

CONSTRUCTION MANAGEMENT AT RISK AGREEMENT

**SERVICES FOR SHORT TERM FAMILY
HOUSING WARD 7 AND WARD 8**

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BY AND BETWEEN

**THE DEPARTMENT OF GENERAL SERVICES
AND**

[CONSTRUCTION MANAGER]

**CONSTRUCTION MANAGEMENT AT RISK AGREEMENT
FOR
[PROJECT NAME]**

THIS AGREEMENT (“Agreement”) is made by and between the **DISTRICT OF COLUMBIA GOVERNMENT**, acting by and through its **DEPARTMENT OF GENERAL SERVICES** (the “Department” or “DGS”) and **[CONSTRUCTION MANAGER]**, duly organized under the laws of [_____], and with a place of business at [_____] (the “Construction Manager”, and together with the Department, the “Parties”).

WITNESSETH:

WHEREAS, the Department desires to [PROJECT DESCRIPTION], the “Project”);

WHEREAS, the Department has retained [ARCHITECT] (hereinafter referred to as the “Architect/Engineer”) to develop a design for the Project and to provide Construction Administration Services;

WHEREAS, the Department issued a Request for Proposals dated [_____] (the “RFP”) to engage a construction manager to work with the Architect/Engineer as it advances the design and to construct the approved design for the Project;

WHEREAS, the Construction Manager submitted a proposal entitled [PROPOSAL TITLE] dated [_____] to complete the Project;

WHEREAS, the Department wishes to retain the Construction Manager to provide construction management services for the Project;

WHEREAS, the Construction Manager wishes to provide the construction and related services necessary to complete the Project, subject to the terms and conditions set forth in the Contract;

WHEREAS, the Department anticipates that it will assign its contract with the Architect/Engineer (the “Design Contract”) to the Construction Manager once a permit set of construction documents have been developed and a Guaranteed Maximum Price (“GMP”) is established, and that from that point forward the Construction Manager shall be responsible for both the completion of the design and for the construction of the Project;

WHEREAS, the Department desires that the Recreation Center be completed no later than [_____], (“Substantial Completion Date”);

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

WHEREAS, the Department and the Construction Manager entered into a letter contract dated [_____] (the "Letter Contract") pursuant to which the Construction Manager was authorized to proceed with certain preconstruction services in furtherance of the Project.

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

ARTICLE 1 **GENERAL PROVISIONS**

Section 1.1 Relationship of Parties. The Construction Manager accepts the relationship of trust and confidence established with the Department by this Agreement, and covenants with the Department to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect/Engineer and the Program Manager in furthering the interests of the Department. The Construction Manager 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, Architect/Engineer, Construction Manager, Program Manager, and other persons or entities employed by the Department for the Project. In performing its duties under this Contract, the Construction Manager shall at all times use the standard of care used by Construction Managers that construct state-of-the-art recreation centers in large, urban areas. Whenever the term "competent" is used herein to describe the Construction Manager's actions or duties, that term shall refer to the level of competence customarily possessed by those Construction Managers that construct state-of-the-art recreation centers in large, urban areas.

Section 1.2 Project Description. As a general description, the Project consists of Preconstruction, Construction, Abatement, and Demolition/Raze Services necessary to [PROJECT DESCRIPTION]

Section 1.3 Program Manager. The Department has hired a Program Manager to provide certain program management functions. Such Program Manager shall, at all times, be acting solely for the benefit of the Department, not the Construction Manager. **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 Construction Manager 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 T. Alao, Kimberly Gray, and James Marshall.**

Section 1.4 General Description of Construction Manager's Duties. The Construction Manager shall perform the services described in Articles 2 through 4. The Construction Manager shall supply and furnish at the location where the Work is to be performed all labor, materials, equipment, tools, services, and supervision, and shall bear all items of expense, necessary to complete and satisfactorily perform this Contract, except such items that

the Department, in this Contract, specifically agrees to supply or furnish to or for the use of Construction Manager. Any labor, materials, equipment, tools, services or supervision not specifically described in this Contract, but which may be fairly implied as required thereby or necessary to properly complete the Contract Work, shall be deemed within the scope of the Contract Work and shall be provided by Construction Manager at Construction Manager's sole expense.

The services to be provided under Article 2 constitute the preconstruction phase services that were performed by the Construction Manager (the "Preconstruction Phase Services"). Article 3 provides for the process by which the Construction Manager and the Department agreed upon a GMP for this Project. Article 4 constitutes the construction phase during which the Construction Manager shall carry-out the bulk of the construction and manage the completion of the design (the "Construction Phase Services").

Section 1.5 Warranties and Representations

Section 1.5.1 All disclosures, representations, warranties, and certifications the Construction Manager makes in its proposal in response to the RFP shall remain binding and in effect throughout the term of the Contract. The Construction Manager reaffirms that all such disclosures, representations, warranties, and certifications are true and correct.

Section 1.5.2 If any disclosure, representation, warranty or certification the Construction Manager has made or makes pursuant to the RFP or the Contract, including, without limitation, representations concerning the Construction Manager'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 1.5.3 The terms and conditions of Section 1.5 shall apply during both the Preconstruction and the Construction Phases.

Section 1.6 Responsibility for Agents and Contractors. At all times and during both the Preconstruction and Construction Phases, the Construction Manager shall be responsible to the Department, the Program Manager and the Architect/Engineer for any and all acts and omissions of the Construction Manager's agents, employees, Subcontractors, Sub-Subcontractors, material suppliers, and laborers, and the agents and employees of the Subcontractors, Sub-Subcontractors, material suppliers, and laborers performing or supplying Work in connection with the Project. This Section 1.6 shall apply during both the Preconstruction and Construction Phases.

Section 1.7 Working with Others. In setting the Project Schedule and prosecuting the construction work, the Construction Manager 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 Construction Manager 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 Construction Manager warrants and represents that it has accounted for its coordination efforts in the development of its Baseline Schedule. The Construction Manager acknowledges and agrees that the Department does not assume any responsibility for work performed by third parties in connection with the Project.

Section 1.8 Conformance with Laws. It shall be the responsibility of the Construction Manager 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 Construction Manager to determine the Procurement Regulations, statutes, laws, codes, ordinances, regulations, rules, requirements and orders that apply and their effect on the Construction Manager's obligations thereunder. This Section 1.7 shall apply during both the Preconstruction and the Construction Phases.

ARTICLE 2 **CONTRACTOR'S PRECONSTRUCTION PHASE SERVICES**

Section 2.1 Preconstruction Services. The Parties acknowledge that the Construction Manager performed certain preconstruction services under a letter contract dated [_____]. A list of preconstruction deliverables is attached hereto as **Exhibit M**. It is further understood and agreed that the Preconstruction Fee has been fully earned. It is understood and agreed that certain of the activities described in this Agreement 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.

Section 2.2 Construction Administration Plan. During the Preconstruction Phase and prior to the commencement of any trade work, the Construction Manager has met with the Department and the Architect/Engineer, and collectively, they have developed a plan for the manner in which Construction Administration Services will be provided (the "Construction Administration Plan"). Among other things, the Construction Administration Plan shall include provisions addressing: (i) where construction administration services will be provided (i.e. on or off site); (ii) the staffing level that will be devoted to construction administration services; (iii) timelines for reviewing shop drawings, RFIs, etc.; and (iv) the process by which shop drawings, submittals, RFIs, etc. will be handled. Once agreed upon by the three parties, the Architect/Engineer shall provide construction administration services in accordance with the Construction Administration Plan. As part of the Construction Administration Plan, the Construction Manager and the Architect/Engineer have developed a mutually agreeable, written submittal schedule for each package.

Section 2.3 Submittals to the Architect/Engineer. The Construction Manager shall receive submittals from trade subcontractors and will manage the submittal process, including,

but not limited to, reviewing each request for information and submittal to determine that it is in the appropriate form and that it contains the appropriate information so as to allow the Architect/Engineer to efficiently review it, monitoring adherence to the submittal schedule and keeping a log, numbering each document, and tracking the status of each submittal. The Construction Manager shall cause the Architect/Engineer to respond to each submittal within the time agreed on such schedule. In accepting assignment of the Architect/Engineer's contract, the Construction Manager expressly assumes the risk that the Architect/Engineer will process such submittals in a timely manner and in no event shall the Architect/Engineer's failure to process such submittals in a timely manner constitute an Excusable Delay.

Section 2.4 Scope of Submittal Review by Architect/Engineer. The Architect/Engineer shall review and approve or take other appropriate action upon the Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Construction Manager as required by the Contract Documents. The Architect/Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect/Engineer, of any construction means, methods, techniques, sequences or procedures. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

ARTICLE 3 **GUARANTEED MAXIMUM PRICE**

Section 3.1 General. During the Preconstruction Phase, the Department caused the Architect/Engineer to prepare a set of Drawings and Specifications upon which the Construction Manager's GMP for construction of the Project is based (such Drawings and Specifications are referred to herein as the "GMP Drawings & Specifications"). The Construction Manager acknowledges and understands that the GMP Drawings & Specifications may be incomplete, but that the GMP set forth herein is intended to represent the Construction Manager's offer to Fully Complete the Project. By entering into this Agreement, the Construction Manager hereby certifies that the GMP established herein (i) contains sufficient amounts to perform all Work necessary to Fully Complete the Project; and (ii) contains sufficient amounts to provide and construct any items or facilities that are not contained in the GMP Drawings & Specifications but which are necessary for a fully functioning, state-of-the-art recreation center facility incorporating sustainable design initiatives (LEED Silver). The Construction Manager further covenants and agrees that it will perform all of the construction work necessary to Fully Complete the Project, including, without limitation, aspects of the Work that are not shown on the GMP Drawings and Specifications but which are a logical development of the design intent reflected in the GMP Drawings and Specifications, for an amount not to exceed the GMP.

Section 3.2 Review of GMP Drawings & Specifications. The Department has selected the Construction Manager because of its special expertise in constructing similar projects. As part of the Preconstruction Phase and prior to executing this Agreement, the Construction Manager has had an opportunity to review the GMP Drawings & Specifications for accuracy, constructability and completeness and has had an opportunity to work with the Architect/Engineer and the Department's Program Manager to identify and correct any such deficiencies that may exist in the GMP Drawings & Specifications. To the extent that any such deficiencies remain in the GMP Drawings & Specifications and that such deficiencies could have been identified by a competent Construction Manager given the nature and scope of the Construction Manager's involvement, such deficiencies shall not be the basis for a change in the GMP or delaying the Project Schedule.

Section 3.3 Guaranteed Maximum Price. Subject to additions and deductions which may be made only in accordance with this Agreement, the Construction Manager represents, warrants and guarantees to the Department that the total maximum cost to be paid by the Department for Construction Manager's complete performance under the Agreement, including, but not limited to, Final Completion of all Work, all services of Construction Manager under the Agreement, and all fees, compensation and reimbursements to Construction Manager, shall not exceed the total amount of [_____] (\$[_____]) ("GMP"). Costs which would cause the GMP (as may be adjusted pursuant to the Contract Documents) to be exceeded shall be paid by the Construction Manager without reimbursement by the Department.

Section 3.3.1 Basis of GMP. The GMP is for the performance of the Work in accordance with the Contract Documents listed and attached to this Agreement and marked **Exhibits A through L**, as follows:

- .1 **Exhibit A:** A list of the Drawings and Specifications, including all addenda thereto, on which the GMP is based.
- .2 **Exhibit B:** A list of unit price allowance items and a statement of their basis; provided, however, that only such allowances as are agreed to by the Department shall be included. The allowance amounts represent all Costs of the Work of the allowance items, including, without limitation, costs of materials, labor, handling, transportation, loading and unloading and installation, as determined by Construction Manager.
- .3 **Exhibit C:** A list of the clarifications and assumptions made by the Construction Manager in the preparation of the GMP to supplement the information contained in the Drawings and Specifications. These clarifications include specific reference to any exclusions from the building components, systems, and furniture, fixtures & equipment ("FF&E") typically required for the operation of a state of the art recreation center facility. The Assumptions and Clarifications shall take precedence over the Drawings and Specifications, but shall be subordinate to the Agreement.

- .4 **Exhibit D:** The GMP budget, including a statement of the detailed cost estimate organized by trade categories, allowances, Contingency, and other items and the fee that comprise the GMP.
- .5 **Exhibit E:** A proposed Construction Phase Schedule which shall include, but not be limited to, the Substantial and Final Completion Dates, upon which the proposed GMP is based, and a schedule of the Construction Documents issuance dates upon which the Substantial and Final Completion Dates are based (the “Project Schedule”).
- .6 **Exhibit F:** An LSDBE Utilization Plan setting forth the estimated dollar volume of the work that will be perform by small, local and disadvantaged business enterprises, as certified by the Department of Small and Local Business Development, upon which the GMP is based.
- .7 **Exhibit G:** A Workforce Utilization Plan setting forth by subcontractor the percentage participation of District residents in performing the labor necessary for the Project upon which the proposed GMP is based.
- .8 **Exhibit H:** Key Personnel.
- .9 **Exhibit I:** Construction Manager’s Designated Representative
- .10 **Exhibit J:** Standard Contract Provisions.
- .11 **Exhibit K:** Form of Lien Waiver
- .12 **Exhibit L:** Davis-Bacon Wage Rates
- .13 **Exhibit M:** Preconstruction Deliverable List

Section 3.4 Design Intent; Inferable Work. The Construction Manager agrees that the GMP is based on the current state of the design. The GMP Drawings and Specifications include various clarifications and assumptions that are intended to further define the scope of Work that will be required to complete the Project. The Construction Manager has included within the GMP sufficient amounts to cover aspects of the Work that are not shown on the GMP Drawings and Specifications. If the Department does not approve any scope increase, the Construction Manager shall cause the Architect/Engineer to develop a design that is consistent with the original design intent and shall complete the Work for an amount that does not exceed the GMP.

Section 3.5 Intent, Interpretation and Correlation

Section 3.5.1 Intent of the Contract. The intent of the Contract is for the Construction Manager to perform and supply, and the Department hereby engages Construction

Manager to and Construction Manager hereby agrees to perform and supply the Work, including all necessary scheduling, procurement, supervision, construction, and management services, and supply all necessary labor, materials, equipment and related work and services necessary to Fully Complete the Work and obtain the intended results of the Contract Documents, including, but not limited to the requirements of the Project Schedule and the GMP requirements set forth in Section 3.4 above. The enumeration of particular items in the Specifications and/or Drawings shall not be construed to exclude other items. The Contract Documents are complementary, and what is required by any one of the Contract Documents (including either a Drawing or Specification) as being necessary to produce the intended results shall be binding and required as a part of the Work as if required by all Contract Documents.

Section 3.5.2 Construction Manager's Compliance with Contract Documents. The Construction Manager agrees, accepts and assumes that the Department's decision will require implementation of the most stringent requirements among any conflicting provisions of the Contract Documents as being part of the Work. The Construction Manager agrees to be bound by all decisions by the Department to implement the most stringent of any conflicting requirements within the Contract Documents. Any failure by Construction Manager to seek clarifications shall in no way limit the Department's ability to require implementation, including replacement of installed Work at a later date at Construction Manager's sole expense, to achieve compliance with the more stringent requirements. Without limiting the generality of the foregoing, the Construction Manager hereby agrees as follows:

- .1 The failure of the Department to insist in any one or more instances upon a strict compliance with any provision of this Contract, or to exercise any option herein conferred, shall not be construed as a waiver or relinquishment of the Department's right thereafter to require compliance with such provision of this Contract, or as being a waiver of the Department's right thereafter to exercise such option, and such provision or option will remain in full force and effect.
- .2 If there is any inconsistency in the Drawings or any conflict between the Drawings and Specifications, the Construction Manager shall provide the better quality or greater quantity of Work or materials, as applicable, unless the Department directs otherwise in writing.
- .3 Construction Manager shall be responsible for dividing the Work among the appropriate Subcontractors and Vendors. No claim will be entertained by the Department based upon the organization or arrangement of the Specifications and/or the Drawings into areas, sections, subsections or trade disciplines.
- .4 Detail drawings shall take precedence over scale drawings, and figured dimensions on the Drawings shall govern the setting out of the Work.
- .5 Unless the Specifications expressly state otherwise, references to documents and standards of professional organizations shall mean the latest editions published prior to the Effective Date.

- .6 Technical words, abbreviations and acronyms in the Contract Documents shall be used and interpreted in accordance with customary usage in the construction industry.
- .7 Whenever consent, permission or approval is required from any party pursuant to the provisions of the Contract Documents, such consent, permission or approval shall, unless expressly provided otherwise in this Agreement, be given or obtained, as applicable, in writing.

Section 3.6 Construction Manager's Responsibilities. The Construction Manager has been, and will continue to be, an active participant in the design process. Given such participation, the Construction Manager represents that it is familiar with the scope and quality of those aspects of the Project that have not yet been fully designed, and has taken such scope and quality matters into consideration in preparing each component of the GMP. The Construction Manager agrees to work with the Department in managing the construction and design work to complete the design process. The Construction Manager shall manage the Project, including coordinating redesign or value engineering necessary or advisable for certain aspects of the Project at any stage of the design process in order to bring the cost of such Work within or below, but not in excess of, the respective allowances or the budgeted or allocated amounts for other items contained in the GMP. Once the Drawings and Specifications are complete, it is recognized by the Construction Manager and the Department that the scope of the GMP may include Work not expressly indicated on the Contract Documents, but which is reasonably inferable from the Contract Documents, and such Work shall be performed without any increase in the GMP or extension of Contract Time, except if and to the extent otherwise expressly provided in this Agreement.

Section 3.7 Contingency. The Cost of the Work includes a Contingency, a sum established by the Department and the Construction Manager to cover, among other things costs necessary to address scope expansion that is a logical development of the design, issues arising under Section 3.2, Section 3.4 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order, such as costs that were not reasonably foreseeable as of the effective date of this Agreement, including such items as emergencies, unforeseeable changes in market conditions for materials or labor, or subsurface, soils or site conditions that were neither known nor reasonably discoverable as of the effective date of the Contract. If the Construction Manager draws on the Contingency, it shall provide written notice to the Department, identifying the amount requested and the reason for the draw. Such notice shall be provided prior to any such draw and shall update the Department regarding use of the contingency on a weekly basis. The Construction Manager shall, in subsequent required reports, show an increase in the relevant line item by the amount drawn and a decrease in the line item for the Contingency. The Construction Manager shall keep records reasonably acceptable to the Department reflecting all draws against the Contingency.

Section 3.8 Assignment of Design Contract; Design Services. The Design Contract is hereby assigned to the Construction Manager. Such assignment shall be effective as of the date this Agreement becomes effective and without need for any further documentation affecting

such transfer. The Construction Manager shall manage the design and the activities of the Architect/Engineer from the point such assignment of the Design Contract is effective.

- .1 The Construction Manager's duties in managing the Architect/Engineer contract shall include but are not limited to: (i) managing and coordinating the design work of the Architect/Engineer to ensure that the work is done in a timely manner and on schedule; (ii) directly coordinating all requests for information (RFI's) and resolving in the field where possible; (iii) ensuring that all shop drawings and submittals are coordinated; and (iv) maintaining a timely and accurate review and return of shop drawings and submittals by the Architect/Engineer.
- .2 The Construction Manager shall cause the Architect/Engineer to advance the GMP Drawings & Specifications. In advancing the GMP Drawings & Specifications, the Construction Manager and the Architect/Engineer shall ensure that the design reflects the logical development of the GMP Drawings & Specifications, subject to any necessary value engineering as agreed upon by the Construction Manager and the Department.
- .3 Notwithstanding the above, the Construction Manager shall not be responsible for performing the work of the Architect/Engineer or the aesthetic elements of the Architect/Engineer's contract.

Section 3.9 Unsafe Materials and Hazardous Materials

Section 3.9.1 The Construction Manager 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 Construction Manager believes that anything in the Contract 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 3.9.2 The Construction Manager shall abate Hazardous Materials on the site as necessary to complete the Work contemplated by this Agreement. The Construction Manager 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 Construction Manager shall also give those notices at the appropriate times. **The Construction Manager shall ensure abatement subcontractors and disposal sites are appropriately licensed and qualified. In addition, the Construction Manager 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 3.9.3 The Construction Manager shall be entitled to submit a Change Request in accordance with Article 4 of the Standard Contract Provisions in the event the Construction Manager encounters Hazardous Materials beyond those contemplated in the Contract Documents.

Section 3.9.4 The Construction Manager shall keep detailed records documenting Work done so that the Department may independently verify compliance with all laws, the number of units actually removed, treated, and/or disposed of, and the appropriate unit price(s) applicable to the Work.

ARTICLE 4
CONSTRUCTION PHASE SERVICES

Section 4.1 General. The Construction Phase shall commence upon execution of this Agreement by the Parties. The Construction Manager shall perform all of the Work necessary to construct the Project so that it is complete, safe, and properly built in strict accordance with the GMP Drawings and Specifications and the other requirements of the Contract. Without limitation, the Construction Manager shall provide all of the labor, materials, tools, equipment, temporary services, and facilities necessary to complete the construction and installation of the 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 Construction Manager further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects. The Construction Manager 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 Construction Manager shall furnish satisfactory evidence as to the type, grade and quality of materials and equipment.

Section 4.2 [Intentionally Omitted]

Section 4.3 Design and Approval Process. The Construction Manager shall complete the design of the Project so that it conforms to, and is a logical development of, the GMP Drawings and Specifications. The Construction Manager shall cause the Architect/Engineer to submit to the Program Manager copies of all construction document packages that have been issued for construction for the Department's review and approval. All such sets shall clearly identify (through "bubbling" or otherwise) changes from the GMP Drawings and Specifications. The Department shall have seven (7) days to approve the design and/or construction document packages, and if the Department takes no action within seven (7) days, the design and/or construction document packages shall be deemed approved. The Department can disapprove the design construction document packages or any changes thereto

for any reason. In the event the Department disapproves any such package, the Construction Manager shall not be entitled to a change in the GMP and/or the Substantial Completion Date unless the change being requested by the Department reflects a departure from the design intent fairly reflected in the GMP Drawings and Specifications. To the extent that the change being requested by the Department is necessary in order to preserve the design intent or functionality contemplated in the GMP Drawings and Specifications or is necessary in order to address concerns raised by the Code Official, the Construction Manager shall cause the Architect/Engineer to further revise the drawings and shall not be entitled to an adjustment to the GMP of the Substantial Completion Date by virtue of such redesign.

Section 4.4 Subcontracting and Administration

Section 4.4.1 The Construction Manager shall contract for provision of all services and materials for the Project over \$25,000 (other than Self-Performed Work which must be authorized in advance and in writing by the Department) via written subcontracts or, for contracts requiring provision of materials or equipment only, and not labor, via written supply agreements. All subcontracts and supply agreements shall include the following provisions:

- .1 that, to the extent of the Work or supply within the agreement's scope, the Subcontractor or supplier is bound to the Construction Manager for the performance of all obligations which the Construction Manager 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 Construction Manager is terminated for default;
- .5 that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Construction Manager 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 a period of time as specified in the Standard Contract Provisions 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 Architect/Engineer, for accuracy, constructability and completeness and will bring any deficiency to the attention of the Department before the Subcontractor enters into a subcontract with the Construction Manager;
- .8 that the Subcontractor shall obtain and maintain, throughout the Project, workers' compensation insurance in accordance with the laws of the District of Columbia (This provision is not applicable to supply agreements.);
- .9 that, if the Department terminates the Contract for convenience, the Construction Manager 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 of this Agreement;
- .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 Construction Manager 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 substantially similar to Section 4.4.1 of this Agreement, 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 Article 11 (Economic Inclusion Goals); provided, however, that the Construction Manager 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 Construction Manager from using its best efforts to achieve the LSDBE subcontracting goal on an aggregate basis for the Project;
- .14 a provision which allows the Construction Manager 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 4.4.2 Within seven (7) days of receiving any payment from the Department including amounts attributable to Work performed, or materials or equipment supplied, by a Subcontractor or supplier, the Construction Manager shall either pay the Subcontractor or supplier for its proportionate share of the amount paid to the Construction Manager for the Subcontractor's or supplier's Work or materials or equipment, or notify the Department and the Subcontractor or supplier, in writing, of the Construction Manager's intention to withhold all or part of the payment and state the reason for the withholding. All monies paid to the Construction Manager under the Contract shall be used first to pay amounts due to Subcontractors or suppliers supplying labor or materials for the Project and only money remaining after such payments are made may be used for other items such as the Cost of the General Conditions or the Construction Management Fee. Monies paid by the Department to the Construction Manager for Work performed, or materials or equipment supplied, by a Subcontractor or supplier shall be deemed to have been paid fully to the Subcontractor or supplier. Any interest paid to Subcontractors or suppliers because the Construction Manager has failed to pay them in timely fashion shall not entitle the Construction Manager to a Change Order.

Section 4.4.3 The Construction Manager shall not enter into any profit sharing, rebate, or similar arrangement with any Subcontractor or supplier at any tier with respect to the Project or the Work to be carried out for the Project.

Section 4.4.4 The Construction Manager shall not substitute or replace any Subcontractor or supplier approved by the Department without the Department's prior written consent.

Section 4.4.5 The Department has the right to contact Subcontractors or suppliers at all tiers or material or equipment suppliers directly to confirm amounts due and owing to them or amounts paid to them for Work on the Project, and to ascertain from the Subcontractors or suppliers at all tiers their projections of the cost to complete their Work or to supply their material or equipment, or the existence of any claims or disputes. In doing so the Department shall not issue any directions to Subcontractors or Suppliers at any tier.

Section 4.5 **Progress Meetings.** The Construction Manager shall schedule and conduct at a minimum bi-weekly progress meetings at which the Department, the Architect/Engineer, the Program Manager, the Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

Section 4.6 **Written Reports.** The Construction Manager shall provide monthly written reports to the Department with a copy to the Program Manager and the Architect/Engineer on the progress of the entire Work in accordance with Section 4.10 of this Agreement, including, but not limited to, a baseline schedule and schedule updates with narrative demonstrating the critical path of the Project in Primavera 6 format. The Construction Manager

shall also maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, major equipment on the site, Work accomplished, problems encountered and other similar relevant data as the Department may reasonably require. The log shall be available to the Department, the Architect/Engineer and the Program Manager.

Section 4.7 Cost Control System. The Construction Manager shall use a system of cost control for the Work in a format consistent with the GMP Drawings & Specifications and approved by the Department, which shall include, without limitation, regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Department, the Architect/Engineer and the Program Manager at regular intervals.

Section 4.8 Key Personnel.

Section 4.8.1 To carry out its duties, the Construction Manager shall provide at least the key personnel identified in **Exhibit H** 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 Construction Manager's obligation to provide adequate staffing is not limited to providing the key personnel, but is determined by the needs of the Project. The Construction Manager 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, disability or separation from the employment of the Construction Manager or any affiliate of the Construction Manager, then the Construction Manager 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 4.8.2 Certain members of the Construction Manager's Key Personnel shall be subject to liquidated damages for their removal or reassignment by the Construction Manager. Those members of the Construction Manager's Key Personnel subject to the liquidated damages provisions of this Agreement shall be identified in **Exhibit H** as subject to the liquidated damages provisions. In the event there is no delineation in **Exhibit H** of those members of the Construction Manager'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 Construction Manager removes or reassigns one of the key personnel listed in **Exhibit H** as being subject to liquidated damages (but excluding instances where such personnel become unavailable due to death, disability or separation from the employment of the Construction Manager or any affiliate of the Construction Manager) without the prior written consent of the Department's Designated Representative, the Construction Manager shall pay to the Department the sum of Fifty Thousand Dollars (\$50,000) as liquidated damages and not a penalty, to reimburse the Department for its administrative costs

arising from the Construction Manager'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 Construction Manager in the event that a member of the Key Personnel has been removed or replaced by the Construction Manager 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 Construction Manager, the Department shall have the right to enforce the terms of this Agreement and to keep-in-place those members of the Construction Manager'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 Construction Manager's team approved by the Department.

Section 4.9 Qualified Personnel/Cooperation. The Construction Manager shall employ on the Project only those employees and Subcontractors who will work together in harmony and who will cooperate with one another on the Project. The Construction Manager shall enforce strict discipline, good order and harmony among its employees and its Subcontractors and shall remove from the site any person who is unfit for the work or fails to conduct himself in a proper and cooperative manner. If the Department requests removal of any person as unfit or as having behaved inappropriately, the Construction Manager shall promptly comply.

Section 4.10 Monthly Reports and Biweekly Updates. On the fifth (5th) day of each month, from Notice to Proceed until Final Completion of the Project, the Construction Manager shall deliver to the Department and the Program Manager a written monthly report and a written biweekly update of each such monthly report which reports shall include the following elements:

- .1 Construction Progress Update.** Each monthly and biweekly update 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 Construction Manager'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 Construction Manager shall identify the causes of any potential delay and state what, in the Construction Manager's judgment, must be done to avoid or reduce that delay. The Construction Manager 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 reports and updates shall be in a native Primavera 6 format or the latest version thereof and reasonably acceptable to the Department. The Department may make reasonable requests during the Project for changes to the format or for further

explanation of information provided. Submission of reports or 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 Project Schedule shall not be regarded as the Department's agreement that the Construction Manager may have an extension of time, or as a waiver of any of the Department's rights, but merely as the Construction Manager'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 Water Utility Construction Phase 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.

- .2 Cost Update.** The monthly report and biweekly update shall reflect, by Guaranteed Maximum Price line item, the original line item amount, approved, pending, and projected Change Order amounts, the cost incurred to date, the projected cost to complete the Work of the line item, and any variance between the actually approved budgeted balance of the line item and the projected cost to complete. A clear distinction must be made between approved Change Orders and those merely requested or anticipated. The report shall explain all variances including "buy-outs" or final actual costs including those below their respective Guaranteed Maximum Price line item. In addition, the report must disclose any instances in which the Construction Manager has transferred amounts from one line item to another, or from the Contingency to any other line item. Neither submission of, nor the Department's failure to reject, an update reflecting that the projected cost to complete the Project will exceed the Guaranteed Maximum Price will operate to increase the Guaranteed Maximum Price or waive the Department's right to enforce the Guaranteed Maximum Price; nor shall such submission or failure to reject by the Department constitute approval of the expenditure of contingency funds or the transfer of funds from one line item to another. If the report reflects budget overruns, it must also include a recovery plan.
- .3 Economic Inclusion Report.** The monthly report and biweekly update shall include a detailed summary of the Construction Manager's efforts and results with respect to the economic inclusion goals set forth in this Agreement. Such report shall be in a format acceptable to the Department and shall include, at a minimum (i) the Construction Manager's overall performance with respect to the goals; (ii) a listing of subcontracts and agreements with material suppliers let by the Construction Manager and its Subcontractors during the month and the percentage of those subcontracts and agreements with material suppliers awarded to LSDBEs; (iii) a listing of subcontracts let by the Construction Manager and its Subcontractors during the month and the estimated percentage of the labor hours

to be worked by District of Columbia residents pursuant to those subcontracts; and (iv) a description of the major subcontracting and supply opportunities that will be solicited during the next three (3) months and the actions being undertaken to meet the subcontracting goals.

- .4 Cash Flow Update.** If there have been any changes to the anticipated cash flow for the Project, they shall be disclosed and explained in the monthly report and biweekly update. If there are no such changes, the report shall so state.
- .5 Quality Assurance Report.** The monthly report and biweekly update shall include a detailed summary of the steps that are being employed in order to ensure quality construction and workmanship. Each report and update should specifically address issues that were raised by the Department and/or its Program Manager during the prior reporting period and outline the steps that are being taken to address such issues.
- .6 Progress Photos.** The monthly report and biweekly update shall include updated progress photos that shall detail changes in the Work during such reporting period.

Section 4.11 Open Book Reporting. The Construction Manager shall maintain an open book reporting system with the Department, allowing the Department or its consultants access to the Construction Manager's Subcontractors and material suppliers, invoices, purchase orders, Change Order estimates, records for Self-Performed Work, and other relevant documentation and sources of information concerning the Work or costs. The Department shall not use its access to the Subcontractors to give instructions or directions to them. All instructions or directions shall be given only to the Construction Manager.

Section 4.12 Claims for Additional Time

Section 4.12.1 Time is of the essence for this Contract. The Construction Manager shall achieve Substantial Completion of the Project no later than [_____].

Section 4.12.2 The Construction Manager 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 4.12.3, the delay shall be deemed Non-Excusable and the Construction Manager shall not be entitled to an extension of time. Without limiting the generality of the foregoing, delays for the following reasons shall be regarded as Non-Excusable and shall not entitle the Construction Manager 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 Construction Manager 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 Construction Manager 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 Hazardous Materials Remediation shall be deemed an Excusable Delay.

Section 4.12.3 The Construction Manager 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 Construction Manager; provided, however, that in no event shall a Non-Excusable Delay or the action of the Construction Manager, or any of its employees, agents, Subcontractors or material suppliers be deemed an Excusable Delay; or
- .3 Delays caused by Differing Site Conditions or 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 Construction Manager 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 4.12.4 If the Construction Manager wishes to make a request for an increase in the Contract time, written notice as provided herein shall be given. The Construction Manager'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 Construction Manager's request, including, but not limited to any additional costs, shall be for the Department's consideration in determining whether to grant the Construction Manager's request for an increase in the Contract time and shall not be construed to entitle the Construction Manager to additional compensation or reimbursement of additional costs.

Section 4.12.5 In no event shall the Construction Manager be entitled to an increase in the GMP or the Construction Management Fee as a result of either an Excusable or Non-Excusable Delay.

Section 4.12.6 Administrative Term. This Agreement shall have an administrative term that runs from the effective date of the Notice to Proceed through the earlier of the following of: (i) [_____]; or (ii) the date the Contractor 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 Office of the Chief Financial Officer to process payments in the event any payments become due. Notwithstanding the foregoing, nothing herein shall be construed to: extend the Substantial Completion Date; extend the Final Completion Date; and, limit the Department's ability to assess liquidated damages thereon.

Section 4.13 Site Safety and Clean-Up.

Section 4.13.1 The Construction Manager will be required to provide a safe and efficient site, with controlled access. The Construction Manager shall submit to the Department for its review and approval prior to the start of the Construction Phase, the Construction Manager shall prepare a safety plan for the Construction Phase conforming to OSHA 29 CFR 1926. The Construction Manager shall abide by such safety plan during the Construction Phase. In the event the Construction Manager fails to provide such a plan, the Construction Manager will not be permitted to commence the Construction Phase until such a plan is submitted and in no event shall any resulting delay constitute an Excusable Delay.

Section 4.13.2 The Construction Manager shall be required to provide wheel washing stations on site so as to prevent the accumulation of dirt and other refuse on the streets surrounding the Project site. The Construction Manager shall also be responsible for maintaining the sidewalks adjacent to the site for the duration of the Project, to include snow removal.

Section 4.13.3 The Construction Manager shall be responsible for site security and shall be required to provide such watchman as are necessary to protect the site from unwanted intrusion.

Section 4.13.4 The Construction Manager shall be responsible for the cost of temporary power used during the construction of the Project, including, but not limited to, the cost of installing such temporary wiring as may be required to bring power to the site. The Construction Manager shall also be responsible for the cost of all temporary construction necessary on the site.

Section 4.14 Close-out & FF&E.

Section 4.14.1 The Construction Manager shall be responsible for purchasing and providing FF&E. A detailed list of FF&E requirements will be developed during the preconstruction phase.

Section 4.14.2 The Construction Manager shall be required to prepare and submit at close-out a complete set of product manuals, warranties, etc. The Construction Manager shall also provide the Department with a complete set of its Project files, including, but not limited to, shop drawings, etc., at close out so as to assist the Department and/or the District of Columbia Department of Parks and Recreation in operating the building. The Construction Manager shall prepare and submit all documents and materials contemplated by this Section 4.14.2 in accordance with “DGS Projects Turnover Protocol Manual” dated May 2013 Revision 0.0.”. In addition, at the beginning of the first heating and cooling season following turnover of the Project, the Construction Manager shall be available to assist with, and train the building engineers and staff in the start-up of the building systems for the new weather cycle.

Section 4.14.3 An allowance for cleaning and other move-in services as directed by the Department shall be included in the GMP. Such allowance is in addition to cleaning services that would otherwise be required by the Construction Manager, including, but not limited to, the obligation to deliver a broom clean building at the end of construction.

Section 4.15 Control of the Site. The Construction Manager shall take control of the site immediately after being provided notice to proceed with Construction services and shall install the necessary construction fences and other devices to properly secure the site.

Section 4.16 Salvaged and Stored Items. The Construction Manager 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 4.17 Sediment and Erosion Control. The Construction Manager shall be responsible for installing sediment and erosion control measures, inclusive of, but not limited to: silt fencing, inlet protection, stabilized construction entrances, and other control measures.

Section 4.18 Quality Control. The Construction Manager shall be responsible for all activities necessary to manage, control, and document work to ensure compliance with Contract Documents. The Construction Manager’s responsibility includes ensuring adequate quality control services are provided by the Construction Manager’s employees and its subcontractors at all levels. The work activities shall include safety, submittal management, document reviews, reporting, and all other functions related to quality construction.

The Construction Manager shall implement a Quality Control Plan for the Project. A draft of such plan shall be submitted to the Department no later than fifteen (15) days prior to the commencement of work in the field, and a final plan shall be agreed upon and approved by the Department’s Program Manager prior to commencing of the Work in the field. The Quality Control Plan shall be tailored to the specific products/type of construction activities contemplated by the GMP Drawings & Specifications, and in general, shall include a table of contents, quality control team organization, duties/responsibilities of quality control personnel, submittal procedures, inspection procedures, deficiency correction procedures, documentation process, and a list of any other specific actions or procedures that will be required for key

elements of the Work.

During the construction phase, the Construction Manager shall perform daily quality control inspections and create reports based on such inspections. The daily quality control reports shall be provided to the Department electronically on a weekly basis. The Construction Manager shall incorporate a quality control section in the progress meetings to discuss outstanding deficiencies, testing/inspections, and upcoming Work. The monthly report shall include a detailed summary of the steps that are being employed to provide quality construction and workmanship. The monthly report should specifically address issues raised during the month and outline the steps that are being used to address such issues.

Section 4.19 Prolog. The Construction Manager shall utilize the Department's Prolog system to submit any and all documentation required to be provided by the Construction Manager 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 4.20 Acceleration. Subject to the terms of this Section 4.20, the Department shall have the right to direct the Construction Manager to accelerate the Work if, in the reasonable judgment of Department, the Construction Manager 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 Construction Manager with written notice of such event and the Construction Manager 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 Construction Manager 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 GMP on the Substantial Completion Date. The Construction Manager 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 GMP in order to comply with the requirements of this Section.

Section 4.21 Corrective Action Plan. Subject to the terms of this Section 4.21, the Department shall have the right direct the Construction Manager to revise the provisions of its Quality Control Plan if, in the reasonable judgment of the Department, the craftsmanship of the Work being installed fails to comply with generally applicable industry standards, requirements set forth in the Specifications that are reasonably related to the quality of craftsmanship quality, or any provisions set forth in this Agreement. In the event that the Department or its Program Manager determine that any of the events specified in the preceding sentence have occurred, the Department shall provide the Construction Manager with written notice of such event and the

Construction Manager 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 Construction Manager are unable to agree on the terms of such corrective action plan within five (5) days after the issuance of the notice (i.e. within forty eight (48) hours after the receipt of the proposed corrective action plan), the Department shall have the right to direct such corrective action measures as the Department, in its reasonable judgment, deems necessary. Such directive may include adjustments to the procedural provisions set forth in the Quality Control Plan and/or impose additional requirements on the manner in which Work is being installed. Provided the notice provisions of this Section are complied with, the cost of any such corrective action directed under this Section shall not justify an adjustment to the GMP on the Substantial Completion Date.

Section 4.22 Construction Manager Warranty of the Construction Work. The Construction Manager warrants to the Department that materials and equipment furnished under the Contract Documents will be of good quality and new unless otherwise required or permitted by the Contract Documents, that for the one (1) year period following the Substantial Completion Date the construction work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. The Construction Manager's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Construction Manager, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. The Construction Manager 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 Construction Manager fails schedule such a walk, the Warranty period shall be extended until such time as the Construction Manger schedules such walk.

Section 4.23 Application for Substantial Completion Certificate. The Construction Manager shall apply to the Architect for a Certificate of Substantial Completion upon meeting the criteria set forth in Section 15.19 of this Agreement. Upon application by the Construction Manager, the Architect shall verify that the Construction Manager has achieved Substantial Completion, within the meaning of Section 15.19 of this Agreement, upon which event the Architect shall execute such Substantial Completion Certificate, certifying to the Contracting Officer that Substantial Completion has been achieved. Upon receipt of the executed Substantial Completion Certificate from the Architect, the Construction Manager shall cause the Architect to submit such Substantial Completion Certificate to the Contracting Officer for review and approval.

Section 4.24 Construction Phase Deliverables. The following deliverables are required during the Construction Phase, prior to the commencement of construction, unless otherwise noted:

.1 Initial Construction Phase Project Schedule, which shall include a narrative description of the project progress and a critical path method schedule in Primavera 6 format.

.2 Preliminary Cost Estimate for the Work during the Construction Phase.

- .3 Statement of constructability as to the Work during the Construction Phase.
- .4 Schedule of long lead items and recommendations.
- .5 List of subcontractors from which the Construction Manager intends to solicit bids and a description of the bid procedures to be utilized.
- .6 Trade bid tabulations and bid packages, including all subcontractor proposals and scope assessments, evaluations, basis for selection and award and all supporting documents.
- .7 Report outlining value engineering strategies to be utilized by the Construction Manager.
- .8 Construction Administration Plan, as contemplated by Section 2.2 of this Agreement.
- .9 GMP Proposal along with GMP Drawings and Specifications.
- .10 Copies of the certificates of insurance set forth in Section 10.1 of this Agreement to the satisfaction of the Department.
- .11 Copies of the payment and performance bonds as set forth in Section 10.2 of this Agreement to the satisfaction of the Department.
- .12 Copy of Construction Manager's agreement of indemnity in connection the bonds set forth in Section 10.2 of this Agreement to the satisfaction of the Department.
- .13 Fifteen (15) days prior to the commencement of construction on the Construction Phase, a Quality Control Plan, as contemplated in Section 4.18 of this Agreement.
- .14 Monthly progress reports, as contemplated by Sections 4.6 and 4.10 of this Agreement, which shall include a narrative description of the project progress and a critical path method schedule in Primavera 6 format, cost update, economic inclusion report, cash flow update, quality assurance report and progress photos;
- .15 Bi-weekly updates to Construction Phase Project Schedule, as contemplated by Section 4.10.1 of this Agreement which shall include a narrative description of the project progress and a critical path method schedule in Primavera 6 format.
- .16 Biweekly Construction Phase Progress Meeting minutes, as contemplated by Section 4.5 of this Agreement.
- .17 Biweekly Construction Manager's daily log, as contemplated by Section 4.6 of this Agreement.

.18 Certificate of Substantial Completion executed by the Architect/Engineer and submitted to the Contracting Officer for verification and approval.

.19 No later than fifteen (15) days of Construction Phase Final Completion, the Project close out documents, as contemplated by Section 4.14 of this Agreement, which shall include a construction summary table broken down by specification outlining warranty maintenance and training issues.

In the event that the Construction Manager fails to timely submit any such deliverable, the Construction Manager shall pay to the Department as liquidated damages Seven Thousand Five Hundred Dollars (\$7,500).

ARTICLE 5 **CONSTRUCTION MANAGER'S DESIGNATED REPRESENTATIVES**

The Construction Manager designates the individual(s) identified in **Exhibit I** as its representative with express authority to bind the Construction Manager with respect to all matters requiring the Construction Manager'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 Construction Manager'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 Construction Manager shall be performed in accordance with the highest professional standards recognized and adhered to by Construction Managers that construct recreation centers in large, urban areas.

ARTICLE 6 **COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

Section 6.1 Compensation

Section 6.1.1 The Department shall compensate and make payments to the Construction Manager for Preconstruction Phase Services in accordance with this Article 6 and Article 9. For Preconstruction Phase Services, the Construction Manager's compensation shall be [_____] (\$[_____] (the "Preconstruction Fee").

Section 6.1.2 The Preconstruction Fee shall be the Construction Manager's sole compensation for Preconstruction Phase Services. The Preconstruction Fee shall include, but not be limited to, amounts necessary to compensate the Construction Manager 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

Section 6.2 Payments

Section 6.2.1 Payments for Preconstruction Phase Services shall be made monthly following presentation of the Construction Manager’s acceptable invoice and shall be in proportion to services performed. In no event, however, will the aggregate of the Construction Manager’s monthly invoices for Preconstruction Phase Services exceed the Preconstruction Fee.

Section 6.2.2. Payments are due and payable in accordance with Article 9 of this Agreement. Amounts unpaid after the date of which payments due shall bear interest in accordance with the Prompt Payment Act.

ARTICLE 7
COMPENSATION FOR CONSTRUCTION PHASE SERVICES

Section 7.1 Compensation

Section 7.1.1 The Department shall compensate and make payments to the Construction Manager for Construction Phase Services in accordance with this Article 7 and Article 9. For Construction Phase Services, the Construction Manager’s compensation shall be [_____] (\$[_____]) (the “Construction Management Fee”).

[Section 7.1.2 Subject to the terms and conditions of this Agreement, the Construction Management Fee shall be increased by [___] Percent ([___]%) if both of the objectives set forth below are met and shall be decreased by [___] Percent ([___]%) if either or both of the objectives set forth below are not met. The objectives are as follows:

- .1 On-Time Completion.** Substantial Completion for the Project is achieved on or before [_____]. In the event this milestone is achieved, then this portion of

the At Risk Portion shall be paid in the first progress payment that is due after Substantial Completion;

- .2 **Cost Control.** The total amount paid to the Construction Manager for Work performed under this Contract is less than or equal to the GMP, regardless of any increases authorized by subsequent Change Order, plus \$[_____].]

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 why the objectives have or have not been met, and the Construction Manager acknowledges and agrees that [___] Percent ([___]%) of the Construction Management Fee is put at-risk by virtue of this provision and that the Construction Manager can lose entitlement to such portion of the Construction Management Fee even if objectives are not met due to the fault of the Department, the Architect/Engineer, the Code Official, events of force majeure or otherwise; provided, however, that the Construction Manager shall not lose such entitlement for failure to achieve the Substantial Completion Date if such failure to secure the building permit is not due to the fault of the Construction Manager. The Department shall also pay each subcontractor an incentive payment equal to [___] Percent ([___]%) of the payroll that is paid by the subcontractor to District residents who are employed on the Project. These calculations would be based the certified payrolls required to be submitted under the Davis-Bacon Act as set forth in Section 13.8 of this Agreement. The GMP includes allowances for the incentive payments contemplated by this Section 7.1.2.

Section 7.1.3 The Construction Management Fee, as adjusted in accordance with Section 7.1.2 shall be the Construction Manager's sole compensation for Construction Services. The Construction Management Fee shall include, but not be limited to, amounts necessary to compensate the Construction Manager for:

- Profit
- Home office overhead
- Home office staff

Section 7.2 Maximum Cost of General Conditions. The Construction Manager shall not be entitled to recover more than [_____] (\$[_____]) for the Cost of General Conditions (such amount, the "Maximum Cost of General Conditions"). The Construction Manager understands and agrees that the Maximum Cost of General Conditions shall not be increased or decreased as a result of Change Orders or Change Directive unless such Changes (i) extend the duration for the Construction Phase beyond [_____]; and (ii) the Construction Manager can demonstrate to the satisfaction of the Department that such additional Cost of General Conditions are reasonable. To the extent the Construction Manager incurs General Conditions costs in excess of the Maximum Cost of General Conditions, the Construction Manager shall not be entitled to reimbursement for such amounts unless the Department authorizes, in writing, an increase to the Maximum Cost of General Conditions. Nonetheless, in such an event, the Construction Manager exceeds the Maximum Cost of General Conditions, the Construction Manager shall be required to adequately staff the Project.

Section 7.3 No Adjustments to Fee. The Construction Manager understands and agrees that the Preconstruction Fee and Construction Management Fee shall not be increased or decreased as a result of any such Change Orders or Change Directive. In furtherance of this understanding, the Construction Manager agrees that it shall not be entitled to an increase in the Preconstruction Fee, or the Construction Management Fee by virtue of changes authorized by the Department unless such changes fall outside the general scope of work contemplated by this Agreement. The term general scope of work shall mean the design and construction of a state-of-the-art [TYPE OF STRUCTURE] that is consistent with the Program of Requirements and incorporates sustainable design initiatives [(LEED _____)]. Without limiting the generality of the foregoing, it is understood and agreed that changes that, individually or in the aggregate, are less than ten percent (10%) of the GMP shall conclusively be deemed to be within the Project's general scope, and thus, shall not entitle the Construction Manager to an increase in the Preconstruction Fee or the Construction Management Fee.

Section 7.4 Mark-Up on Trade Work. The maximum mark up for change order work shall be as follows:

- .1 For Work performed by a Subcontractor with its own forces, the Subcontractor shall be entitled to a mark-up of not more than fifteen percent (15%) (covering home office overhead, the cost of insurance and bonds, field supervision, general conditions and profit) on the Direct Costs of the Work. For Work that the Department permits the Construction Manager to self-perform, the Construction Manager shall also be entitled to a mark-up of not more than fifteen percent (15%) of the Direct Cost of the Work. With regard to any such Work that is self-performed by the Construction Manager, the markup contemplated in this Section 7.4.1 shall be the Construction Manager's exclusive compensation and it shall not be entitled to the markup contemplated in Section 7.4.3;
- .2 Intervening tier Subcontractors shall be entitled to a mark-up of five percent (5%) (covering home office overhead, the cost of insurance and bonds, field supervision, general conditions and profit) on Work Performed by lower-tier Subcontractors;
- .3 To the extent permitted by Section 7.3, the Construction Manager shall be entitled to an increase in its Construction Management Fee at a rate of Three Percent (3%) on work perform by Subcontractors. Such markup shall cover the same cost elements that were included in the Construction Management Fee; and
- .4 In no event shall the maximum mark-up on the Direct Cost of the Work exceed twenty five percent (25%).
- .5 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 Construction Manager 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 Construction Manager shall submit written certification to the Contracting Officer that any required rented equipment is neither owned by nor rented from the Construction Manager or an affiliate of or subsidiary of the Construction Manager.
- (c) **Contractor's Equipment.** Payment for required equipment owned by the Construction Manager or an affiliate of the Construction Manager 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.
- (d) **Materials.** Incorporated and unincorporated materials as permitted under Section 8.1.

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

ARTICLE 8

COST OF THE WORK FOR CONSTRUCTION PHASE

Section 8.1 Cost of the Work. The term "Cost of the Work" shall mean the costs necessarily incurred by the Construction Manager in the proper performance of the Work and shall include only the following:

- .1 Payments made by the Construction Manager to Subcontractors and suppliers, but only in accordance with the subcontracts and supply agreements (“Subcontractor Costs”);
- .2 The Cost of General Conditions, subject however to the Maximum Cost of General Conditions;
- .3 All amounts due to the Construction Manager under the terms of the Department's written authorization for the Construction Manager to perform any portion of the Work as Self-Performed Work. If an authorization for the Construction Manager to engage in Self-Performed Work is not on a fixed-price basis, then, as to that Work, the following costs shall be within the Cost of the Work:
 - (a) **Labor.** Properly documented wages actually paid to Project superintendents, foremen, construction workers, and other personnel in the direct employ of the Construction Manager, while engaged in approved Self-Performed Work, together with contributions, assessments, payroll taxes, or fringe benefits required by the laws or applicable collective bargaining agreements, charged at the rates agreed upon by the parties in writing for such Self-Performed Work.
 - (b) **Incorporated Materials.** The cost, net of trade discounts, of all materials, products, supplies and equipment incorporated into the Self-Performed Work, including, without limitation, costs of transportation and handling.
 - (c) **Unincorporated Materials.** The cost of materials, products, supplies and equipment not actually installed or incorporated into the Self-Performed Work, but required to provide a reasonable allowance for waste or spoilage, subject to the Construction Manager's agreement to turn unused excess materials over to the Department at the completion of the Project or, at the Department's option, to sell the material and pay the proceeds to the Department or give the Department a credit in the amount of the proceeds against the Cost of the Work.
- .4 Royalty and license fees paid for use of a design, process or product, if its use is required by this Contract or has been approved in advance by the Department;
- .5 Fees for obtaining all required approvals or permits associated with any abatement, demolition, utilities abandonment, and utility relocation, as well as all trade permit fees; **provided, however,** that the Department shall be required to pay for the building permit fee;
- .6 Cost of the Design Contract assigned to the Construction Manager, reimbursed at cost and without markup; provided, however, that such costs shall not exceed

Two Hundred Twenty Thousand Four Hundred Sixty Dollars (\$220,460). Design costs in excess of such amount shall not be reimbursed as a Cost of the Work;

- .7 All fees and other costs necessarily incurred to carry out testing and inspection required by the Contract or applicable laws, or otherwise to maintain proper quality assurance. The costs the Construction Manager incurs to schedule and coordinate any additional testing and inspections the Department may decide to conduct itself shall be within Cost of the Work unless the additional testing establishes that the Work tested was defective or otherwise failed to satisfy Contract requirements, in which case the Construction Manager shall pay the costs, without reimbursement;
- .8 All bonds to jurisdictional agencies (utilities, storm water management, land disturbance, and grading); and
- .9 All performance and payment bonds and general liability insurance.

Section 8.2 Cost of General Conditions. Items included in the Cost of General Conditions are all items necessary to perform Construction Phase Services described herein including, but not limited to:

- .1 Cost of construction primary staff (only staff stationed in the field is reimbursable; however, exceptions will be made for project executive personnel, purchasing, scheduling, cost estimating, local participation oversight and reporting, and accounting services if such functions are normally provided by the Construction Manager's regional and/or home office personnel and/or if the Construction Manager deems such functions are more efficiently performed at the regional and/or home office(s)).
- .2 Fringe Benefits associated with field staff costs
- .3 Payroll taxes and payroll insurance associated with field staff costs
- .4 Staff costs associated with obtaining permits and approvals
- .5 Out-of-house consultants
- .6 Travel, Living and Relocation expenses
- .7 Job vehicles
- .8 Field office for CM including but not limited to: (i) trailer purchase and/or rent; (ii) field office installation, relocation and removal; (iii) utility connections and charges during the Construction Services Phase; (iv) furniture; (v) office supplies;

- .9 Office equipment including but not limited to: (i) computer hardware and software; (ii) fax machines; (iii) copying machines; (iv) telephone installation, system and use charges; (v) job radios
- .10 Local delivery and overnight delivery costs
- .11 Field computer network
- .12 First aid facility
- .13 Progress photos

Section 8.3 Costs Not to Be Reimbursed. All costs not specifically listed in Section 8.1 as being within the Cost of the Work are excluded from the Cost of the Work. In particular, but without limitation, the Cost of the Work does not include any of the following:

- .1 Any personnel or labor costs other than those set forth in Section 8.1.3(a) or Section 8.2.1 of this Agreement.
- .2 Fees for any permits or licenses the Construction Manager requires to conduct its general business operations.
- .3 Capital expenses and interest on capital employed for the Work.
- .4 Direct or indirect costs of any kind, except those expressly included in Section 8.1.
- .5 Sales or use taxes, unless the Construction Manager establishes that applicable law required payment of such taxes.
- .6 Costs due to the errors or omissions of the Construction Manager or its Subcontractors or suppliers at all tiers, negligent or otherwise.
- .7 Costs due to breach of Contract by the Construction Manager or its Subcontractors or material suppliers at all tiers, including, without limitation, costs arising from defective or damaged Work or its correction, disposal of materials or equipment erroneously supplied, and repairs to property damaged by the Construction Manager or its Subcontractors or material suppliers at all tiers. The Department may retain another contractor and correct any deficient, defective, and nonconforming work at Construction Manager's expense. In no event shall the Department be obligated to compensate the Construction Manager for deficient, defective, and nonconforming work.

- .8 Any costs incurred in performing work of any kind before Notice to Proceed, unless such costs were specifically authorized by a duly authorized contracting officer of the Department in advance and in writing.

Section 8.4 Discounts, Rebates And Refunds

Section 8.4.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Department if (i) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Department, or (ii) the Department has deposited funds with the Construction Manager with which to make payments; otherwise cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Department, and the Construction Manager shall make provisions so that they can be secured.

Section 8.4.2 Amounts that accrue to the Department in accordance with the provisions of Subsection 8.4.1 shall be credited to the Department as a deduction from the Cost of the Work.

Section 8.5 Facilitating Tax Exempt Purchases. The Department expects that the Project will qualify as tax-exempt under applicable laws. The Department will provide the Construction Manager with the necessary information relating to the tax exemption. In the event any savings are attributable to the tax-exempt status of the Project, the Construction Manager shall not be entitled to share in such savings.

Section 8.6 Accounting Records. The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract, the accounting and control systems shall be satisfactory to the Department. The Department, its representatives, and the Department's accountants shall be afforded access to the Construction Manager's records, books, correspondence, instruction, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 9
CONSTRUCTION PHASE PAYMENTS

Section 9.1 Progress Payments. The Construction Manager shall be paid its compensation in a series of progress payments and a final payment, for Work completed in accordance with the Contract, and for which proper Applications for Payment have been submitted and approved. The amount of each progress payment shall be as follows:

The Costs of Work Completed to Date

Plus $\frac{\text{Cost of Work for Pay Period}}{\text{Current approved estimated Cost of Work through completion}} \times \text{Construction Management Fee}$

Minus Applicable Retainage

Minus Amounts previously paid by the Department

Section 9.2 Retention. The Department shall withhold from each progress payment an amount equal to ten percent (10%) of the payment related to: (i) each Subcontract and supply agreement, (ii) the Construction Management Fee, (iii) the Cost of General Conditions, and (iv) the Cost of the Work related to each item of Self-Performed Work, until such time as fifty percent (50%) of the then currently budgeted cost associated with each such an item has been invoiced at which point the Department may cease retaining against such item. The Department may elect to increase the retention on any trade subcontractor up to ten percent (10%) in the event the Department determines that the situation so warrants. The Department, in its sole and absolute discretion, may elect to reduce the retainage relating to a particular trade Subcontractor, the Cost of General Conditions, or the Cost of the Work related to a specific item of Self-Performed Work to zero upon: (x) satisfactory completion of such Work; (y) submission of all required warranties, certifications, and operating or maintenance instructions with respect to that Work; and (z) execution of appropriate waivers of lien and releases of claims. However, in no event shall the total retainage held by the Department be reduced to an amount that is less than two and one-half percent (2.5%) of the GMP. Once Substantial Completion has occurred, the Department will reduce the retention being withheld to an amount that is equal to Two Hundred percent (200%) of the Program Manager's good faith estimate of the remaining Work.

Section 9.3 Documents Required with Application for Payment. Each Application for Payment shall be accompanied by the Construction Manager's job cost ledgers in a form satisfactory to the Department, the Subcontractors' and Suppliers' Applications for Payment on AIA Documents G702 and G703 or other form acceptable to the Department, and such other supporting documentation as the Department may reasonably request. Each Application for Payment shall include detailed documentation of costs as a condition to approving progress payments, but the Construction Manager shall nevertheless maintain complete documentation of the costs. An executed Release of Liens and Claims in the format required by the Contracting Officer must accompany each Application for Payment.

Section 9.4 Stored Materials. The Department shall not be required to pay for materials stored at the site or stored at other locations, absent its express agreement to do so, which may be withheld at the Department's sole discretion. If the Department expressly agrees to pay for materials stored at the site but not yet incorporated into the Work, the Application for Payment may also include a request for payment of the cost of such materials, if the materials have been delivered to the site, and suitably stored. Such requests shall be documented by appropriate invoices and bills of sale. Payment for stored materials shall be conditioned also on

the Construction Manager's representation that it has inspected the material and found it to be free from defect and otherwise in conformity with this Contract, and on satisfactory evidence that the materials are insured under the builder's risk policy. Further, if the Construction Manager requests the Department to allow payments for storage of materials offsite, the Construction Manager shall be required, inter alia, to agree to execution of proper documentation to afford the Department a secured interest in the materials upon payment.

Section 9.5 Construction Manager's Certification. Each Application for Payment shall be accompanied by the Construction Manager's signed certification that all amounts paid to the Construction Manager on the previous Application for Payment that were attributable to Subcontractor Work or to materials or equipment being supplied by any supplier has been paid over to the appropriate Subcontractors and suppliers; that all amounts currently sought for Subcontractor Work or supply of materials or equipment are currently due and owing to the Subcontractors and material or equipment suppliers; and that all Work, materials or equipment for which payment is sought is, to the best of the Construction Manager's knowledge, free from defect and meets all of the Contract requirements. The Construction Manager shall not include in an Application Payment amounts for Work for which the Construction Manager does not intend to pay.

Section 9.6 Lien Waivers. Each Application for Payment shall be accompanied by written waivers of the right to file a mechanic's lien and all other claims, in a form substantially similar to **Exhibit K** for the Construction Manager and all Subcontractors and material suppliers at all tiers who have supplied labor or material or both for which payment is requested, subject only to receipt of payment. If the Department so requests, the Construction Manager shall also submit unconditional waivers of liens for itself and all Subcontractors and material suppliers at all tiers with respect to Work or materials or equipment for which payment has been previously made, and additional forms of waiver acknowledging receipt of final payment under the Contract, and providing final release of such liens.

Section 9.7 Warranty of Title. By submitting an Application for Payment, the Construction Manager warrants to the Department that title to all Work for which payment is sought will pass to the Department, without liens, claims, or other encumbrances, upon the receipt of payment by the Construction Manager. The Department may require execution of appropriate documents to confirm passage of clear title. Passage of title shall not operate to pass the risk of loss with respect to the Work in question. Risk of loss remains with the Construction Manager until Substantial Completion, unless otherwise agreed by the Department, in writing.

Section 9.8 Submission. On the twenty-fifth day of each month the Construction Manager shall submit to the Department (with a copy to the Program Manager) an Application for Payment, which Application for Payment shall cover the entire month during which the Application for Payment is submitted. All amounts formally submitted via Application for Payment and not disputed by the Department shall be due and payable on the last day of the month following submission or, if that is not a business day, on the following business day. If the Construction Manager and Department are unable to agree on the amounts properly due and

owing, the Department shall pay in accordance with its good faith determination and the Construction Manager may protest and pursue a claim as provided in this Agreement.

Section 9.9 Right to Withhold Payments. The Department will notify the Construction Manager within fifteen (15) days after receiving any Application for Payment of any defect in the Application for Payment or the Construction Manager's performance which may result in the Department's declining to pay all or a part of the requested amount. The Department may withhold payment from the Construction Manager, in whole or part, as appropriate, if:

- .1 the Work is defective or non-conforming and such defects have not been remedied; or
- .2 the Department has determined that the Construction Manager's progress has fallen behind the Project Schedule, and the Construction Manager fails, within ten (10) calendar days of the Department's written demand, to provide the Department with a realistic and acceptable plan to recover the delays; or
- .3 the Construction Manager's monthly schedule update reflects that the Construction Manager has fallen behind the Project Schedule, and the Construction Manager fails to include, in the same monthly report, a realistic and acceptable plan to recover the delays; or
- .4 the Construction Manager has failed to provide the monthly report in full compliance with Section 4.10 of this Agreement; or
- .5 the Construction Manager has failed to pay Subcontractors or suppliers promptly or has made false or inaccurate certifications that payments to Subcontractors or suppliers are due or have been made; or
- .6 any mechanic's lien has been filed against the Department, the site or any portion thereof or interest therein, or any improvements on the site, even though the Department has paid all undisputed amounts due to the Construction Manager, and the Construction Manager, upon notice, has failed to remove the lien, by bonding it off or otherwise, within ten (10) calendar days; or
- .7 the Department has reasonable evidence that the Work will not be completed by the Substantial Completion Date, as required, that the unpaid balance of the Guaranteed Maximum Price would not be adequate to cover actual or liquidated damages arising from the anticipated delay; or
- .8 the Department has reasonable evidence that the Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price; or

- .9 the Construction Manager is otherwise in substantial breach of this Contract (including, without limitation, failures to comply with LSDBE requirements in Article 11); or
- .10 the Application for Payment is incomplete, unsubstantiated and/or does not contain sufficient documentation for evaluation by the Contracting Officer.

Section 9.10 Payment Not Acceptance. Payment of any progress payment or final payment shall not constitute acceptance of Work that is defective or otherwise fails to conform to the Contract, or a waiver of any rights or remedies the Department may have with respect to defective or nonconforming Work.

Section 9.11 Department Not Obligated to Others. The Department shall have no obligation to pay or be responsible in any way for payments to a consultant or subcontractor performing portions of the Work. The Department shall have no obligation, after assignment of the Design Contract to the Construction Manager, to pay or be responsible in any way for payments to the Architect/Engineer.

Section 9.12 Final Payment. Final payment shall be made by the Department to the Construction Manager when (i) Final Completion has been achieved; (ii) a certification by the Construction Manager that except for requested final payment, all subcontractors and suppliers have been paid in full and that appropriate partial lien releases have been obtained from such subcontractors and suppliers documenting such payments; and (iii) a complete and final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Department and, to the extent the Department determines appropriate, its accountants. The Department shall make such final payment not more than thirty (30) days after the Department verifies the amount of the final payment set forth in a complete final Application for Payment. The Department may, if it so elects, require that copies of all lien releases be provided as a condition precedent to making final payment.

Section 9.12.1 The amount of the final payment shall be calculated as follows:

- .1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Preconstruction Fee and the Construction Management Fee, as adjusted to reflect whether the goals established in Section 7.1.2 have been met; but not more than the Guaranteed Maximum Price.
- .2 Subtract amounts, if any, for which the Department withholds pursuant to the Contract.
- .3 Subtract the aggregate of previous payments made by the Department. If the aggregate of previous payments made by the Department exceeds the amount due the Construction Manager, the Construction Manager shall promptly reimburse the difference to the Department.

- .4 The final payment shall take into account any savings accruing to the Department or the Construction Manager.

Section 9.12.2 The Department will review and report in writing on the Construction Manager's final accounting within thirty (30) days after delivery of the final accounting to the Department by the Construction Manager. Based upon the Department's determination of the Cost of the Work and provided the other conditions of Subparagraph 9.12.1 have been met, the Department will, within fifteen (15) days after the Department's determination notify the Construction Manager of any amount that the Department will withhold and the reasons therefor. The time periods stated in this Section 9.12 supersede those for typical progress payments.

Section 9.12.3 If the Department determines that the Cost of the Work is less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 3 of the Standard Contract Provisions. Pending a final resolution of the disputed amount, the Department shall pay the Construction Manager the amount that the Department determines to be appropriate.

Section 9.13 No Diversion of Funds. Construction Manager agrees that the funds it receives for the performance of this Agreement shall be held in trust by Construction Manager for the benefit of all its Subcontractors, Suppliers, laborers and materialmen, and Construction Manager shall not itself have any interest in such funds until all these obligations have been satisfied in full. Construction Manager further agrees that any funds received shall be used exclusively for the prosecution of the Work, and none will be diverted to satisfy other obligations of Construction Manager. The Department has the right to request written evidence from the Construction Manager that the Construction Manager has properly paid Subcontractors and material and equipment suppliers amounts paid by the Department to the Construction Manager for subcontracted Work. If the Construction Manager fails to furnish such evidence within seven days, the Department shall have the right to contact Subcontractors to ascertain whether they have been properly paid.

ARTICLE 10 **INSURANCE AND BONDS**

Section 10.1 Insurance Required by the Project

Section 10.1.1 The Construction Manager 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 Construction Manager's subcontractor and/or supplier policy, the Construction Manager shall be responsible for the payment of any applicable deductible and shall not be entitled to an increase in the GMP 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 Construction Manager 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 Construction Manager, 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 Excess umbrella liability coverage (on at least a follow form basis) having an aggregate limit of at least Ten Million dollars (\$10,000,000).
- .5 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.
- .6 With respect to the Architect/Engineer, errors and omissions coverage written on a claims made basis and having an aggregate policy limit of at least Five Million Dollars (\$5,000,000). This coverage shall remain in place for at least three (3) years after Substantial Completion of the Project is achieved.
- .7 Contractor's Pollution Liability coverage in the amount of at least Two Million Dollars (\$2,000,000) for each occurrence. Such coverage shall be maintain for the duration of the Project as well as three (3) years after Substantial Completion of the Project is achieved.

Section 10.1.2 Each insurance policy shall be issued in the name of the Construction Manager 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 10.1.3 All such insurance policies shall contain a waiver of subrogation against the Department and the District of Columbia, and their respective agents.

Section 10.1.4 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 10.2 Performance Bond and Payment Bond. The Construction Manager shall, before commencing the Construction Phase, provide to the Department a payment bond and performance bond, each with a penal sum equal to the full value of the GMP. In addition to the delivery of the performance and payment bonds, the Construction Manager must deliver to the Contracting Officer a copy of the executed Agreement of Indemnity under which the bonds were issued. Such bond shall remain in full force and effect until Final Completion is achieved and the Department shall be able to draw upon such bond regardless of the amount paid by the Department to the Construction Manager, even if such amount exceeds the penal value of such bond. Unless otherwise directed by the Department, the Construction Manager 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 Construction Manager must deliver to the Contracting Officer copies of its subcontractor's Agreements of Indemnity. The Construction Manager shall reserve the right to enroll pre-qualified subcontractors in to the Construction Manager's Subcontractor Default Insurance Program ("SDI") in lieu of providing payment and performance bonds for such subcontractors. 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, authorized to do business in the District of Columbia and reasonably acceptable to the Department. All subcontractors' bonds must include a dual obligee rider, naming the Construction Manager 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 Construction Manager shall promptly comply. The Construction Manager 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 Construction Manager shall promptly provide substitute security acceptable to the Department. If the Construction Manager 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 Construction Manager 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 10.3 The Construction Manager shall ensure abatement subcontractors and disposal sites are appropriately licensed and qualified. In addition, the Construction Manager 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.

ARTICLE 11
ECONOMIC INCLUSION REQUIREMENTS

Section 11.1 LSDBE Utilization

Section 11.1.1 The Construction Manager shall ensure that Local, Small and Disadvantaged Business Enterprises will participate in at least [Fifty Percent (50%) of the Contract.] Thirty Five Percent (35%) of the Contract Work must be awarded to entities that are certified as either Small or Disadvantaged Business Enterprises by the District of Columbia Department of Small and Local Business Development and Twenty Percent (20%) of the Contract Work to entities that are certified as Disadvantaged Business Enterprises. 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.

Section 11.1.2 The Construction Manager has developed a detailed LSDBE Utilization Plan that is attached hereto as **Exhibit F**. The Construction Manager shall comply with the terms of the LSDBE Utilization Plan in making purchases and administering its Subcontractors and Supply Agreements.

Section 11.1.3 Neither the Construction Manager or 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. The Department may condition its approval upon the Construction Manager 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 11.2 Equal Employment Opportunity and Hiring of District Residents

Section 11.2.1 The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

Section 11.2.2 The Construction Manager shall ensure that at least fifty-one percent (51%) of the Construction Manager's Team and every subconsultant's and subcontractor's employees hired after the effective date of the Contract, or after such subconsultant or subcontractor enters into a contract with the Construction Manager, to work on the Project shall be residents of the District of Columbia. This percentage shall be applied in the aggregate, and not trade by trade. In addition, the Construction Manager 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 11.2.3 Workforce Utilization Goal. In addition to the requirement imposed by applicable law, the Department has established a Workforce Utilization Goal for the performance of labor hours on the Project. The Construction Manager shall ensure that the Workforce Utilization Goal is met. The Construction Manager has developed a detailed Workforce Utilization Plan that is attached hereto as **Exhibit G**. The Department has established a goal that at least forty percent (40%) of all labor hours worked on the Project be worked by District residents (such goal, the “Workforce Utilization Goal”).

Section 11.3 Economic Inclusion Reporting Requirements

Section 11.3.1 Upon execution of the Contract, the Construction Manager 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 Contract, the date they were hired and whether or not they live in the District of Columbia.

Section 11.3.2 The Construction Manager 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, and any implementing regulations, as the same may be amended from time to time. Without limiting the generality of the foregoing, the Construction Manager shall use commercially reasonable best efforts to comply with the recently adopted amendments to such law, including, but not limited to, the workforce percentage goals set forth in such amendments. The Construction Manager 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 11.3.3 The Construction Manager shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

Section 11.3.4 The Construction Manager shall be responsible for: (i) including the provisions of Section 11.3 in all subcontracts; (ii) collecting the information required in this Section 11.3 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in the reports required to be submitted by the Construction Manager pursuant to Section 11.3.

Section 11.4 Compliance with the Apprenticeship Act. The Construction Manager agrees to comply with the requirements of the Apprenticeship Act of 1946, D.C. Code §§ 32-1431, *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 Construction Manager or any of its subcontractors

fail to use its best efforts to meet this goal, the Construction Manager or the subcontractor shall be subject to a penalty of five percent (5%) of the labor costs associated with the Contract.

ARTICLE 12 **LIQUIDATED DAMAGES**

If the Construction Manager fails to achieve Substantial Completion of the Project by the Substantial Completion Date, the Parties acknowledge and agree that the actual damage to the Department for the delay will be impossible to determine, and in lieu thereof, the Construction Manager shall pay to the Department, as fixed, agreed and liquidated delay damages in the amount of Seven Thousand Two Hundred Fifty Dollars (\$7,250) per day for each calendar day of delay for failure to meet the Substantial Completion Date. The Construction Manager and the Department agree that the liquidated damages set forth in this Article 12 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 Construction Manager fails to meet the Substantial Completion Date for more than 50 days, the Construction Manager consents to a termination for default.

ARTICLE 13 **MISCELLANEOUS PROVISIONS**

Section 13.1 Ownership and Use of Documents. The Drawings, Specifications and other documents prepared by the Architect/Engineer, and copies thereof furnished to the Construction Manager, are for use solely with respect to this Project. They are not to be used by the Construction Manager, Subcontractors, sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Department, and the Architect/Engineer. The design documents and other documents prepared by the Architect/Engineer shall become the property of the Department.

Section 13.2 Buy American Act Provision. The Construction Manager shall comply with the provisions of the Buy American Act (41 U.S.C. § 10a), including, but not limited to, the purchase of steel.

Section 13.2.1 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 Construction Manager agrees that only domestic construction material will be used by the Contractor, subcontractors, material men and suppliers in the performance of the Contract, except for non-domestic material listed in the Contract.

Section 13.2.2 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 13.2.3 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 13.2.4 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 13.3 Davis-Bacon Act Provision. The Construction Manager 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 L.** The Construction Manager 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.

ARTICLE 14 **OTHER CONDITIONS AND SERVICES**

This Contract and the rights and obligations of the Department and Construction Manager herein are subject to the approval of the Council for the District of Columbia.

ARTICLE 15 **DEFINITIONS**

Section 15.1 Agreement. This Agreement means this Agreement, exhibits attached hereto and any document incorporated by reference.

Section 15.2 Construction Documents. The final Drawings and Specifications, as prepared, sealed by the Architect/Engineer's design professional in accordance with the law, and issued by the Construction Manager for the purpose of obtaining bids from potential trade Subcontractors and material suppliers for use in constructing the Project.

Section 15.3 Cost of General Conditions. The Cost of General Conditions shall have the meaning set forth in Section 7.2 of this Agreement.

Section 15.4 Contract. The entire, integrated agreement between the Department and the Construction Manager with respect to the Project, consisting of this Agreement, the Exhibits

to the Agreement and any Change Directives or Change Orders that have been executed by the Department.

Section 15.5 Contract Documents. The Contract Documents consist of the Agreement between the Department and the Construction Manager, including any modifications or changes thereof, the Drawings and Specifications, and any addenda issued thereto.

Section 15.6 Drawings. The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and wherever issued, showing the design, locations and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

Section 15.7 Final Completion. The point at which Substantial Completion has been achieved, all punch list items noted at Substantial Completion have been completed and all documents the Construction Manager is required to deliver to the Department as a condition to receiving final payment have been received by the Department.

Section 15.8 Final Completion Date. Sixty (60) days after the Substantial Completion Date. The Final Completion Date may be modified only by Change Order or Change Directive in accordance with the Agreement.

Section 15.9 Fully Complete. 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 Construction Manager 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.

Section 15.10 Guaranteed Maximum Price or GMP. The maximum amount, including, but not limited to, the Preconstruction Fee, the Construction Management Fee, any incentives authorized hereby and the Cost of the Work, that will be paid the Construction Manager to Fully Complete the Project. The GMP may be modified only by Change Order or Change Directive in accordance with the Agreement.

Section 15.11 Hazardous Material. Any toxic substance or hazardous chemical defined or regulated pursuant to federal, state or local laws relating to pollution, treatment, storage or disposal of waste, or protection of human health or the environment. Such laws include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act and laws relating to emission, spills, leaks, discharges, releases or threatened releases of toxic material. The term Hazardous Materials shall also include petroleum and petroleum bi-products. The Term "Hazardous Material Remediation Costs" shall mean the cost of the Work to actually remove, treat, and/or dispose of, Hazardous Material and the appropriate unit price(s) applicable to the Work.

Section 15.12 Hazardous Materials Remediation Costs. The direct Costs (excluding, however, the Cost of General Conditions) incurred by the Construction Manager in connection with the removal, remediation, passivation or encapsulation of Hazardous Materials.

Section 15.13 Notice to Proceed. A written notice to proceed, signed by the Department, directing the Construction Manager to proceed with the Project or any portion of the Project.

Section 15.14 Project Schedule. The schedule for the project agreed to by the Department and the Construction Manager as part of this Agreement. Such schedule shall not be changed except by a Change Order or Change Directive issued by the Department. The schedule shall be in a form and contain such detail as may be agreed upon by the parties.

Section 15.15 Self-Performed Work. Trade work performed by employees of (1) the Construction Manager; (2) any entity that is a partner or member of the entity comprising the Construction Manager; (3) any entity that controls, is controlled by, or is under common control with the Construction Manager; or (4) any entity that controls, is controlled by, or is under common control with any entity that is part of the Construction Manager. Self-Performed Work is distinguished from trade work performed by Subcontractors unaffiliated with the Construction Manager or the entities of which the Construction Manager is comprised.

Section 15.16 Specifications. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

Section 15.17 Standard Contract Provisions. The District of Columbia Department of General Services Standard Contract Provisions, General Provisions (Construction Contract), as amended, are attached hereto as **Exhibit J** and incorporated herein.

Section 15.18 Subcontractor. Any person, natural or legal, to whom the Construction Manager delegates performance of any portion of the Work required by the Contract. The term “Subcontractor,” used without a qualifier, shall mean a subcontractor in direct privity with the Construction Manager. “Subcontractors at all tiers” shall mean not only those Subcontractors in direct privity with the Construction Manager, but also those performing Work pursuant to sub-subcontracts, subsubsubcontracts, and so on. “Subcontractors” shall include both those who are retained to perform labor only and those who are retained both to perform labor and to supply material or equipment. “Subcontractors” shall also include design professionals who are not the Construction Manager’s employees and to whom the Construction Manager delegates any part of its responsibilities under the Contract, except that references to “trade Subcontractors” shall exclude design professionals.

Section 15.19 Substantial Completion. Substantial Completion shall mean that all of the following have occurred: (1) the construction and installation work have been completed with only minor punch list items remaining to be completed; (2) a permanent certificate of occupancy and all other required permits or approvals 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.

Section 15.20 Substantial Completion Date. The date established herein by which the Construction Manager shall achieve Substantial Completion. The Substantial Completion Date may be modified only by Change Order in accordance with the Agreement.

ARTICLE 16
CLAIMS & DISPUTE RESOLUTION

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

ARTICLE 14
TERMINATION OR SUSPENSION

All terminations or suspensions arising out of or under this Agreement shall be in accordance with the terms of the Standard Contract Provisions.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date below.

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

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

[CONSTRUCTION MANAGER]

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

Exhibit A

Design Documents

Exhibit C

Assumptions and Clarifications

Exhibit D

Proposed GMP

Exhibit E

Project Schedule

Exhibit F

LSDBE Utilization Plan

Exhibit G

Workforce Utilization Plan

Exhibit H

Key Personnel

Exhibit I

Construction Manager's Designated Representative

Exhibit J

Department of General Services Standard Contract Provisions (Construction), as amended

Exhibit K

Form of Lien Waiver

Exhibit L

Davis- Bacon Wage Rates

Exhibit M

Preconstruction Deliverable List