-3 for programs of interest to the Department of Human Services to be incorporated at the Shelter

- b. Developed solutions must not hinder existing shelter programs that are to remain in place. The A/E shall confirm that the programmatic and functional requirements of the facilities are met, and that any deficiencies are remedied by the scopes of the program.
- c. All proposed work shall be designed to be maintained by the DGS Facilities Department or similar levels of capability.
- d. All finishes and fixtures are to be of a heavy-duty or industrial construction and durability at minimum.

2.1.1.1.5 Deliverables. During this phase, the A/E shall prepare and submit to the Department the deliverables discussed above as part of the Pre-Preliminary Report. All such deliverables shall be subject to review and approval by the Department, and the A/E's pricing shall assume that revisions may be required to these documents to address concerns raised by the Department and/or other Project stakeholders.

2.1.1.2 Schematic Design

Based on the conclusions of the Pre-Preliminary design phase, prepare concept/schematic package for the proposed renovation. The concept/schematic design shall include at minimum:

- a. Concept presentation drawings of site plans and building component relationships.
- b. Refinement of concepts based on comments for DHS, DGS and other stakeholders
- c. Drawings with support areas completed (shafts, mechanical, plumbing etc.)
- d. Exterior Elevations and key Cross Sections
- e. Finalized architectural programs based on information obtained from site surveys, and approved programs, with net- and gross- square foot calculations.
- f. Preliminary cost estimates of construction costs
- g. Preliminary schedule outlining the project from refinement of concept designs through project completion. Construction schedule shall be based on the scope of work proposed for each site.

2.1.1.2.1 Deliverables. The A/E shall prepare and submit the Schematic Design documents for this phase of the work.

2.1.1.2.2 Value Engineering Memorandum. To the extent that the cost estimate developed during the Schematic Design 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 cost 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 cost 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.

2.1.1.2.3 At the end of the Schematic Design Phase, the A/E shall seek and obtain in writing from the Department's Budget Representative Confirmation of the hard cost construction budget, i.e. the Design-to-Budget. For the avoidance of doubt, in the absence of any adjustment to the previously approved Design-to-Budget by the Department's Budget Representative, the A/E shall be required to design to the previously approved Design-to-Budget. The A/E shall use its best efforts to develop the design development documents and all subsequent design documents in a manner that is consistent with the Design-to-Budget.

2.1.1.3 Design Development

This requires the further development of the Schematic Designs in detail sufficient to develop a 5% marginal variance of actual costs, consisting, at minimum, of the following:

- a. Fully developed plans, interior and exterior elevations, and all pertinent spatial and structural cross sections at appropriate architectural scales.
- b. Material selection and room finish schedule, Materials Presentation Boards suitable for client review, incorporating final client selections of materials, furniture, finishes, colors, equipment, etc.
- c. MEP & Structural design drawings.
- d. Coordinate the design to existing utilities connections
- e. Provide calculations for utility demand.
- f. Prepare outline specifications
- g. Prepare detailed cost estimate.
- h. Prepare a phasing plan (if applicable)

2.1.1.3.1 Deliverables. The A/E shall prepare and submit Design Development documents as a deliverable for this phase of the work.

2.1.1.3 Permit and Construction Documents

Preparation of a complete set of construction contract documents and specifications to acquire Permit from DCRA, and that are complete for bidding. This includes:

- a. Prepare necessary permit documents and submit to the appropriate DC Government agencies for review and approval.
- b. Submit full bid set for constructability peer review
- c. Prepare detailed estimate, with alternates and associated costs
- d. Review schedule for construction and revise as necessary
- e. Attend pre-bid conference/site visit with potential bidders to answer questions regarding the project.
- f. Prepare addenda/clarifications (if needed) and issue to bidders and DGS project manager
- g. Evaluate bids to ensure that the bids reflect all elements as outlined in the construction documents and specifications.

2.1.1.3.1 Permit Set. The A/E shall advance the Design Development Drawings into a permit set of construction documents (“Permit Set”). 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.

2.1.1.3.2 Code Review. The A/E shall submit the permit set of documents to the Department of Consumer and Regulatory Affairs (“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.

2.1.1.3.3 Issued for Construction (IFC) Documents. The A/E shall prepare 100% complete Construction Documents (“Issued for Construction” or “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 Construction Documents shall be coordinated and shall contain at a minimum the level of detail typically required by standard industry best practices for Construction Documents. The A/E shall respond to and revise the Construction Documents as may be necessary in order to address any concerns raised by the code official.

2.1.1.3.4 If it 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 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. In the event the Department does not approve a document within ten (10) business days after issuance, unless otherwise denied, such document shall be deemed approved, provided however that the Department has not advised that such document is still under review.

2.1.2 Document Preparation: Each required submission shall be in Portable Document Format (pdf) and transmitted via email. The specifications shall be based on the latest, 48-division CSI MasterSpec Format. In addition, the A/E shall provide three (3) hard copy sets (36" x 24") of drawings for the Schematic Design and Design Development submissions. The final submission of required drawings will be on Computerized Graphic Software (AutoCAD) and PDF. Three (3) bound sets of project specifications shall be provided as well as one (1) electronic set in pdf. The A/E shall make available on the company’s FTP website, the DCRA approved permit set drawings and complete project specifications.

Section 2.1.3 Design Submissions. Total design time is thirty two (32) weeks, outside of review periods. A/E shall not be paid additional for review periods. Submission reviews should be completed in five (5) working days.

Section 2.2 Title I Services are deemed complete when the A/E obtains the required building permit (building permit fees are reimbursable at cost) and the construction contract is awarded to a general contractor. The A/E shall be held financially responsible for all errors and omissions resulting in a deficient design or changes including funds spent by the District to correct the documents and complete construction.

Section 2.3 A/E Key Personnel. The following individuals shall be considered key personnel: (i) the Design Principal; (ii) the Project Architect; (iii) the Project Designer; and (iv) the MEP Engineer; and (v) the Structural Engineer as identified in **Exhibit A**. The A/E will not be permitted to reassign 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 (i.e. due to retirement, resignation, termination, etc.), the A/E shall propose a substitute for any such individual and obtain the Department's consent to such substitute.

All members of the Architect's Key Personnel in **Exhibit A** shall be subject to replacement disincentive fees for their removal or reassignment by the A/E except in circumstances arising from reasons beyond the A/E's control (i.e. due to retirement, resignation, termination, etc.). In each instance where the Architect removes or reassigns one of the key personnel as being subject to replacement fees (but excluding instances where such personnel become unavailable due to death, disability or separation from the employment of the Architect or any affiliate of the Architect) without the prior written consent of the Department's Designated Representative, the Architect shall owe to the Department the sum of Twenty Five Thousand dollars (\$25,000) as replacement fees and not a penalty, to reimburse the Department for its administrative costs arising from the Architect'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 liquidated damage 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. 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 Architect's team approved by the Department.

ARTICLE 3
SERVICES DURING CONSTRUCTION (TITLE II)

Section 3.1 Bidding and Construction Administration Services

Section 3.1.1 Bidding. The A/E shall provide support to the Department as necessary to support the bidding of a general contractor. These services shall include, but are not necessarily limited to:

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

Section 3.1.2 Construction Administration. Prior to the completion of the Permit Set, the Department and the A/E shall agree upon a plan for how construction administration services will be performed (the “**Construction Administration Plan**”). The Construction Administration Plan shall specifically address: (i) whether the A/E will be required to assign staff on-site; (ii) turn-around time for submittals; and (iii) such other matters as the A/E and the Department consider relevant to the orderly administration of the Project. The A/E shall submit to the Department a signed copy of the Construction Administration Plan. Throughout the construction administration phase of the Project, the A/E shall comply with the Construction Administration Plan. The A/E shall provide support to the Department as may be necessary to support the construction phase of the Project.

Section 3.1.2.1 Services. These services shall include, but are not necessarily limited to:

- a. Attend Construction Kick-Off meeting with the Project Manager and contractor. Prepare meeting minutes and distribute to attendees.
- b. Attend bi-weekly construction progress meetings with GC and DGS (GC to prepare minutes).
- c. Attend site observation visits as necessary during the construction period. Prepare and distribute field reports following site visits.
- d. Review/Answer Requests for Information (RFIs), shop drawings, and submittals to ensure contractor’s compliance with drawings and specifications.
- e. Attend substantial completion walk-through, prepare and distribute punch lists to contractors and the Project Manager. Monitor punch-list and progress of its completion.
- f. Review “as-built” documents of the work including all the modifications performed during construction. If applicable deliver ‘as-built’ documents to DCRA.
- g. Obtain Final Sign-off of Certificate of Occupancy at DCRA.

Section 3.2 General Requirements (for Title I and Title II Services)

The work under this contract shall be performed and documented in a professional manner.

3.2.1 The A/E shall coordinate all work through the Project Manager including but not limited

to all site surveys and other field investigations germane to the work.

3.2.2 The A/E shall check all drawings and specifications for accuracy and detailed coordination. At the 100% submission, the A/E shall meet with all the appropriate regulatory agencies to discuss and review the drawings with them for compliance, if required. Upon complying with the aforementioned requirements, the A/E shall submit the final documents for peer review by DGS.

3.2.3 The A/E shall apply for and obtain a building permit from DCRA, if required, prior to releasing the final documents for bids. All costs associated with the work of obtaining the permit shall be included in the Design Fee. The actual cost of the permit will be reimbursable at cost, upon submitting the paid invoice, and payable from an allowance to be included in this Agreement.

3.2.4 The A/E shall validate and submit to DGS the general contractor's final as-built drawings both in hard copies and soft copies. The soft copies shall be in pdf and AutoCAD format. District shall reserve the right to re-use the AutoCAD format drawing submitted. Two (2) CD copies each of pdf and AutoCAD submittals. Also for hard copies.

3.2.5 The A/E may be held financially responsible for all errors and omissions resulting in a deficient design or changes including funds spent by the District to correct the documents or redesign and complete construction exercise.

3.2.6 The District will provide the A/E access to the DGS Prolog Project Management software. The A/E shall be responsible for using Prolog to execute selected contract document requirements in coordination with DGS PM to include communication with the general contractor during the construction phase.

3.2.7 The A/E shall be responsible for acting as recorder for all meetings with the government agencies that it attends. The minutes shall clearly indicate the meeting number and date, numbering of each issue discussed, including description of the issue, who is responsible to address, by what date, and date completed. Minutes shall also record all open items, and will note the schedule of the Project, how far through the Project we are, including how far over schedule, if applicable and the financial status of the Project and payments and a list of open Change Orders and Requests for Information. Memorandum for the Record of such meetings shall be typewritten and submitted to the Project Manager within five (5) calendar days from the date of the meeting, for review and approval and for such distribution as may be required. A/E compensation for performing these services shall be included as part of the Title I and Title II Services, as applicable.

Section 3.3 Continued Design-to-Budget Obligations. In general, the A/E shall use its best efforts to develop the Construction Documents in a manner that is consistent with the Design-to-Budget that was established in this Agreement. The A/E understands and agrees that any redesign required due to the design exceeding the Design-to-Budget may need to be completed on an expedited basis or in multiple packages in order to keep the Project on schedule and the A/E shall use its best efforts to meet the Project's schedule requirements in performing such redesign. It is understood and

agreed by both Parties to this Agreement that the A/E's redesign obligations under this Section 3.3 shall be the limit of the A/E's liability for the failure to meet its design-to-budget obligations.

Section 3.4 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 or 3 of this Agreement are key to realizing the value of such services. In the event the A/E fails to deliver any of the reports or key design deliverables required in this Section, the A/E shall be subject to liquidated damages in an amount of Three Thousand Dollars (\$3,000) plus Five Hundred Dollars (\$500) per day after receiving written notice from the Contracting Officer of failure to submit such report or deliverable.

ARTICLE 4 COMPENSATION

Section 4.1 Compensation.

Section 4.1.1 Value of Agreement. The value of this Agreement is [Insert Amount]. This amount includes Title I pre-design services; Design Development Drawings; a Permit Set of construction documents; and 100% construction documents (IFC Set); as well as Title II Construction Administration Services (altogether, the "Design Fee"). An allowance in the amount of \$40,000 is established for reimbursable expenses, including permit costs. A schedule of values is included in **Exhibit C**.

Section 4.1.2 Compensation for Reimbursable Expenses. Reimbursable expenses are in addition to compensation for Title I and Title II Services and include expenses incurred by the A/E and the A/E's consultants directly related to the Project. An allowance in the amount of \$40,000 is established for such reimbursable expenses. In the event reimbursable expenses reach the allowance, A/E shall notify the District, and shall not incur any additional reimbursable expense unless the District authorizes an increase in the allowance. Such expenses shall be reimbursed without markup of any kind and records of reimbursable expenses and services performed on the basis of hourly rates shall be available to the Department at mutually convenient times. 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; and
- f. Additional renderings, models, and mock-ups, requested by the Department.

Section 4.1.3 Hourly Rates for Additional Services. For any additional services that the Department requests the A/E to provide by Change Order, the A/E shall be compensated based on the fully loaded hourly rates as set forth in **Exhibit D**. Such rates shall be fixed and not subject to further adjustment for the term of this Agreement plus a period of one (1) year thereafter. Compensation for services performed on an hourly basis shall be computed by multiplying the number of hours directly spent on the Project by the applicable hourly billing rate listed in **Exhibit D**.

Section 4.2 Retention. An amount equal to five percent (5%) of the firm, fixed Design Fee (but not expenses) shall be withheld as retention from all progress payments that are due to the A/E. This 5% retention will only be due to the A/E if: (i) the Project is Substantially Complete on or before June 1, 2020; and (ii) the total hard construction costs (inclusive of the general contractor's fees and general conditions) do not exceed One Hundred Three Percent (103%) of the amount allocated in the Design-to-Budget established herein. 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 Department, the District, the Code Official or any other person or cause.

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 District of Columbia 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.

Section 4.5 Allowance. Charges to any Contract allowance will be paid on a cost-reimbursement basis without markup of any kind.

ARTICLE 5 INSURANCE

Section 5.1 GENERAL REQUIREMENTS. 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. The Contractor shall require all of its subcontractors to carry the same insurance required herein.

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 Grantee and subcontractors.

Section 5.1.1 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.

Section 5.1.1.1 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.

Section 5.1.1.2 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.

Section 5.1.1.3 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. This insurance requirement will be considered met if the general liability insurance includes an affirmative cyber endorsement for the required amounts and coverages.

Section 5.1.1.4 Environmental Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of pollution legal liability insurance covering losses caused by pollution conditions that arise from the ongoing or completed operations of the Contractor. Completed operations coverage shall remain in effect for at least ten (10) years after completion of the work. Such insurance shall apply to bodily injury, property damage (including loss of use of damaged property or of property that has been physically injured), cleanup costs, liability and cleanup costs while in transit, and defense (including costs and expenses incurred in the investigation, defense and settlement of claims). There shall be neither an exclusion nor a sublimit for mold-related claims. The minimum limits required under this paragraph shall be equal to the greater of (i) the limits set forth in the Contractor's pollution legal liability policy or (ii) \$2,000,000 per occurrence and \$2,000,000 in the annual aggregate. If such coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverages under the policy precedes the Contractor's performance of any work under the Contract and that continuous coverage will be maintained or an extended reporting period will be exercised for at least ten (10) years after completion. The Contractor also must furnish to the Owner certificates of insurance evidencing pollution legal liability insurance maintained by the transportation and disposal site operators(s) used by the Contractor for losses arising from facility(ies) accepting, storing or disposing hazardous materials or other waste as a result of the Contractor's operations. Such coverages must be maintained with limits of at least the amounts set forth above.

Section 5.1.1.5 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.

Section 5.1.1.6 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.

Section 5.2 PRIMARY AND NONCONTRIBUTORY INSURANCE. The insurance required herein shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the Government of the District of Columbia.

Section 5.3 DURATION. The Contractor shall carry all required insurance until all contract work is accepted by the District of Columbia, and shall carry listed coverages for ten years for construction projects following final acceptance of the work performed under this contract and two years for non-construction related contracts.

Section 5.4 LIABILITY. These are the required minimum insurance requirements established by the District of Columbia. **HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE WILL NOT IN ANY WAY LIMIT THE CONTRACTOR'S LIABILITY UNDER THIS CONTRACT.**

Section 5.5 CONTRACTOR'S PROPERTY. Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.

Section 5.6 MEASURE OF PAYMENT. The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.

Section 5.7 NOTIFICATION. The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. The

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

Section 5.8 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:
Franklin Austin, CPPB, CPM/Department of General Services
2000 14th Street, NW, 8th Floor
202-727-7128
Franklin.Austin5@dc.gov/Ahmad.Stanekzai@dc.gov**

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

Section 5.9 DISCLOSURE OF INFORMATION. The Contractor agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.

Section 5.10 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 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, 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 to 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 all fees then owed to the A/E under this Agreement. 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. Unless Department fails hereunder to pay A/E therefor, 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 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 Department and A/E.

Section 7.10 Prolog. The A/E shall utilize the Department's Prolog system to submit any and all documentation required to be provided by the Contractor for the Project, including, but not limited to: (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) invoices/applications for payment (full package including all forms required by the Department); (v) certified payrolls (in addition to upload via LCP Tracker); (vi) drawings and specifications; (vii) punchlist; and (viii) other documents as may be designated by the Department. The A/E shall also require all subcontractors and subconsultants to utilize prolog for the Project.

Section 7.11 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 professional services pursuant to this Agreement.

Section 7.12 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, subconsultants, made in order to provide the services required of the A/E under this Agreement.

Section 7.13 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 7.14 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 Contract 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 – 8th Floor
Washington, DC 20009

If to the A/E:

Insert
Insert
Insert
Insert
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). 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 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 the government, including the prescriptions set forth in D.C. Code § 2-308.14.

Section 8.3 Retention of Records: Inspections and Audits. The A/E shall maintain books, records, documents and other evidence directly pertinent to performance under the Agreement in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Agreement.

Section 8.3.1 The A/E shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Department and the required cost submissions in effect on the date of execution of the Department.

Section 8.3.2 The Department, the District of Columbia government, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall

have access to the books, records, documents and other evidence held, owned or maintained by the A/E for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the A/E. The A/E shall provide proper facilities for such access and inspection.

Section 8.3.3 The A/E agrees to include the wording of this Section 8.3 in all its subcontracts in excess of five thousand dollars (\$5,000.00) that directly relate to Project performance.

Section 8.3.4 Audits conducted pursuant to this Section 8.3 will be in accordance with generally accepted auditing standards with the results prepared in accordance with generally accepted accounting principles and established procedures and guidelines of the applicable reviewing or audit agency.

Section 8.3.5 The A/E agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the A/E, the auditing agency will afford the A/E an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

Section 8.3.6 The A/E shall preserve all records described herein from the effective date of the Agreement completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

Section 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 Contract, 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 Contract.

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, nor the Department nor 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 Contracting Officer 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 of the Department to fulfill financial obligations pursuant to this 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.

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 8.7 Reserved.

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.

Section 8.12.1 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:

- a. Employment, upgrading, or transfer;
- b. Recruitment or recruitment advertising;
- c. Demotion, layoff, or termination;
- d. Rates of pay, or other forms of compensation; and
- e. Selection for training and apprenticeship.

Section 8.12.2 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 of this Section concerning non-discrimination and affirmative action.

Section 8.12.3 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, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

Section 8.12.4 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, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

Section 8.12.5 The A/E shall include in every subcontract the equal opportunity clauses of this Section so that such provisions shall be binding upon each Subcontractor or vendor.

Section 8.12.6 The A/E shall take such action with respect to any Subcontractor as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for non-compliance.

Section 8.13 RESERVED

Section 8.14 Interpretation. 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 the design and construction administration of the Project. If there is any inconsistency among the documents comprising 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. In carrying out all its obligations under the Agreement, the A/E shall be acting as an independent contractor, and not as an employee or agent of the Department, or joint venture or partner with the Department. The A/E shall have exclusive authority to manage, direct, and control the Work, and shall be responsible for all construction means, methods, techniques, sequences, and procedures, as well as for Project safety.

Section 8.16 Confidential Information. In the course of the A/E's performance of the work pursuant to this Agreement, 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 nor 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, 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 8.22 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 Agreement.

Section 8.26 Entire Agreement; Modification. 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 and supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to the Agreement shall be effective against the Department unless made in writing signed by both the Department and the A/E, unless otherwise expressly provided to the contrary in the Agreement. Notwithstanding the foregoing, nothing herein shall be construed to limit the Department's ability to unilaterally modify the Agreement.

Section 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.*, for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before:

- a. the 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 8.28.1.2 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 8.28.2 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 Agreement:

- 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 Agreement; or
- b. Notify the District 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% 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 of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

Section 8.28.3 Subcontract flow-down requirements

Section 8.28.3.1 The A/E shall include in each subcontract under this Agreement 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 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 Contracting Officer; 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 contracting officer; and

Section 8.28.4.3 The Department, A/E, prime contractor, or subcontractors are prohibited from declaring another party to the Agreement 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 8.29 General Conditions. To the extent that this Agreement is silent on an action or requirement of the A/E, and current as of the date of this Agreement the Standard Contract Provisions for Architectural and Engineering Services (**Exhibit G**) shall govern the A/E's obligations with respect to such action or requirement under this Agreement.

ARTICLE 9 ECONOMIC INCLUSION

Section 9.1 LSDBE Utilization.

Section 9.1.1 If the A/E subcontracts any services or work under the Agreement, at least 35% of the dollar value of this Agreement shall be subcontracted to small business enterprises ("SBE"s) and the A/E must submit a subcontracting plan in accordance with D.C. Official Code § 2-218.46. The subcontracting plan (**Exhibit L**) should have been submitted as part of the A/E's Proposal and may only be amended with the prior written approval of a Contracting Officer and the Director of the Department of Small and Local Business Development ("DSLBD").

Section 9.1.2 Mandatory Subcontracting Plan and Requirements.

Section 9.1.2.1 Unless the Director of the DSLBD has approved a waiver in writing, in accordance with D.C. Official Code § 2-218.51, for all contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted to qualified SBEs.

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

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

Section 9.1.2.4 Except as provided in 9.1.2.5 and 9.1.2.6, an A/E that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization

and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

Section 9.1.2.5 An A/E that is a certified joint venture and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A certified joint venture prime contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

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

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

Section 9.1.2.8 Subcontracting Plan

If the A/E is required by law to subcontract under this Agreement, then the subcontracting plan submitted with its Proposal, may only be amended with the prior written approval of the Contracting Officer and Director of DSLBD, as previously stated herein; and, any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the Subcontracting Plan shall inure to the benefit of the District. The Subcontracting Plan shall include the following:

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

Section 9.1.2.9 Copies of Subcontracts

Within twenty-one (21) days of the date of award, the A/E shall provide fully executed copies of all subcontracts identified in the subcontracting plan to the Contracting Officer (CO), City Administrator (CA), District of Columbia Auditor and the Director of DSLBD.

Section 9.1.2.10 Subcontracting Plan Compliance Reporting

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

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

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

Section 9.1.2.11 Annual Meetings

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

Section 9.1.2.12 DSLBD Notices

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

Section 9.1.2.13 Enforcement and Penalties for Breach of Subcontracting Plan

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

Section 9.1.2.13.2 A contractor that is found to have breached its subcontracting plan for utilization of CBEs in the performance of a contract shall be subject to the imposition of penalties, including monetary fines in accordance with D.C. Official Code § 2-218.63.

Section 9.1.2.14 If the CO determines the A/E's failure to be a material breach of the contract, the CO shall have cause to terminate the contract under the default provisions in **Article 8 of the SCP, Default.**

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

Section 9.2 Equal Employment Opportunity and Hiring of District Residents

Section 9.2.1 The A/E shall comply with applicable laws, regulations and special requirements of the Agreement 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 9.2.2 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. A copy of the First Source Employment Agreement and Plan is attached as **Exhibit E**. This percentage shall be applied in the aggregate, and not trade by trade. In addition, the A/E shall use commercially reasonable best efforts to comply with the workforce percentage goals established by the recently adopted amendments to the First Source Employment Agreement Act of 1984 (D.C. Code §§ 2-219.01 *et seq.*) and any implementing regulations, including, but not limited to the following requirements:

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

Section 9.2.3 Intentionally Omitted

Section 9.2.4 Thirty five percent (35%) of all apprentice hours worked on the Project shall be worked by District residents.

Section 9.3 Economic Inclusion Reporting Requirements

Section 9.3.1 Upon execution of the Agreement, the 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 9.3.2 The A/E and its constituent entities shall comply with subchapter X of Chapter II of Title 2 of the D.C. Code, 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, and all successor acts thereto and the rules and regulations promulgated thereunder.

Section 9.3.3 The A/E shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

Section 9.3.4 The A/E shall be responsible for: (i) including the provisions of Section 9.3 in all subcontracts; (ii) collecting the information required in Section 9.3 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 9.3.

Section 9.4 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. Service Contract Wage Schedules are available at wdol.gov, **Exhibit F**. Notwithstanding the terms of the Standard Contract Provisions for Architectural and Engineering services, the Davis-Bacon Act is not applicable to this Agreement.

Section 9.5 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 I**, as amended (codified at D.C. Official Code §§ 2-220.01 et seq.) and its implementing regulations.

Section 9.6 Apprenticeship Act. The D.C. Apprenticeship Act of D.C. Law 2-156, (as amended, the Act) may apply to these Projects. As applicable, the A/E firms and its subcontractors selected to perform work on the Projects on a craft-by-craft basis may be required to comply with the Act. If applicable, all terms and conditions of the D.C. Apprenticeship Council Rules and Regulations shall be implemented, and the selected A/E firms shall be liable for any subcontractor non-compliance.

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 Work, 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 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 Design Fee to which it believes it is entitled as a result of the Change Directive. If additional time is sought, a schedule analysis supporting the requested extension should be included. The schedule analysis should include a written narrative explanation. If a change in the 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 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 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 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 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 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 Design Fee shall be limited in accordance with that Section 10.3.

Section 10.6 Changes to Design Fee. Subject to the condition precedent that the A/E have complied with the notice and documentation provisions of this Article, and subject to the limitations stated in this Agreement, the A/E is entitled to an adjustment to the 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 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 herein. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Contract and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

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 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 13
EXHIBITS**

- Exhibit A** Key Personnel
- Exhibit B-1** Facility Condition/Assessment Report
- Exhibit B-2** Drawings
- Exhibit C** Schedule of Values
- Exhibit D** Hourly Rate
- Exhibit E** First Source Employment Agreement and Employment Plan
- Exhibit F** Service Contract Act Wage
- Exhibit G** Standard Contract Provisions, Architectural & Engineering Services
- Exhibit H** Equal Employment Opportunity
- Exhibit I** 2019 Living Wage Act
- Exhibit J** SBE Subcontracting Plan

IN WITNESS WHEREOF, the Parties' duly authorized representatives have executed this Agreement (DCAM-19-AE-0006) as of the dates signed below:

**DEPARTMENT OF GENERAL [A/E]
SERVICES**, an agency within the executive
branch of the Government of the District of
Columbia

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

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

Exhibit A
Key Personnel

Exhibit B1
Facility Assessment/ Condition Report

Exhibit B2
Drawings

Exhibit C
Schedule of Values

Exhibit D
Hourly Rate

Exhibit E
First Source Employment Agreement and Employment Plan

Exhibit F
Service Contract Act Wage

Exhibit G
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Equal Employment Opportunity

Exhibit I
2019 Living Wage Act

Exhibit J
SBE Subcontracting Plan