

AGREEMENT FOR DESIGN-BUILD SERVICES

BY AND BETWEEN

**DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES**

AND

[CONTRACTOR]

RANDALL/LANGDON PARK POOL AND POOL HOUSES

CONTRACT NUMBER: [_____]

**AGREEMENT FOR DESIGN-BUILD SERVICES
RANDALL/LANGDON PARK POOL AND POOL HOUSES
CONTRACT NUMBER: DCAM-16-CS-0133**

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

A. PROJECT INFORMATION

Project Name: [_____] (the “Project”)
Lump Sum Amount: [_____] (\$[_____])
Substantial Completion Date: May 6, 2017
Project Manager: [_____]
Liquidated Damages: [_____] Dollars (\$[_____]) per calendar day

B. ATTACHMENTS

Exhibit A: Narrative Scope of Work & Schematic Design Documents
Exhibit B: Schedule of Values
Exhibit C: Deliverable List
Exhibit D: CBE/LSDBE Utilization Plan
Exhibit E: List of Allowances
Exhibit F: Key Personnel
Exhibit G: Davis Bacon Act Wage Determination
Exhibit H: Workforce Utilization Plan
Exhibit I: Design-Builder’s Designated Representative
Exhibit J: Standard Contract Provisions

C. TERMS & CONDITIONS

SECTION 1 GENERAL PROVISIONS

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

describe the Design-Builder's actions or duties that term shall refer to the level of competence customarily possessed by those Design-Builders that construct similar facilities in large, urban areas.

Section 1.2 Project Description. In general, the Project includes design-build services for [PROJECT DESCRIPTION]. The Design-Builder shall advance the design for the Project, to obtain any required permits, and construct the approved design no later than May 6, 2017.

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

Section 1.4 Program Manager. The Department has engaged a Program Manager (or "PM") to provide certain program management functions. Such Program Manager shall, at all times, be acting solely for the benefit of the Department, not the Design-Builder. **The Program Manager shall not be authorized to modify any of the rights or obligations of the Department or the Construction Manager pursuant to this Contract, or to issue Change Orders or Change Directives. The Design-Builder hereby acknowledges and agrees that only a duly authorized contracting officer shall have the authority to issue Change Orders or Change Directives on the Department's behalf. As of the date that this Agreement is signed, the Department's duly authorizing contracting officers are Christopher Weaver, Yinka Alao, and James Marshall.** Unless otherwise provided herein, all deliverables hereunder shall be submitted to the PM.

Section 1.5 Prolog. The Design-Builder shall utilize the Department's Prolog system to submit any and all documentation required to be provided by the Design-Builder for the

Project, including, but not limited to, (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) proposed Changes; and (v) applications for payment.

Section 1.6 Deliverables. Attached as **Exhibit C** is a list of deliverables required from the Design-Builder. This list is attached for the convenience of the parties and does not limit the Design-Builder's obligations set forth herein. Unless an otherwise larger liquidated damages amount for any particular deliverable is set forth in this Agreement or the Exhibits thereto, it is understood and agreed that should that Design-Builder fail to deliver any such deliverable by the due date the Administrative Liquidated Damages set forth in the Standard Contract Provisions shall apply.

Section 1.7 Conformance with Laws. It shall be the responsibility of the Design-Builder to perform the Contract in conformance with the Department's Procurement Regulations (5 DCMR § 3900 et seq.) and all statutes, laws, codes, ordinances, regulations, rules, requirements and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Design-Builder to determine the Procurement Regulations, statutes, laws, codes, ordinances, regulations, rules, requirements and orders that apply and their effect on the Design-Builder's obligations thereunder. This Section 1.7 shall apply during both the Preconstruction and the Construction Phases.

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

Section 1.9 Working with Others. In setting the Project Schedule and prosecuting the construction work, the Contractor shall be responsible to coordinate and cooperate with the Architect, the Department, utility companies and other third parties regarding the Contract work, including, but not limited to, the lead time required for assembling crews, ordering materials, the deployment of its forces, and completion of construction activities, such that the Project reaches Substantial Completion and Final Completion in accordance with the terms of this Agreement. The Contractor may not charge any costs or submit any claims to the Department for inconvenience, inefficiency, hindrance or delay caused by the Architect, utility companies or any other third parties. The Contractor warrants and represents that it has accounted for its coordination efforts in the development of its Baseline Schedule. The Contractor acknowledges and agrees that the Department does not assume any responsibility for work performed by third parties in connection with the Project.

SECTION 2 DESIGN AND PRECONSTRUCTION PHASE

Section 2.1 Program Verification & Concept Design Phase.

Section 2.1.1 Services & Deliverables. During this phase, based on the approved Program of Requirements, the Design-Builder shall be required to develop a concept design. The concept design shall contain such detail as is typically required for a concept design under the standard AIA contract. In general, the Design-Builder shall be required to undertake the following tasks and submit any required deliverables to the Department:

- .1 Meet with the Department's Project Team to kick-off the project. The purpose of this meeting will be to review the project scope, schedule, goals and objectives, and expectations for the project. The Design-Builder will also collect and present any data available for the Project and study area including, but not limited to previously completed studies, current survey data, aerial photography, GIS data, etc. Complete a Meeting Summary from this meeting and distribute to meeting attendees for review.
- .2 Conduct workshops with DGS and DPR staff, as well as other stakeholders, in order to further clarify the goals, objectives, performance targets, service standards, responsibilities, and key agency actions necessary throughout the Department in order to fully realize the vision for the new recreation center. Provide report of findings.
- .3 [Coordinate with the DC Historic Preservation Office/HPRB and other agencies, commissions, groups, etc. as required to assess and determine historic and/or archeological significance and requirements. Attend meetings and hearings if necessary.]
- .4 Draft Conceptual Design Plans
 - a. Based on input obtained through the process outlined in the project scope of work, as well as information provided in the Program of Requirements, Stakeholder Interviews, and Public Workshop, the Design-Builder will work to determine the Concept Design.
 - b. Develop up to three (3) conceptual designs and cost estimates for the Project that provide alternatives to addressing the needs identified. The Design-Builder will make any appropriate modifications based on DGS comments prior to presenting the concept(s) to the public.
- .5 The Design-Builder will conduct a Community Workshop to present the plan alternatives to the neighborhood.
- .6 Draft Final Conceptual Design Plan. The Design-Builder will develop a draft final conceptual plan and cost estimate informed by the comments obtained throughout the program verification and concept design process. Submit the draft final conceptual site plan/response and cost estimate to DGS for review before presenting it to the public. The Design-Builder will make any appropriate modifications prior to presenting the concepts to the public.

Section 2.3 Schematic Design Phase.

Section 2.3.1 Services & Deliverables. During this phase, based on the approved concept design, the Design-Builder shall be required to develop a schematic design. The schematic design shall contain such detail as is typically required for schematic design under the standard AIA contract. In general, the Design-Builder shall be required to undertake the following tasks and submit to the Department:

- .1 Utilize findings and final concept plans, perform site visits as necessary, attend and/or facilitate meetings with stakeholders and District staff to review program of requirements, required utilities, drainage, zoning and traffic needs where/when necessary to develop Schematic Design Documents.
- .2 Obtain and review applicable District standards and guidelines for design (Design Criteria Manual, Unified Development Code, DPR Standards), where applicable, and provide a complete design that meets all applicable District codes. Coordinate security requirements with DC PSPD. Coordinate IT and Telecom requirements with DC OCTO and DC Net, if necessary. Coordinate with CFA/NCPC for review and approval as necessary.
- .3 [Coordinate with the DC Historic Preservation Office and other agencies, commissions, groups, etc. as required to assess and determine historic and/or archeological significance and requirements. Attend meetings and hearings if necessary.]
- .4 Attend and participate in community meeting(s) to update community regarding the Project.
- .5 Prepare a presentation and provide a minimum of three (3) presentation boards for each community meeting and present/display onsite. Presentation boards shall be in full color and include at least one (1) 3-D rendering.
- .6 [LEED Certification work as required].
- .7 Prepare and submit three (3) hard-copy sets, and one (1) electronic copy in PDF, of Schematic Design Documents, Preliminary Specifications, Schematic cost estimate to the Project Manager for review and approval (30% plan review). Components to include, but are not limited to:
 - a. Site plans, paving layouts, traffic circulation
 - b. Floor plans, building circulation, ADA requirements
 - c. Design Narrative
 - d. Plan-to-Program Comparison
 - e. Exterior elevations, rendering and color palette
 - f. Critical building sections and details
 - g. Relevant right of way information such as easements, building set-backs etc.
 - h. Location of utilities and sizes

- i. Stormwater management
 - j. Preliminary MEP systems
 - k. LEED Information as appropriate
 - l. Copies of all surveys and reports
 - m. Updated schedule and cost estimate
- .8** After receiving schematic design comments, meet and coordinate as necessary with:
- a. Owner, stakeholders, and all relevant regulatory or reviewing agencies as necessary to review project requirements.
 - b. Pepco, DC Water, DDOE and all others as necessary for infrastructure and utility requirements.
 - c. Private utilities and service providers if necessary
- .9** Respond in writing to all Department comments on plans.
- .10** Act as scribe for all design related meetings. Distribute meeting minutes to all attendees.
- .11** Perform comprehensive Value Engineering effort (VE) utilizing 30% Plan Review submission. Provide report of findings to DGS. Conduct a meeting with DGS and other stakeholders as necessary to present and discuss VE options.
- .12** Upload all design documentation and deliverables as required utilizing the online DGS Project Management Information System (Prolog Converge) and guidelines.

Section 2.4 Design Development Phase.

Section 2.4.1 Services & Deliverables. During this phase, the Design-Builder will be required to progress the approved schematic design into a full set of design development documents. In general, the Design-Builder shall be required to undertake the following tasks and submit to the Department:

- .1** Perform site visits as necessary and attend/facilitate meetings with District staff as necessary to develop and progress Design Development Documents. Incorporate VE options chosen by DGS.
- .2** [Coordinate with the DC Historic Preservation Office and other agencies, commissions, groups, etc. as required to assess and determine historic and/or archeological significance and requirements. Attend meetings and hearings if necessary.]
- .3** Complete code compliance analysis and drawing.

- .4** Meet and coordinate with regulatory, reviewing, and stakeholder agencies as necessary.

 - a. Present the design to CFA, NCPC, Office of Planning, and other regulatory agencies as required.
- .5** [Progress LEED Certification work as required

 - a. Register the Project with USGBC to obtain LEED certification and pay all registration fees.]
- .6** Prepare and submit three (3) hard-copy sets, and one (1) electronic copy in PDF of Design Development Documents including Detailed Specifications, Cost Estimate and schedule to the District staff for review and approval (60% plan review). Components to include, but are not limited to:

 - a. Site plans, paving layouts, traffic circulation, lighting, signage and utilities
 - b. Floor plans, Structural, Civil, Architectural, MEP, Fire Protection and landscaping
 - c. Exterior elevations, rendering and color palette
 - d. Building sections and details as required
 - e. Interior elevations, casework and millwork elevations as required
 - f. Stormwater management
 - g. Food service or other equipment as required
 - h. [LEED Information as appropriate]
- .7** Respond in writing to all Department comments on plans.
- .8** Coordinate furniture, fixtures, and equipment requirements (“FF&E”).
- .9** Attend and participate in community meeting(s) to update community regarding the Project.
- .10** Prepare a presentation and provide a minimum of three (3) presentation boards for each community meeting and present/display onsite. Presentation boards shall be in full color and include at least one (1) 3-D rendering.
- .11** Coordinate final utility plans as required.
- .12** Act as scribe for all design related meetings. Distribute meeting minutes to all attendees.
- .13** Upload all design documentation and deliverables as required utilizing the online DGS Project Management Information System (Prolog Converge) and guidelines.
- .14** Statement of constructability within ten (10) days of the conclusion of the Design

and Preconstruction Phase, executed by both the Design-Builder and the Department.

Section 2.5 Construction Documents Phase.

Section 2.5.1 Services & Deliverables. The Design-Builder shall be required to develop a complete set of documents for construction. In general, the Design-Builder shall be required to undertake the following tasks and submit to the Department:

- .1 Progress design and Design Development documents and prepare Construction Documents.
- .2 [Progress LEED Certification work as required.]
- .3 Coordinate with the DC Historic Preservation Office and other agencies, commissions, groups, etc. as required to assess and determine historic and/or archeological significance and requirements. Attend meetings and hearings if necessary.
- .4 Submit three (3) hard-copy and one (1) electronic PDF copy of all Construction Documents and Specifications to the Department for its review and approval.
- .5 Attend follow up meetings and coordinate with regulatory agencies, Fire Marshall, DGS Facilities personnel, and others as necessary.
- .6 Obtain all required signatures on plans.
- .7 Complete Platting and record Plat.
- .8 Complete final coordination with utilities and service providers as necessary.
- .9 Attend and participate in community meeting(s) to update community regarding the Project.
- .10 Prepare a presentation and provide a minimum of three (3) presentation boards for each community meetings and present/display onsite. Presentation boards shall be in full color and include at least one (1) 3-D rendering.
- .12 Submit appropriate number of copies of plans to applicable DC regulatory agencies for permit review.
- .13 Coordinate with all DC regulatory agencies and permit reviewers as necessary.
- .14 An Environmental Impact Screening Form (EISF) will be required and shall be the responsibility of the Design-Builder.

- .15 Correct plans to reflect issues noted by regulatory agencies and permit reviewers as required. Re-submit for additional review and approval as required. Provide three (3) hard-copy sets and one electronic PDF copy of all corrected plans to DGS (100% Construction Documents) (“Bid Set”).
- .16 Act as scribe for all design related meetings. Distribute meeting minutes to all attendees.
- .17 Certificate of Substantial Completion executed by the Program Manager and submitted to the Contracting Officer for verification, concurrence and approval.
- .18 Upload all design documentation and deliverables as required utilizing the online DGS Project Management Information System (Prolog Converge) and guidelines.
- .19 If Archeological monitoring is required, Design Builder is responsible for hiring a 3rd party Archeological Consultant to monitor and document the project.

Section 2.6 Project Schedule. The Design-Builder has developed a preliminary schedule for the Project, a copy of which is attached hereto as **Exhibit K.** During the Preconstruction Phase, the Design-Builder shall monitor the Project’s progress and promptly notify the Department of any delays, regardless of their cause, the causes of such delays, and the Design-Builder’s best projection of the effect of such delays on the Substantial Completion, and Final Completion of the Project. The Department's receipt of, and lack of objection to, any schedule update showing Substantial or Final Completion later than the scheduled Substantial or Final Completion Date shall not be regarded as the Department’s agreement that the Design-Builder may have an extension of time, or as a waiver of any of the Department’s rights, but merely as the Design-Builder’s representation that, as a matter of fact, the Project may not be completed by the applicable Substantial or Final Completion Date. The Project Schedule shall be maintained and continuously updated during the Preconstruction and Construction Phases.

Section 2.7 Trade Bids.

Section 2.7.1 Subcontractors and Suppliers; Bidding Procedures. The Design-Builder shall seek to develop subcontractor interest in the Project. No later than two (2) weeks prior to the date the Design-Builder anticipates issuing the Bid Set to trade subcontractors for bid, the Design-Builder shall provide to the Department and its Program Manager a written submission on the proposed bidding procedures. Such procedures shall include: (i) a list of proposed trades packages; (ii) a list of at least three (3) trade subcontractors that will be invited to bid on each such package; and (iii) a narrative description of the bidding process.

Section 2.7.2 Bidding. Following the Department’s approval of the Bid Set, the Design-Builder shall solicit bids from trade subcontractors and suppliers based on the Bid Set. The Design-Builder shall obtain a minimum of three (3) bids for each trade package unless such package has an expected value of less than One Hundred Thousand Dollars (\$100,000) or the Department approves otherwise. In addition to the information normally required in such bids, the Design-Builder shall also require subcontractors to provide an estimate of the percentage of

labor hours performed in completing the subcontracted work which will be performed by District residents.

Section 2.7.3 Workforce and LSDBE Utilization. The Department requires that (i) District of Columbia residents and (ii) Local, Small and Disadvantaged Business Enterprises (“LSDBEs”) participate in this project to the greatest extent possible. To that end, the Design-Builder shall meet the goal of (i) the minimum percentage of labor hours for the Project required to be performed by District of Columbia residents (such requirement, the “Workforce Utilization Requirement”) as set forth in the RFP and (ii) **must perform at least thirty five percent (35%) of the contracting effort with Design-Builder’s own forces, and if Design-Builder subcontracts any work, thirty five percent (35%) of the subcontracted effort must be subcontracted to LSDBEs.** The LSDBE certification shall be, in each case, as of the effective date of the subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal. The Design-Builder has developed a Utilization Plan in compliance of these requirements, attached hereto as **Exhibit D.** The Design-Builder shall comply with the terms of the Workforce Utilization Requirement and Utilization Plan in making purchases and administering its Subcontracts and Supply Agreements.

Section 2.7.4 Bid Tab. The Design-Builder shall provide to the Department tabulations of the trade bids received. Such bid tabulations shall include, in addition to pricing information, Utilization information, as defined in Section 2.7.3. The Design-Builder represents and warrants that the bid tabs so submitted shall fairly represent the results of the subcontractor bidding process and that the Design-Builder shall not misrepresented any such data to the Department or its Program Manager. The Design-Builder shall forfeit its Preconstruction Fee in the event it fails to solicit bids or provide bid tabulations as set forth in this Section 2.7.

Section 2.8 Value Engineering. Based on the trade bids received, the Design-Builder shall prepare a written report of suggested value engineering strategies necessary to reconcile the costs of constructing the Project with the Lump Sum Price. The Design-Builder shall meet with the Department’s representatives for review and approval by the Department of any value engineering and changes in scope necessary to ensure that the programmatic requirements and performance specifications are met and that the Lump Sum Price is not exceeded. Based on these discussions, the Design-Builder shall complete any revisions to the design documents and prepare any additional drawings, without increase to the Design Fee, necessary to complete the Project.

Section 2.9 Preconstruction Services. The Design-Builder shall provide such preconstruction services as are necessary to properly advance the Project. These services shall include, but are not necessarily limited to, scheduling, cost estimating, shop-drawings, and, if authorized, ordering of long-lead materials.

The following deliverables are required during the Design and Preconstruction Phase. The Design-Builder acknowledges that the Department is engaging the Design-Builder to provide an extensive level of preconstruction support services so as 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 required under this Section 2.9 are key to realizing the value of such

services. In the event that the Design-Builder fails to provide any deliverable listed below, the Design-Builder shall forfeit its Preconstruction Fee. The Design-Builder shall also be subject to liquidated damages in an amount of Five Thousand Dollars (\$5,000) plus Five Hundred Dollars (\$500) per day after receiving written notice from either the COTR or the Contracting Officer of failure to submit such report.

- .1 Project Schedule
- .2 List of Long Lead Items that could adversely impact the Project's schedule and recommendations for purchase.
- .3 Concept Cost Estimate and Concept Designs.
- .4 Schematic Cost Estimate and Schematic Design (30% submission).
- .5 Design Development Cost Estimate and Design Development Documents (60% submission).
- .6 Construction Documents Cost Estimate and Construction Documents (90% submission)
- .7 Construction Documents, including 90% plan review responses (95% submission)
- .8 Construction Documents (100% submission)
- .9 List of subcontractors from which the Design-Builder intends to solicit bids and bidding procedure.
- .10 Trade bid tabulations, including all subcontractor proposals.
- .11 Report outlining value engineering strategies.
- .12 Lump Sum Price Proposal
- .13 Construction Phase Baseline Schedule
- .14 Statement of constructability within ten (10) days of the conclusion of the Design and Preconstruction Phase, executed by both the Design-Builder and the Department.

If the Department so determines, it may direct the Design-Builder to purchase certain long lead items prior to commencement of the Construction Phase. In the event the Department issues any such directive, the Design-Builder shall make such purchases as the agent for the Department and any such subcontracts or purchase orders shall be assignable to the Department in the event the Department terminates this Agreement.

Section 2.10 Permits. The Design-Builder shall be responsible for securing and paying for the building permit for the Project. The Design-Builder shall secure and pay for any other permits, governmental fees, licenses and inspections necessary for the execution the work and to complete the Project. The Department shall cooperate with the Design-Builder in securing such permits, licenses and inspections; provided however, the Department shall not be required to pay the fees for such permits, licenses and inspections unless otherwise noted herein. An allowance in the amount of [] Dollars (\$[]) is included in the Lump Sum Price for the costs of the building permit.

Section 2.11 Notices. The Design-Builder shall comply with and give notices required by agencies having jurisdiction over the Work. If the Design-Builder performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall assume full responsibility for such Work

and shall bear the attributable costs. The Design-Builder shall promptly notify the Department in writing of any known inconsistencies in the Drawings and Specifications with such governmental laws, rules and regulations.

Section 2.12 Letter Contract. The Department and the Design-Builder entered into a letter contract dated [DATE] (the “Letter Contract”). It is understood and agreed that certain of the design and preconstruction activities described above were performed while the Letter Contract was in place, and the terms of the Letter Contract shall merge into and be superseded by this Agreement upon the execution of this Agreement. For avoidance of doubt, any services provided or work performed pursuant to the Letter Contract and prior to the date that this Agreement is effective shall be governed by the terms and conditions of this Agreement.

SECTION 3 CONTRACT SUM

Section 3.1 Lump Sum Price. The Design-Builder shall be paid a Lump Sum Price in the amount set forth in the Project Information Section of this Agreement, and as more fully detailed in this Section 3.1 to Fully Complete the Project. Fully Complete shall mean to undertake all of the Work necessary to fully construct and complete the Project and execute all tasks necessary to obtain the final Certificate of Occupancy for the Project from the District of Columbia; submit final lien releases from the Design-Builder and Subcontractors and material suppliers; complete all punch list items to the Department’s approval and sign-off; and cause all representations, warranties and guarantees to be honored and otherwise fulfill all of the requirements set forth in the Contract.

3.1.1 Design Fee. For design services, the Design-Builder’s compensation shall not exceed \$[] (the “Design Fee”).]

3.1.2 Preconstruction Fee. For Preconstruction Services, the Design-Builder’s compensation shall be [] (the “Preconstruction Fee”). The Preconstruction Fee shall be the Design-Builder’s sole compensation for Preconstruction Phase Services. The Preconstruction Fee shall include, but not be limited to, amounts necessary to compensate the Design-Builder for:

- Profit
- Home Office Overhead
- Cost of preconstruction staff
- Fringe Benefits associated with staff costs
- Payroll taxes associated with staff costs
- Staff costs associated with obtaining permits and approvals during the Preconstruction Phase
- Out-of-house consultants
- Travel, Living and Relocation expenses
- Job vehicles
- Office equipment including but not limited to:
 - Computer hardware and software
 - Fax machines

- Copying machines
- Office supplies
- Telephone
- Local delivery and overnight delivery costs

In the event that the Department and the Design-Builder are unable to agree upon a Lump Sum Price or schedule for the Project, the Department shall have the right to terminate the contract and assume any trade subcontracts held by the Design-Builder. In such an event, the Design-Builder shall only be entitled to 50% of the Preconstruction Fee.

3.1.3 Design-Build Fee. For Design-Build Phase Services, the Design-Builder’s compensation shall be \$[] (the “Design-Build Fee”). The Design-Build Fee, as adjusted in accordance with Section 3.1.4, shall be the Design-Builder’s sole compensation for Construction Services. The Design-Build Fee shall include, but not be limited to, amounts necessary to compensate the Design-Builder for profit, home office overhead and home office staff.

3.1.4 Project Incentives. Subject to the terms and conditions of this Agreement, the Lump Sum Price shall be increased by two percent (2%) if both of the objectives set forth below are met and shall be decreased by two percent (2%) if either or both of the objectives set forth below are not met. The objectives are as follows:

- .1 **On-Time Completion.** Substantial Completion is achieved no later than May 6, 2017.
- .2 **Cost Control.** The total amount paid to the Design-Builder for Work performed under this Contract is less than or equal to the Lump Sum Price, regardless of any increases authorized by subsequent Change Order.

In determining whether these objectives have been met, the Department will evaluate whether the stated objectives have, in fact, been achieved. This decision shall be made regardless of the reason the objectives have or have not been met, and the Design-Builder acknowledges and agrees that the Design-Builder may lose entitlement to such portion of the Lump Sum Price even if objectives are not met due to the fault of the Department, the Code Official, the utility companies, events of force majeure or otherwise.

3.1.5 Payments

Section 3.1.5.1 Payments for the Design and Preconstruction Phase Services shall be made monthly following presentation of the Design-Builder’s acceptable invoice and shall be in proportion to services performed. In no event, however, will the aggregate of the Design-Builder’s monthly invoices for Preconstruction Phase Services exceed the Design Fee or the Preconstruction Fee.

Section 3.1.5.2 Payments are due and payable in accordance with the terms and conditions of this Agreement. Amounts unpaid after the date of which payments due shall bear interest in accordance with the Quick Payment Act.

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

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

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

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

SECTION 4 CONSTRUCTION PHASE

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

Section 4.1.1 Supervision & Coordination.

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

- .1 Participate and assist in Project/Planning meetings;
- .2 Maintain full-time on-site construction supervision and provide daily inspections, quality control, monitoring, coordination of various trades, record drawings, and daily work log;
- .3 Coordinate work with any on-site DPW personnel so as to ensure that their activities are not adversely affected;
- .4 Conduct periodic progress meetings following a Design-Builder generated agenda with the Program Manager;
- .5 Provide general safety and signage and posting for the project and see that each subcontractor prepares and submits adequate safety program and monitoring throughout the project;
- .6 Obtain all job permits and approvals from the Department of Consumer and Regulatory Affairs that are required to perform and complete the Work, unless

- otherwise noted herein;
- .7 Prepare payment requests, verify accuracy and forward to Department for approval and payment;
 - .8 Assemble close-out documents required; and
 - .9 Provide assistance to the Department through all applicable warranty periods.
 - .10 Coordinate its work with all third parties so as not to delay the critical path of the Project.
 - .11 Prepare and submit to the Department construction meeting minutes, progress meeting minutes, daily logs, inspection reports, preliminary and baseline schedules, (Primavera format) and schedule updates demonstrating the critical path of the Project (Primavera format).

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

- .1 that, to the extent of the Work or supply within the Contract's scope, the Subcontractor or supplier is bound to the Design-Builder for the performance of all obligations which the Design-Builder owes the Department under the Contract;
- .2 that the Subcontractor or supplier is not in privity with the Department and shall not seek compensation directly from the Department on any third-party beneficiary, quantum meruit, or unjust enrichment claim, or otherwise, except as may be permitted by any applicable mechanic's lien law;
- .3 that the Department is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit;
- .4 that the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Design-Builder is terminated for default;
- .5 that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Design-Builder to suspend or stop work;
- .6 that the Subcontractor or supplier shall maintain records of all Work it is requested or authorized to do on a time and material or cost-plus basis, or with respect to claims that it has asserted on a time and materials or cost-plus basis, during the Project and for at least three (3) years after the Project is Substantially Complete and requiring the Subcontractor or supplier to make those records available for review or audit by the Department during that time;
- .7 that the Subcontractor and Sub-subcontractors, at all tiers, have reviewed the Construction Documents including, but not limited to, all Drawings and Specifications provided by the Design-Builder, for accuracy, constructability and

completeness and will bring any deficiency to the attention of the Department before the Subcontractor enters into a subcontract with the Design-Builder;

- .8 that the Subcontractor shall obtain and maintain, throughout the Project, workers' compensation insurance in accordance with the laws of the District of Columbia. It is understood that this provision is not applicable to supply agreements;
- .9 that, if the Department terminates the Contract for convenience, the Design-Builder may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) days' written notice to the Subcontractor or supplier, and that the Subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in the Termination for Convenience provisions in the Standard Contract Provisions;
- .10 that the Department shall have the right to enter into a contract with the Subcontractor or supplier for the same price as its subcontract or supply agreement price less amounts already paid, if the Design-Builder files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;
- .11 that the Subcontractor or supplier shall not be entitled to payment for defective or non-conforming work, materials or equipment, and shall be obligated promptly to repair or replace non-conforming work, materials or equipment at its own cost;
- .12 a provision requiring that Subcontractors and suppliers promptly pay Subcontractors and suppliers at lower tiers, imposing upon the Subcontractors and suppliers a duty to pay interest on late payments, and barring reimbursement for interest paid to lower tier Subcontractors or suppliers due to a Subcontractor's or supplier's failure to pay them in timely fashion;
- .13 a provision requiring that all Subcontractors at all tiers comply with the provisions of Section 10 (Economic Inclusion Requirements); provided, however, that the Design-Builder may, in its reasonable discretion impose a different LSDBE subcontracting goal on some or all of its Subcontractors; provided, further, however, that nothing in this provision shall be deemed to excuse the Design-Builder from using its best efforts to achieve the LSDBE subcontracting goal on an aggregate basis for the Project;
- .14 a provision which allows the Design-Builder to withhold payment from the Subcontractor if the Subcontractor does not meet the requirements of the Subcontract;
- .15 lien and claim release and waiver provisions substantially identical to those in this Agreement.

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

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

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

Section 4.6 Unsafe Materials and Hazardous Materials

Section 4.6.1 The Design-Builder shall not bring, spill or release onto the site asbestos, PCBs, or any other Hazardous Material that is not customarily used in a facility of the type and similar to the Project, and shall bring to the Department's attention any specification of such Hazardous Materials in the design documents. If the Design-Builder believes that anything in this Agreement would require that it use or bring onto the site asbestos, PCBs, or any Hazardous Material that is not customarily used in a facility of the type and similar to the Project, it shall immediately inform the Department and seek direction before proceeding.

Section 4.6.2 If Hazardous Materials are discovered on the site, the Design-Builder shall immediately inform the Program Manager and the Department of such discovery. The Design-Builder shall be entitled to submit a Change Request for any Hazardous Materials abatement and disposal work. The Design-Builder shall comply with all laws, including, without limitation, the requirements of the EPA and all jurisdictional agencies as well as all laws relating to safety, health welfare, and protection of the environment, in removing, treating, encapsulating, passivating, and/or disposing of Hazardous Materials, including, but not limited to, removal, treatment, encapsulation, passivation, and/or disposal of the Hazardous Materials. If any notices

to governmental authorities are required, the Design-Builder shall also give those notices at the appropriate times. **The Design-Builder shall ensure abatement subcontractors and disposal sites are appropriately licensed and qualified. In addition, the Design-Builder shall ensure that any subcontractors involved in the abatement of hazardous materials maintain a contractor's pollution legal liability insurance policy of at least Two Million Dollars (\$2,000,000) for the duration of the Project and a period of three (3) years after Substantial Completion of the Project, and that any disposal site to which hazardous materials are taken carries environmental impairment liability insurance for the duration of the Project and a period of three (3) years after Substantial Completion of the Project.**

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

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

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

Section 4.9 Key Personnel. To carry out its duties, the Design-Builder shall provide at least the key personnel identified in **Exhibit F** to this Agreement, who shall carry out the functions identified in the Exhibit. Among other things, the Key Personnel shall include the project managers that will be responsible for managing the Work related to the Project's structural, mechanical, electrical and special systems. It is contemplated that these project managers will work from the design stage, purchasing and throughout the bulk of the field work. The Design-Builder's obligation to provide adequate staffing is not limited to providing the key personnel, but is determined by the needs of the Project. The Design-Builder shall not replace any of the key personnel without the Department's prior written approval, which shall not be unreasonably withheld. If any of the key personnel become unavailable to perform services in connection with the Contract due to death, illness, discharge or resignation, then the Design-Builder shall promptly appoint a replacement acceptable to the Department. The Department shall be entitled to complete information on each such replacement, including a current resume of his or her qualifications and experience.

Section 4.7.2 Certain members of the Design-Builder's Key Personnel shall be subject to liquidated damages for their removal or reassignment by the Design-Builder. Those members of the Design-Builder's Key Personnel subject to the liquidated damages provisions of this Agreement shall be identified in **Exhibit F** as subject to the liquidated damages provisions. In the event there is no delineation in **Exhibit F** of those members of the Design-Builder's Key Personnel subject to the liquidated damages provisions of this Agreement, then all of the Key Personnel shall be subject to the liquidated damages provisions of this Agreement.

In each instance where the Design-Builder removes or reassigns one of the key personnel listed in **Exhibit F** as being subject to liquidated damages, other than (a) for reasons where such personnel become unavailable due to death, disability or separation from the employment of the Design-Builder or any affiliate of the Design-Builder or any affiliate of the Design-Builder, or (b) with the prior written consent of the Owner's Designated Representative, then the Design-Builder shall pay to the Department the sum of [_____] Dollars (\$[_____]) as liquidated damages and not a penalty, to reimburse the Department for its administrative costs arising from the Design-Builder's failure to provide the Key Personnel. The foregoing liquidated damage amount shall not bar recovery of any other damages, costs or expenses other than the Department's internal administrative costs.

In addition, the Department shall have the right, to be exercised in its sole discretion, to remove, replace or to reduce the scope of services of the Design-Builder in the event that a member of the Key Personnel has been removed or replaced by the Design-Builder without the prior written consent of the Department. In the event the Department exercises the right to remove, replace or to reduce the scope of services of the Design-Builder, the Department shall have the right to enforce the terms of this Agreement and to keep-in-place those members of the Design-Builder'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 Design-Builder's team approved by the Department.

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

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

Section 4.12 Close-out. The Design-Builder shall be required to prepare and submit at

close-out a complete set of product manuals, warranties, etc. The Design-Builder shall also provide the Department with a complete set of its Project files, including, but not limited to, shop drawings.

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

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

Section 4.15 Correction of Work.

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

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

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

Section 4.16 Manufacturers' Warranties.

Section 4.16.1 The Design-Builder warrants that all manufacturers' or other warranties on all labor, materials and equipment furnished by the Design-Builder or a Subcontractor or supplier shall run directly to or will be specifically assigned to Department on demand or upon Project completion without demand. In the event any issue or defect which would be covered by any warranty arises but is not addressed by the grantor of the warranty, the Design-Builder shall be required to act as the guarantor of the obligations under the warranty and to perform under the terms of the warranty.

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

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

Section 4.18 Application for Substantial Completion Certificate. The Design-Builder shall apply to the Department through the Program Manager for a Certificate of Substantial Completion upon meeting the criteria set forth in Section 1.3 of this Agreement. Upon application by the Design-Builder, the Program Manager shall verify that the Design-Builder has achieved Substantial Completion, within the meaning of Section 1.3 of this

Agreement, upon which event the Program Manager shall execute such Substantial Completion Certificate, certifying to the Contracting Officer that Substantial Completion has been achieved. Upon receipt of the executed Substantial Completion Certificate from the Program Manager, the Design-Builder shall request the Program Manager to submit such Substantial Completion Certificate to the Contracting Officer for review and approval.

SECTION 5 CLAIMS FOR ADDITIONAL TIME

Section 5.1 Time is of the essence for this Contract.

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

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

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

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

.3 Delays caused by Differing Site Conditions or remediation of Hazardous Materials remediation.

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

Section 5.4 If the Design-Builder wishes to make a request for an increase in the Contract time, written notice as provided herein shall be given. The Design-Builder's written notice and request to the Department shall include an estimate of the cost and of the probable effect of delay on the progress of the Work. In the case of continuing delay, only one request is necessary. The information set forth in the Design-Builder's request, including, but not limited to any additional costs, shall be for the Department's consideration in determining whether to grant the Design-Builder's request for an increase in the Contract time and shall not be construed to entitle the Design-Builder to additional compensation or reimbursement of additional costs.

Section 5.5 Acceleration. Subject to the terms of this Section 5.5, the Department shall have the right to direct the Design-Builder to accelerate the Work if, in the reasonable judgment of Department, the Design-Builder fails to: (i) supply a sufficiency of workers or to deliver the materials or equipment with such promptness as to prevent the delay in the progress of the Work; or (ii) the progress of the Work materially falls behind the projections contained in the then currently approved Project Schedule. In the event that the Department or its Program Manager determine that either of the events specified in the preceding sentence have occurred, the Department shall provide the Design-Builder with written notice of such event and the Design-Builder shall be required to provide the Department with a corrective action plan that is reasonably designed to address the concerns raised in such notice within three (3) days after receipt of such notice. If the Department and the Design-Builder are unable to agree on the terms of such corrective action plan within five (5) days after the issuance of the notice (i.e. with forty eight (48) hours after the receipt of the proposed corrective action plan), the Department shall have the right to direct such acceleration as the Department, in its reasonable judgment, deems necessary. Provided the notice provisions of this Section are complied with, the cost of any acceleration directed under this Section shall not justify an adjustment to the Lump Sum Price or the Substantial Completion Date. The Design-Builder hereby acknowledges that this provision is a material inducement upon which the Department has relied in entering into this Agreement; and represents and warrants that it has included sufficient funding in its Lump Sum Price in order to comply with the requirements of this Section.

SECTION 6 CHANGES & MARK-UPS

Section 6.1 Changes Generally. Unless otherwise specified herein, changes to the Work shall be reviewed in accordance with the District of Columbia Department of General Services Standard Contract Provisions, General Provisions (Construction Contract), as amended, which are attached hereto as **Exhibit J** and incorporated herein.

Section 6.2 **Markups.** For Changes to the Lump Sum Price, the following conditions shall apply:

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

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

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

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

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

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

(a) **Labor.** Payment will be made for direct labor cost plus indirect labor cost such as insurance, taxes, fringe benefits and welfare provided such costs are considered reasonable. Indirect costs shall be itemized and verified by receipted invoices. If verification is not possible, up to eighteen percent

(18%) of direct labor costs may be allowed.

- (b) **Rented Equipment.** Payment for required equipment rented from an outside company that is neither an affiliate of, nor a subsidiary of, the Design-Builder will be based on receipted invoices which shall not exceed rates given in the current edition of the Rental Rate Blue Book for Construction Equipment published by Data Quest. If actual rental rates exceed manual rates, written justification shall be furnished to the Contracting Officer for consideration. No additional allowance will be made for overhead and profit. The Design-Builder shall submit written certification to the Contracting Officer that any required rented equipment is neither owned by nor rented from the Design-Builder or an affiliate of or subsidiary of the Design-Builder.

- (c) **Design-Builder's Equipment.** Payment for required equipment owned by the Design-Builder or an affiliate of the Design-Builder will be based solely on an hourly rate derived by dividing the current appropriate monthly rate by 176 hours. No payment will be made under any circumstances for repair costs, freight and transportation charges, fuel, lubricants, insurance, any other costs and expenses, or overhead and profit. Payment for such equipment made idle by delays attributable to the Government will be based on one-half the derived hourly rate under this subsection.

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

Section 6.3 Design-Builder's Designated Representative. The Design-Builder designates the individual(s) identified in Exhibit I as its representative with express authority to bind the Design-Builder with respect to all matters requiring the Design-Builder's approval or authorization. In addition, the Department retains the right to approve candidates for key on-site personnel in accordance with their experience with similar projects and local marketplace conditions. Once approved, individuals cannot be changed without the Department's prior approval. During the entire term, it is agreed that the Design-Builder's designated representative will devote his time exclusively to the Project, unless the Department consents to a reduction in time. All services provided by the Design-Builder shall be performed in accordance with the highest professional standards recognized and adhered to by Design-Builders that perform historic renovation construction services for municipal facilities.

SECTION 7 LIQUIDATED DAMAGES

If the Design-Builder fails to achieve Substantial Completion by the Substantial Completion Date, the Parties acknowledge and agree that the actual damage to the Department for the delay will be impossible to determine, and in lieu thereof, the Design-Builder shall pay to the Department, as fixed, agreed and liquidated delay damages in the amount of set forth in the

Project Information Section of this Agreement per day for each calendar day of delay for failure to meet the Substantial Completion Date. The Design-Builder and the Department agree that the liquidated damages do not constitute, and shall not be deemed, a penalty but represent a reasonable approximation of the damages to the Department associated with a delay in the Project. In the event the Design-Builder fails to meet the Substantial Completion Date for more than 50 days, the Design-Builder consents to a termination for default.

SECTION 8 INSURANCE AND BONDS

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

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

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

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

Section 8.4 All such insurance policies shall be written by a company that is rated at least A- by A.M. Best and having a surplus size rating of at least XV and is licensed/approved to do business in the District of Columbia.

Section 8.5 Performance Bond and Payment Bond. The Design-Builder shall, before commencing the Construction Phase, provide to the Department a payment bond and performance bond, each with a penal sum equal to the Lump Sum Price. Such bond shall remain in full force and effect until Final Completion is achieved and the Department shall be able to draw upon such bond regardless of the amount paid by the Department to the Design-Builder, even if such amount exceeds the penal value of such bond. All bonding companies must be included on the Department of Treasury's Listing of Approved Sureties. Unless otherwise directed by the Department, the Design-Builder shall require all Subcontractors whose Subcontract prices exceed One Hundred Thousand Dollars (\$100,000) to provide payment and performance bonds, with a penal sum equal to one hundred percent (100%) of the subcontract price. Further, the Design-Builder must deliver to the Contracting Officer copies of its subcontractor's Agreements of Indemnity. All bonds must be in a form acceptable to the Department, its lenders or bond trustee, and issued by a surety authorized to do business in the District of Columbia and bonding company listed on the United States Department of Treasury's Listing of Approved Sureties. All subcontractors' bonds must include a dual obligee rider, naming the Design-Builder and the Department as dual obligees. If the Guaranteed Maximum Price is increased pursuant to the terms of the Contract, the Department may require that the amount of the bonds be increased in the amount of one hundred percent (100%) of the increase, and the Design-Builder shall promptly comply. The Design-Builder shall furnish a copy of its bonds to any potential beneficiary of the bonds, or permit that person or company to make a copy. If the bonds provided become unacceptable to the Department, the Design-Builder shall promptly provide substitute security acceptable to the Department. If the Design-Builder intends to exercise its rights as dual obligee under any trade Subcontractor's bond, it shall first give the Department twenty (20) days written notice, so that the Department may lodge any objection it may reasonably have to the proposed action. If the Design-Builder fails to furnish evidence of such payment and performance bonds, agreements of indemnity or such additional security as set forth in this Section 10.2, within ten (10) days after written notice so to do, all payments under this Agreement will be withheld and work under this Agreement will be stopped until evidence of such bonds, additional security or agreements of indemnity is furnished.

SECTION 9 ECONOMIC INCLUSION REQUIREMENTS

Section 9.1 LSDBE Utilization. The Department requires that Local, Small and Disadvantaged Business Enterprises ("LSDBEs") participate in this project to the greatest extent

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

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

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

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

SECTION 10 MISCELLANEOUS PROVISIONS

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

Section 10.2 Governing Law. The Contract shall be governed by and construed in accordance with the laws of the District of Columbia, without regard to its conflict of laws principles.

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

regulations implementing the Davis-Bacon Act and such regulations are hereby incorporated by reference.

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

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

Section 10.6 Limitations. The Design-Builder agrees that any statute of limitations applicable to any claim or suit by the Department arising from this 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.

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

Section 10.8 Warranties and Representations

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

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

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

Section 10.9 Responsibility for Agents and Design-Builders. At all times and during both the Preconstruction and Construction Phases, the Design-Builder shall be responsible to the Department for any and all acts and omissions of the Design-Builder's agents, employees, Subcontractors, Sub-Subcontractors, material suppliers, and laborers, and the agents and employees of the Subcontractors, Sub-Subcontractors, material suppliers, and laborers

performing or supplying Work in connection with the Project. This Section 10.9 shall apply throughout the term of this Agreement.

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

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

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

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

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

[CONTRACTOR]

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

Exhibit A

Narrative Scope of Work and Schematic Design

Exhibit B

Schedule of Values

Exhibit C

Deliverable List

Exhibit D

LSDBE Utilization

Exhibit E

List of Allowances

Exhibit F

Key Personnel

Exhibit G

Davis-Bacon Wage Rates

Exhibit H

Workforce Utilization Plan

Exhibit I

Design-Builder Representative

Exhibit J

DGS Standard Contract Provisions

Exhibit K

Project Schedule