



ATTACHMENT B FORM OF AGREEMENT

St Elizabeths East Campus Project

Design-Build Agreement

**DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES**

February 12, 2016

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Exhibits

- 1 Acronyms and Definitions
- 2 Completion Dates
- 3 Cost and Pricing Data Certification
- 4 DB Contractor’s Proposal Commitments, ATCs, and Schematics
- 5 Form of Letter Contract for NTP-1

SECTION 1

Solicitation, Offer, and Award

Offer Award Form – DCOC-209-V2206 to be inserted upon Contract execution. Or whatever form DGS OCP uses for the solicitation itself.

Contract # DCAM – 16 – CS - 0084

Introduction

This Design-Build Agreement (DBA) is entered into as of _____, _____, by and between the District of Columbia, Department of General Services, (hereinafter referred to as, “the Department” or “DGS”) and _____ (hereinafter, “Design-Build [DB] Contractor”), (collectively referred to as “the parties”), with reference to the definitions contained in Exhibit A hereto and the following facts:

The purpose of this Project is to design and build the St Elizabeths East Campus Stage 1 Phase 1 Transportation and Infrastructure Improvements Project as defined within the Contract Documents. DDOT completed an Environmental Assessment for the impacts of the Project redevelopment and the proposed roadway system. A combined Federal Highway Administration (FHWA) Finding of No Significant Impact (FONSI) was approved in June 2012. A section 106 MOA is in effect governing the road right of way, cross sections and details.

The Contract is a lump-sum (fixed price) Design-Build Agreement obligating the DB Contractor to perform all Work necessary to complete the Project by the deadlines specified herein, for the Contract Price, subject only to specified exceptions. To allow the District to budget for the Project and to reduce the risk of cost overruns, the Contract includes restrictions affecting the DB Contractor’s ability to make Claims for an increase to the Contract Price or an extension of the Completion Date(s). In furtherance of this understanding, it is agreed that the Design-Build Contractor shall assume all risks except those that are specifically assumed by the District in Section 20.2. The DB Contractor agrees to assume such responsibilities and risks and has reflected the assumption of such responsibilities and risks in the Contract Price. As an incentive to complete the project by the Substantial Completion deadline, a portion of the Design-Build Contractor’s compensation will be at-risk and the Contractor shall only earn the at risk portion if the Project is substantially completed on or before July 31, 2018 and for an amount that is less than 103% of the Lump Sum Price. **Section A.4** of the RFP more fully describes the at-risk portion of the compensation.

If the DB Contractor fails to complete the Project within the time limitations set forth in the Contract Documents, then the District will suffer substantial losses and damages. The Contract Documents therefore provide that the DB Contractor shall pay the District Liquidated Damages if such completion is delayed.

The District has provided Reference Information Documents (RID) to the DB Contractor. The District does not warrant the correctness or adequacy of the information contained in the RID and it is the DB Contractor’s sole responsibility to perform their own due diligence and further investigations as may be necessary. The District and the DB Contractor both agree that the DB Contractor assumes full responsibility and liability with respect to the design of the Project, and the District and the DB Contractor both agree that the DB Contractor shall indemnify and hold harmless the District and others with respect to any defects in the Project. NOW, THEREFORE, in consideration of the sums to be paid to the Design-Build Contractor by the District, the foregoing premises and the covenants and agreements set forth herein, the parties hereby agree as follows:

Contract Components; Interpretation of Contract Documents

3.1 Certain Definitions

Exhibit A of this DBA contains the meaning of various acronyms and terms used in the Contract Documents.

3.2 Contract Documents

The term “Contract Documents” shall mean the documents listed in Section 3.3, including all exhibits and addenda issued prior to execution of the DBA thereto and all design documents, construction documents, submittals and modifications approved by the District.

For the purposes of this Section 3.2, modifications means (1) a written amendment to the Design-Build Agreement signed by both parties, (2) a Change Order, or (3) a Force Account Change Order, or (4) a Directive Letter.

3.3 Order of Precedence

Each of the Contract Documents is an essential part of the Contract, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete Contract. In the event of any conflict among the RFP and Contract Documents, the order of precedence shall be as set forth below:

1. RFP Attachment B, Design-Build Agreement as executed by the District and the DB Contractor, including all exhibits of this DBA
2. RFP Attachment I, DGS Standard Contract Provisions
3. RFP Attachment C, Technical Provisions
4. RFP Attachment A, Contract Data and Reports (CDR).
5. The Proposal Documents and the Proposal Attachments, to the extent that they meet or exceed the requirements of the other Contract Documents, including the Approved Alternative Technical Concepts. In other words, if the Proposal Documents or Proposal Attachments include statements that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the Contract Documents, or to perform services in addition to those otherwise required or otherwise contain terms which are more advantageous to the District than the requirements of the other Contract Documents, the DB Contractor’s obligations hereunder shall include compliance with all such statements, offers, and terms.

Notwithstanding the foregoing, in the event of conflicting requirements involving any requirement within Attachments A, B & C, or a reference contained within an Attachment or Exhibit of the Contract Documents or Proposal, the District shall have the right to determine, in its sole discretion, which requirement(s) apply. The DB Contractor shall request the District’s determination respecting the order of precedence among conflicting provisions promptly upon becoming aware of any such conflict.

3.4 Reference Information Documents (RID)

The documents included in the RID are for information only and are not to be relied upon by the DB Contractor. Cross-references in the Contract Documents to the RID do not incorporate the RID or portions thereof as Contract Documents or requirements. For the avoidance of doubt, it is understood and agreed that should conditions differ from those identified in the RID such variation shall not entitle the Design-Build Contractor to a change in the Lump Sum Price or an extension of time.

3.5 Interpretations

In the Contract Documents:

1. The singular includes the plural and vice versa.
2. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to as of the Proposal Due Date.
3. Words such as “herein,” “hereof,” and “hereunder” refer to the entire document in which they are contained and not to any particular provision or Section.
4. Words not otherwise defined that have well-known technical or construction industry meanings are used in accordance with such recognized meanings and are considered terms of art.
5. References to Persons include their respective permitted successors and assigns and, in the case of Governmental Persons, Persons succeeding to their respective functions and capacities.
6. Words of any gender used herein include each other gender.
7. Words which are capitalized have the meaning as defined in the Contract Documents.

Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive. The DB Contractor acknowledges and agrees that it had the opportunity and obligation, before submission of its Proposal, to review the Contract Documents and to bring to the District’s attention any conflicts or ambiguities contained therein. The DB Contractor further acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel and that it has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the Contract Documents. Accordingly, in the event of an ambiguity in or Dispute regarding the interpretation of the Contract Documents, the Contract Documents shall not be construed against the Person that prepared them, and instead other rules of interpretation shall be used.

3.6 Referenced Standards, Codes, or Criteria

Except as may otherwise be specified in the Contract Documents, references to standards, codes, or criteria, are to the latest version or edition as of the due date for Proposals, and shall be in accordance with Attachment C, Technical Provisions and Attachment I, DGS Standard Contract Provisions.

3.7 Omission of Details; Clarification by the District

The DB Contractor shall not take advantage of any apparent Error in the Contract. Should it appear that the Work to be done or any matter relative thereto is not sufficiently detailed or explained in the Contract Documents, the DB Contractor shall apply to the District in writing for such further written explanations as may be necessary and shall conform to the explanation provided. The DB Contractor shall promptly notify the District in writing of all Errors that it may discover in the Contract Documents and shall obtain specific instructions in writing regarding any such Error before proceeding with the Work affected thereby.

DB Contractor shall perform all work and services that are reasonably inferable from the Contract Documents. The term “reasonably inferable” takes into consideration the understanding of the parties that the Lump Sum Price is based on an intermediate set of design documents that are approximately 65% complete and that the DB Contractor will be required to progress the intermediate design documents into final design documents that deliver a fully functional system that satisfies the various requirements of the various agencies having jurisdiction over this project (i.e. the District Department of Transportation, the District Department of Energy and Environment, and the District Department of Consumer and Regulatory Affairs (DCRA). Such final documents will also need to resolve and address any coordination issue that may arise during the final design process. The DB Contractor shall not be entitled to an increase in the Contract Price (as described in Section 13 of this DB Agreement) due to the evolution of the design to address the

foregoing concerns. If an item or system is either shown or specified, all material and equipment required for the proper installation of such item or system and needed to make a complete functioning and operating installation shall be provided whether or not detailed or specified, omitting only such parts as are specifically excepted by the District.

3.8 Computation of Periods

References to “days” or “Days” contained in the Contract Documents shall mean Calendar Days unless specified otherwise. If the date to perform any act or give any notice specified in the Contract Documents (including the last date for performance or provision of notice “within” a specified time period) falls on a non-Business Day, such act or notice may be timely performed on the next succeeding day that is a Business Day. Notwithstanding the foregoing, requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency, requirements contained in Section 7 of this DB Agreement, and any other requirements for which it is clear that performance is intended to occur when necessary on a non-Business Day shall be required to be performed as specified, even though the date in question may fall on a non-Business Day.

3.9 Standard for Approvals

In all cases where Approvals, acceptances, or consents are required to be provided by the District or Approvals, acceptances, or consents are required to be provided by the DB Contractor hereunder, such Approvals, acceptances, or consents shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified and shall not be unreasonably delayed if no response time is specified. In cases where sole discretion is specified, the decision shall not be subject to Dispute resolution hereunder.

3.10 District of Columbia and Federal Requirements

The DB Contractor must comply with all applicable District of Columbia and Federal Requirements, excluding the present NEPA requirements that are the specific responsibility of DDOT. Notwithstanding anything to the contrary contained herein, in the event of any conflict between any District of Columbia requirements, Federal Requirements, or other requirements of the Contract Documents, the Federal Requirements shall prevail, take precedence, and be in force over and against any such conflicting provisions, unless the District of Columbia requirements are more stringent as allowed by federal law.

3.10.1 Contract Assurances

The DB Contractor, subconsultant, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The DB Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this Contract. Further, the DB Contractor shall comply with the requirements of D.C. Code §2-1401.01 et seq. Failure by the DB Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the District deems appropriate.

3.11 Completion Dates

The DB Agreement permits the DB Contractor to propose earlier Completion Dates as described in Exhibit 2 of the DBA. All references in the Contract Documents to the Completion Dates shall be deemed to include the Completion Date and Final Acceptance Date.

Substantial Completion, Final Completion, and Final Acceptance shall be in accordance with the terms and conditions set forth in Section 22.

Project Milestones are listed below:

- Notice to Proceed 2 – start of construction - on or before July 31, 2016

- Interim milestone 1 – physical lines for wet and dry utilities and roadway (less final lift of asphalt) at the E&SA site (parcels 9 & 12) as shown on the MOT – phase 2 plan limits. - on or before September 30, 2017
- Substantial Completion - on or before July 31, 2018
- Final Completion - on or before August 31, 2018

Obligations of Contract

4.1 Performance Requirements

4.1.1 Performance of Work

All materials, services, and efforts necessary to achieve Final Acceptance on or before the Final Acceptance Date as shown in Exhibit 2 shall be the DB Contractor's sole responsibility, except as otherwise specifically provided in the Contract Documents. Subject to the terms of Section 15, the costs of all such materials, services, and efforts shall be included in the Contract Price.

4.1.2 Performance Standards

The DB Contractor shall furnish the design of the Project in strict accordance with the terms of Section 23 and in accordance with the terms and conditions and requirements set forth in the Contract Documents, and shall construct the Project as designed, in a good and workmanlike manner, free from defects and in strict accordance with the terms and conditions of the Contract Documents.

4.1.3 Performance as Directed

At all times during the term hereof, including during the course of and notwithstanding the existence of any Dispute, the DB Contractor shall perform in a diligent manner and without delay; shall abide by the District's decision or order; and shall comply with all applicable provisions of the Contract.

4.2 General Obligations of DB Contractor

The DB Contractor, in addition to performing all other requirements of the Contract Documents, shall:

1. Furnish all design and other services; provide all materials, equipment, and labor; and undertake all efforts necessary or appropriate (excluding only those services, materials and efforts that the Contract Documents specify will be undertaken by other Persons): (i) to construct the Project and maintain it during construction in strict accordance with the requirements of the Contract Documents, including the Contract Schedule, all Legal Requirements, all Governmental Approvals, the Quality Manual, the Maintenance of Traffic Plan, the Public Information Plan, Applicable Standards (including approved ATCs), and all other applicable safety, environmental, licensing and other requirements, taking into account the ROW drawings and other constraints affecting the Project, so as to achieve the Completion and Final Acceptance Dates; and (ii) otherwise to do everything required by and in strict accordance with the Contract Documents.
2. At all times, provide a DB Contractor Project Manager, approved by the District, who: (i) will have full responsibility for the prosecution of the Work; (ii) will act as agent and be a single point of contact in all matters on behalf of the DB Contractor; (iii) will be present (or his approved designee will be present) at the Site at all times that Work is performed; and (iv) will have authority to bind the DB Contractor on all matters relating to the Project. Either the DB Contractor Project Manager or his designee will attend all meetings related to the Project.
3. Obtain all Governmental Approvals (other than the environmental and certain New Environmental Approvals agreed to be obtained by the District in other areas of the Contract Documents). Exhibit 1 of Technical Provisions, Attachment C, lists the permits the DB Contractor is to obtain and those that DGS will obtain. For the absence of doubt, should a permit or approval be required other than those listed in Exhibit 1 of Technical Provisions, Attachment C, it is understood that the DB Contractor shall be responsible for obtaining such permit or approval unless such permit or approval relates to obtaining financial approval for this Project or land use approvals for the development of the St Elizabeths East Campus (in whole or part).

4. Comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect all Governmental Approvals, including implementation of all environmental commitments and mitigation measures required by the Contract Documents, except to the extent that such responsibility is expressly assigned in the Contract Documents to another Person.
5. Provide such assistance as requested by the District in dealing with any Person and/or in prosecuting and defending lawsuits in any and all matters relating to the Project, which may include providing information and reports regarding the Project, executing declarations, and attending meetings and hearings, but which shall in no event be deemed to require the DB Contractor to provide legal services.
6. Comply with all requirements of all applicable Legal Requirements, including, without limitation: (i) the Environmental Laws, including all environmental commitments, mitigation and monitoring measures required for the Project, including those set forth in Attachment C, Environmental, and requirements regarding the handling, generation, treatment, storage, transportation and disposal of Hazardous Substances; (ii) the Americans with Disabilities Act of 1990, 42 U.S. Code (USC) § 12101 et seq., including any amendments, as well as all applicable regulations and guidelines; and (iii) the Federal Requirements.
7. Comply with all Applicable Standards, including, without limitation, those revised to ensure their enforceability.
8. Cooperate and coordinate with the District and Governmental Persons with jurisdiction over the Project in the review and oversight of the Project and other matters relating to the Work.
9. Make payments to Third Parties required by the Contract Documents, if any, including but not limited to, payments to Utility Companies.
10. Supervise and be responsible to the District for acts and omissions of all DB Contractor-Related Entities, as though the DB Contractor directly employed all such Persons.
11. Federal Excise Taxes and DC Sales and Use Tax will be addressed in accordance with the provisions of Article 25 of the DDOT *Standard Specifications for Highways and Structures*.
12. Ensure compliance with Title VI of the Civil Rights Act of 1964.
13. Ensure compliance with the Americans with Disabilities Act of 1990.
14. Ensure compliance with Section 504 of the Rehabilitation Act of 1973.
15. Ensure compliance with Section C "Economic Inclusion" of the RFP.

4.3 Representations, Warranties, and Covenants

The DB Contractor represents, warrants, and covenants for the benefit of the District as follows:

4.3.1 Evaluation of Constraints

The DB Contractor has evaluated the constraints affecting delivery of the Project, including, but not limited to the ROW as defined in the Section 106 MOA (CDR) and the conditions of the Environmental Approvals, and has grounds for agreeing that the Project can be delivered within such constraints, within the time specified in Exhibit 2, and within the Contract Price.

4.3.2 Review of Site Information

DB Contractor has reviewed the boring logs provided by the District in Attachment A, Contract Data and Reports (CDR); inspected and examined the Site and surrounding locations; and undertaken other appropriate activities sufficient to familiarize itself with surface and subsurface conditions affecting the Project. Any failure to do so will not relieve it from responsibility for successfully performing the Work without additional expense to the District. As a result of such review, inspection, examination, and other activities, the DB Contractor is familiar with and accepts the physical requirements of the Work. Before beginning any Work on a particular aspect of the Project, the DB Contractor shall verify all governing

dimensions and conditions at the Site and shall examine all adjoining work that may have an impact on such Work. The DB Contractor shall be responsible for ensuring that the Design Documents and Construction Documents accurately depict all governing and adjoining dimensions and conditions.

The DB Contractor warrants, represents, covenants, and agrees to call to the District's attention anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the DB Contractor (by the District or any other party) which it regards in its opinion as unsuitable, improper, or inaccurate in connection with the purposes for which such document or data is furnished. Nothing shall excuse or detract from the DB Contractor's responsibilities or obligations hereunder in a case where such document or data is furnished unless the DB Contractor advises the District in writing that in its opinion such document or data and any requests made therein for action are unsuitable, improper, or inaccurate and the District confirms in writing that it wishes the DB Contractor to proceed in accordance with the data as originally given.

4.3.3 Governmental Approvals

If any Governmental Approvals required to be obtained by the DB Contractor must formally be issued in the name of the District, the DB Contractor shall undertake all efforts to obtain such approvals, with the District's reasonable cooperation with the DB Contractor, including execution and delivery of appropriate applications and other documentation. The DB Contractor shall assist the District in obtaining any Governmental Approvals that the District may be obligated to obtain, including providing information requested by the District and participating in meetings regarding such approvals.

4.3.4 Progression of Work

The DB Contractor shall at all times schedule, direct and complete its Work in order to provide an orderly progression of the Work to achieve Substantial Completion, Final Completion, and Final Acceptance by the applicable Completion Dates and in accordance with the Approved Contract Schedules, including furnishing such employees, materials, facilities, and equipment and working such hours (including extra shifts, overtime operations, Sundays and Holidays, as approved by DGS) as may be necessary to achieve such goals, all at the DB Contractor's own expense, except as otherwise specifically provided in Section 14.

4.3.5 DB Contractor/Employee Performance Requirements

The DB Contractor and the design team have maintained, and throughout the term of the Contract and its design Subcontract(s) shall maintain, all required authority, license status, professional ability, skills, and capacity to perform the Work and shall perform them in strict accordance with the requirements of the Contract Documents.

If the District determines in its sole discretion that any Person employed by the DB Contractor or by any Subcontractor is not performing the Work in strict accordance with the Contract Documents, the District has the authority to require the DB Contractor to replace any DB Contractor's representative, including staff members, who is not performing to the satisfaction of the District. At the written request of the District, such Person shall not be re-employed on the Project without the prior written Approval of the District. If such Person is not replaced with skilled and experienced personnel for the proper performance of the Work, then the District may, in its sole discretion, take any appropriate and available contract remedy by delivery of written notice. Such action shall in no way relieve the DB Contractor of any obligation contained in the Contract Documents or entitle the DB Contractor to a Change Order. Once compliance is achieved, the DB Contractor shall be entitled to and shall promptly resume the Work.

DB Contractor shall remove or cause to be removed from any Project site any employee of DB Contractor or of any Subcontractor or supplier at any tier upon the reasonable request of the District if, in the District's opinion, such employee has engaged in inappropriate, offensive, vulgar, or disruptive behavior or speech, including, without limitation, lewd or sexually harassing behavior or speech. DB Contractor shall make its Project employees at any Project site aware of this provision and shall cause all Subcontractors and suppliers with employees at any Project site to make their employees aware of this provision.

4.3.6 Design and Engineering Personnel

All design and engineering Work furnished by the DB Contractor shall be performed by or under the supervision of Persons licensed to practice architecture, engineering, landscape architecture, or surveying (as applicable) in the District of Columbia and by personnel who are skilled, experienced, and competent in their respective trades or professions, who are professionally qualified to perform the Work in strict accordance with the Contract Documents, and who shall assume professional responsibility for the accuracy and completeness of the Design Documents in accordance with the terms of Section 23.

4.3.7 Organization

The DB Contractor is duly organized and validly existing under the laws of the District of Columbia with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted. The DB Contractor [and its joint venture members] is [are] duly qualified to do business and are in good standing in the District of Columbia and will remain in good standing throughout the term of the Contract and for as long thereafter as any obligations remain outstanding under the Contract Documents.

4.3.8 Authorization

The execution, delivery, and performance of the Contract have been duly authorized by all necessary actions of the DB Contractor and, if applicable, the DB Contractor's members and/or Major Participants and will not result in a breach or a default under the organizational documents of any such Person or any indenture, loan, credit agreement, or other material agreement or instrument to which any such Person is a party or by which its properties and assets may be bound or affected.

4.3.9 Legal, Valid, and Binding Obligation

The Contract constitutes the legal, valid, and binding obligation of the DB Contractor and, if applicable, of each member of the DB Contractor.

4.3.10 False or Fraudulent Statements and Claims

Any person who commits any of the following acts shall be liable to the District for 3 times the amount of damages which the District sustains because of the act of that person in accordance with the DC False Claims Act – D.C. Code § 2-360.08.

A person who commits any of the following acts shall also be liable to the District for the costs of a civil action brought to recover penalties or damages, and shall be liable to the District for a civil penalty of not less than \$ 5,500, and not more than \$ 11,000, for each false or fraudulent claim for which the person:

- a) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
- b) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- c) Has possession, custody, or control of property or money used, or to be used, by the District and knowingly delivers, or causes to be delivered, less than all of that money or property;
- d) Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the District and, intending to defraud the District, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- e) Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the District who lawfully may not sell or pledge property;
- f) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an

obligation to pay or transmit money or property to the District, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the District;

- g) Conspires to commit a violation of paragraph (a), (b), (c), (d), (e), or (f) of this subsection;
- h) Is a beneficiary of an inadvertent submission of a false or fraudulent claim to the District, subsequently discovers the falsity of the claim, and fails to disclose the false or fraudulent claim to the District; or
- i) Is the beneficiary of an inadvertent payment or overpayment by the District of monies not due and knowingly fails to repay the inadvertent payment or overpayment to the District.

Notwithstanding the above, the court may assess not more than two times the amount of damages which the District sustains because of the act of the person, and there shall be no civil penalty, if the court finds all of the following:

- j) The person committing the violation furnished officials of the District responsible for investigating false claims violations with all information known to that person about the violation within 30 days after the date on which the person first obtained the information;
 - k) The person fully cooperated with any investigation by the District; and
 - l) At the time the person furnished the District with information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.
- 2) Liability pursuant to this section shall be joint and several for any act committed by 2 or more persons.
 - 3) This section shall not apply to claims, records, or statements made pursuant to those portions of Title 47 of the District of Columbia Official Code that refer or relate to taxation."

Information Supplied to DB Contractor; Responsibility for Design Disclaimer

5.1 Information Supplied

The District has made available to the DB Contractor information that is described in the Contract Documents as CDR and RID regarding the Project.

5.2 Responsibility for Design

The DB Contractor agrees that it has full responsibility for the final design of the Project and that the DB Contractor shall furnish the final design of the Project, regardless of the fact that certain preliminary and intermediate design work occurred and was provided to the DB Contractor prior to the date of execution of the Contract. The DB Contractor specifically acknowledges and agrees that:

1. The DB Contractor is not entitled to rely on and has not relied on: (i) the RID; or (ii) any other documents or information provided by the District, including the Preliminary and Intermediate Design, unless specifically permitted in the Contract Documents.
2. The DB Contractor's Warranties and indemnities hereunder cover any Errors in the Project even though they may be related to Errors in the RID or Preliminary and Intermediate Design Documents.
3. The Engineer of Record shall be responsible for all aspects of the design, and shall ensure that the design conforms to the Contract – regardless of who performs the Work.

5.3 Disclaimer

5.3.1 No Liability Regarding Reference Information Documents

DGS does not represent or warrant that the information contained in the RID or the Preliminary and Intermediate Design Plans, is either complete or accurate or that such information conforms to the requirements of the Contract Documents.

The DB Contractor understands and agrees that the District shall not be responsible or liable in any respect for any loss, damage, cost or expense whatsoever suffered by the DB Contractor or any Related Entity by reason of any use of any information contained in the Preliminary or Intermediate Design, or RID or any action or forbearance in reliance thereon. The DB Contractor further acknowledges and agrees that: (i) if and to the extent the DB Contractor or anyone on the DB Contractor's behalf uses any of said information in any way, such use is made on the basis that the DB Contractor, not the District, has approved and is responsible for said information; and (ii) the DB Contractor is capable of conducting and obligated hereunder to conduct any and all studies, analyses and investigations as it deems advisable to change, recreate, verify or supplement said information, and that any use of said information is entirely at the DB Contractor's own risk and at its own discretion.

Notwithstanding anything in the Contract Documents to the contrary, no field explanations or interpretations provided by DGS at any meetings and no comments or approvals by DGS on Design Documents or Released for Construction Documents shall be deemed, construed, or interpreted to: (a) amend, supersede, or alter the terms, requirements, limitations, or meaning of any Contract Document; or (b) release or relieve the DB Contractor from full responsibility for the design of the Project in strict accordance with the Contract Documents.

5.4 Professional Licensing Laws

The District will not contract for, pay for, or receive any design services that are in violation of any professional licensing laws; and by execution of the Contract, this is acknowledged by the DB Contractor.

The parties agree that the DB Contractor is fully responsible for furnishing the design of the Project and will provide the design services required by the Contract Documents. Any references in the Contract Documents to the DB Contractor's responsibilities or obligations to "perform" the design portions of the Work, that are required to be performed by licensed design professionals, shall be deemed to mean that the DB Contractor shall "furnish" the design for the Project. The terms and provisions of this Section 5.4 shall control and supersede every other provision of the Contract Documents.

Time Within Which Project Shall be Completed; Scheduling

6.1 Time is of the Essence

For this Contract, the DB Contractor shall consider that time is of the essence for the delivery of this Project.

6.2 Notices to Proceed

6.2.1 Issuance of Notice to Proceed 1

The DB Contractor shall begin performance of certain limited Work as directed and described in the First Notice to Proceed (NTP-1) issued by the District. Issuance of NTP-1 authorizes the DB Contractor to perform final design, including access to District-owned Project property and ROW for surveying and site investigations, including but not limited to: geotechnical, Hazardous Materials, and Utilities investigations, PMP, QMP, and workforce development plans; the development of schedule as required by the Contract Documents; and the development of and submission to DGS for review the final plans and other submittals identified in the Technical Provisions.

NTP-1 will be issued following the execution of the Contract by the DB Contractor, but prior to District of Columbia City Council approval and District execution of the Contract. The NTP-1 will be issued as part of a letter contract issued by the District to the DB Contractor requiring both parties to be bound by the conditions of the DB Agreement and Contract. The DB Contractor shall proceed with the NTP-1 Work, subject to the limits of this Section 6 and Section 13.3.2, and shall not receive its first monthly progress payment until it has submitted a Preliminary Baseline Schedule that is acceptable to the District.

6.2.2 Issuance of Notice to Proceed 2

The DB Contractor shall begin performance of the remainder of the Work as directed and described in the Second Notice to Proceed (NTP-2) issued by the District. NTP-2 is conditioned upon the acquisition of required permits and the submission, review and/or Approval of final plans and/or other information as required by the Technical Provisions.

6.3 Completion Dates

6.3.1 Substantial Completion Date

The DB Contractor shall achieve Substantial Completion within the deadline set forth in Exhibit 2. Said deadline for Substantial Completion, as it may be extended hereunder, is referred to as the "Substantial Completion Date." Contractor has the option to propose early completion dates as set forth in Exhibit 2.

6.3.2 Final Completion Date

The DB Contractor shall achieve Final Completion within the deadline set forth in Exhibit 2. Said deadline for Final Completion, as it may be extended hereunder, is referred to as the "Final Completion Date." Contractor has the option to propose early completion dates as set forth in Exhibit 2.

6.3.3 No Time Extensions

Except as otherwise specifically provided in Section 14, the District shall have no obligation to extend any Completion Dates, and the DB Contractor shall not be relieved of its obligation to comply with the Contract Schedule and the applicable Completion Dates for any reason.

6.4 Contract Schedules

The DB Contractor shall deliver the Work in accordance with the Approved Contract Schedules, as described in Attachment C, Technical Provisions. Such schedules shall also be the basis for calculating the amount of monthly progress payments to be made to the DB Contractor.

6.5 Recovery Schedule

If a Recovery Schedule would be required in order to meet a Completion Date due to an event that entitles the DB Contractor to a Change Order as described in Section 14.1, the District shall have the right in its sole discretion to decide whether to allow a time extension with no extended overhead or other delay or disruption damages payable, except as provided in Section 15, or to require implementation of the Recovery Schedule without such time extension.

In such an event, the DB Contractor shall submit to the District at least two alternative Change Order forms, one of which shall include a Recovery Schedule and show the proposed Acceleration Costs associated with the Recovery Schedule, and the other which shall provide for an extension of the Completion Date without any increase in the Contract Price except as provided in Section 15. If the District elects to implement the Recovery Schedule in lieu of a time extension, the District shall issue a Change Order increasing the Contract Price to account for additional Acceleration Costs, if any. If it is not feasible to recover to the original Completion Date, or if DB Contractor believes that the costs associated with such a recovery are prohibitive, then the DB Contractor shall recommend a date to be shown in the time extension Change Order form.

6.6 Prerequisites for Start of Construction

The DB Contractor shall not start construction (or resume construction following any suspension) of any portion of the Project until all of the following events have been fully satisfied with respect to the Work proposed to be constructed:

1. The District has issued NTP 2.
2. All DGS and other Governmental Agency Approvals and environmental requirements necessary for construction of such portion of the Project have been obtained, and all conditions of such Approvals that are a prerequisite to starting such construction have been performed.
3. DB Contractor has issued and DGS has approved Released for Construction plans.
4. All insurance policies and bonds required to be delivered to the District hereunder have been submitted to the District as applicable and remain in full force and effect.
5. All necessary rights of access for such portion of the Project have been obtained.
6. Any additional conditions for construction set forth in the Contract Documents have been met.

Control of Work

7.1 Control and Coordination of Work

The DB Contractor shall be solely responsible for and have control over all aspects of the Work, including but not limited to construction means, methods, techniques, sequences, procedures, and site safety and shall be solely responsible for coordinating all portions of the Work, subject to all requirements of the Contract Documents.

7.2 Safety

The DB Contractor shall be solely responsible for the safety of and shall provide protection to prevent damage, injury, or loss to all persons on the Site or who would reasonably be expected to be affected by the Work, including individuals performing the Work, employees of the District and its consultants, visitors to the Site and members of the public who may be affected by the Work. The DB Contractor shall have a Safety Manager stationed at the Project for the duration of construction activities. The DB Contractor shall at all times comply with its safety program. The DB Contractor shall immediately notify the District if the DB Contractor believes that any Contract requirement creates a safety issue.

Regardless of the District's authority to suspend the work by written order as set forth in Section 16, the District shall have no obligation to issue such order. The failure to issue such order shall not create any liability of the District, and the DB Contractor shall remain solely responsible for safety.

Except as otherwise expressly provided in the Contract Documents, the DB Contractor is authorized to refuse admission either to the premises or to the working space covered by the Contract to any person whose admission is not specifically authorized in writing by the District.

7.3 Process to be followed for Discovery of Certain Site Conditions

7.3.1 Notification to the District

If the DB Contractor becomes aware of: (i) any onsite material that the DB Contractor believes may contain previously unidentified Hazardous Materials required to be removed or treated; or (ii) any human remains, artifacts, and/or other items of historical, archaeological, or geological significance within the ROW, the DB Contractor shall immediately notify the District thereof by telephone or in person, to be followed by written notification as soon as practicable. The DB Contractor shall immediately stop work and secure the area. Operations within 50 feet of the area shall be temporarily suspended and shall not be resumed at that location unless and until authorized by the District. In such event, the District will review the location within two (2) Business Days of receipt of notification and will advise the DB Contractor at that time whether to resume Work or whether further investigation is required. Any delay resulting from the District reviewing the location up to two (2) Business Days shall not be considered a District-caused delay. The DB Contractor shall be entitled to payment for removal and disposal of certain Hazardous Materials, as provided in Section 15.9. This Section does not entitle the DB Contractor to a Change Order except as expressly provided by the Contract.

7.3.2 Further Investigation

The DB Contractor shall promptly conduct such further investigation with respect to Section 7 as the District deems appropriate. Within five (5) Business Days after its initial notice to the District, the DB Contractor shall advise the District of any action recommended to be taken regarding the situation. If Hazardous Materials are involved, the notice shall describe the type of Remediation Work, if any, which the DB Contractor proposes to undertake with respect thereto. If human remains, artifacts, or paleontological, historical, geological, cultural, or biological resources are present, the notice shall advise the District as to

what course of action the DB Contractor intends to take with respect thereto and whether the location must be fenced off or whether Work can resume. The District then will either approve, or require modification of, the DB Contractor's proposed actions. Any additional Governmental Approvals that may become required will be performed in accordance with Section 4.

7.3.3 Recommence Work

The District shall have the right to require the DB Contractor to resume Work in the area at any time, even though an investigation may still be ongoing (so long as such Work is not in violation of any Legal Requirements or Governmental Approvals). The DB Contractor shall promptly resume Work in the area upon receipt of notification from the District to do so. On resuming Work, the DB Contractor shall follow all applicable procedures contained in the Contract Documents and all other Legal Requirements with respect to such Work, consistent with the District's determination or preliminary determination regarding the nature of the material, resources, or species.

7.3.4 Obligation to Minimize Impacts

The DB Contractor shall ensure that all of its activities and the activities of all DB Contractor-Related Entities are undertaken in a manner that will minimize the effect on surrounding property and the public to the maximum extent practicable. In particular the DB contractor must ensure 24/7/365 access to the St Elizabeths Hospital for staff, emergency vehicles and support services, and ensure no impacts from the DB Contractor operations impede or negatively impact access to or from the Congress Heights Metro station. Additional development may be occurring on site from parcel development and the DB contractor will be required to provide access to these sites during construction of the stage 1 phase 1 infrastructure improvements.

7.4 Quality Management

7.4.1 DB Contractor Quality Management

The DB Contractor shall perform the quality management necessary to comply with its obligations under the Contract Documents.

7.4.2 Oversight, Audit, Inspection, and Testing by the District and Others

All materials and each part or detail of the Work shall also be subject to oversight, audit, and testing by the District and other Persons designated by the District. When any third party, including a Utility Company, railroad company, unit of government, or political subdivision, is to accept or pay for a portion of the cost of the Work, its respective representatives have the right to oversee, audit, inspect, and test the Work to the extent such Work is related to such third party. Such oversight, audit, inspection, and/or testing does not make such Person a party to the Contract, nor will it change the rights of the parties hereto. The DB Contractor hereby consents to such oversight, inspection, and testing by the District and other Persons. Upon request from the District, the DB Contractor shall furnish information to such Persons as are designated in such request and shall permit such Persons access to the Site and all parts of the Work.

7.4.3 Obligation to Uncover Finished Work

At all times before Final Acceptance, the DB Contractor shall remove or uncover such portions of the finished construction Work as directed by the District. After examination by the District, the DB Contractor shall restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then the cost of uncovering, removing and restoring the Work or making good the parts removed and recovery of any delay to the Critical Path occasioned thereby shall be at the DB Contractor's expense. If Work exposed or examined under this Section 7 is in conformance with the requirements of the Contract Documents, then the cost of uncovering, removing and restoring the Work shall be paid in accordance with Section 15, and any delay in the Critical Path from uncovering, removing and restoring Work shall be the District's

responsibility. Refer to Section 7 for provisions regarding payments owing by the DB Contractor to the District, if the District agrees (in its sole discretion) to accept certain Nonconforming Work.

7.5 Effect of Oversight, Spot Checks, Assessment, Tests, Acceptances, and Approvals

7.5.1 Oversight and Acceptance

The DB Contractor shall not be relieved of its obligation to perform the Work in strict accordance with the Contract Documents, or any of its other obligations under the Contract Documents, by oversight, spot checks, assessments, reviews, tests, inspections, acceptances, Approvals, approvals by any Persons, or by any failure of any Person to take such action. The oversight, spot checks, assessments, reviews, tests, inspections, acceptances, Approvals, or approvals by any Person do not constitute Final Acceptance of the particular material or Work or waiver of any legal or equitable right with respect thereto. The District may reject or require the DB Contractor to remedy any Nonconforming Work and/or identify additional Work that must be done to bring the Project into compliance with Contract requirements at any time before Final Acceptance, whether or not previous oversight, spot checks, assessments, reviews, tests, inspections, acceptances, or approvals by any Persons were conducted.

7.5.2 No Estoppels

The District shall not be precluded or estopped, by any measurement, estimate, or certificate made either before or after Final Acceptance and payment therefore, from showing that any such measurement, estimate, or certificate is incorrectly made or untrue, or from showing that the true amount and character of the Work performed and materials furnished by the DB Contractor do not conform in fact to the requirements of the Contract Documents. Notwithstanding any such measurement, estimate, certificate, or payment made in accordance therewith, the District shall not be precluded or estopped from recovering from the DB Contractor and its Surety (ies) such damages as the District may sustain by reason of the DB Contractor's failure to comply or to have complied with the terms of the Contract Documents.

7.6 Nonconforming Work

7.6.1 Rejection, Removal, and Replacement of Work

Subject to the District's right, in its sole discretion, to accept or reject Nonconforming Work, the DB Contractor shall remove and replace rejected Nonconforming Work to conform to the requirements of the Contract Documents, at the DB Contractor's expense and without any time extension. The DB Contractor shall promptly take all action necessary to prevent similar deficiencies from occurring in the future. The fact that the District may not have discovered the Nonconforming Work shall not constitute an acceptance of such Nonconforming Work. If the DB Contractor fails to correct any Nonconforming Work within five (5) Days of receipt of notice from the District requesting correction (or, for Nonconforming Work that cannot be corrected within five (5) Days, if the DB Contractor fails to provide to the District a schedule approved by the District for correcting any such Nonconforming Work within such 5-Day period, begin correction within such 5-Day period and thereafter diligently prosecute such correction in accordance with such approved schedule to completion), then the District may cause the Nonconforming Work to be remedied or removed and replaced, and may deduct the cost of doing so from any monies due or to become due the DB Contractor and/or obtain reimbursement from the DB Contractor for such cost.

7.6.2 Nonconforming Work Pay Adjustment

The District may, in its sole discretion, accept any Nonconforming Work without requiring it to be fully corrected and shall be entitled to a pay adjustment (or reimbursement of a portion of the Contract Price, if applicable). In such event, the District shall be entitled to reimbursement of a portion of the Contract Price in an amount determined by the District. In certain events, however, it may not be possible for the Nonconforming Work to be made to conform to the requirements of the Contract Documents, including, but

not limited to, the DB Contractor's failure to perform required items to be paid in equal monthly amounts indicated in the Work Breakdown Structure during a required time period. In general, the pay adjustment (or reimbursement) shall equal, at the District's election: (i) the amount allocated to such Work in the Revised Baseline Schedule; (ii) the DB Contractor's cost savings associated with its failure to perform the Work in strict accordance with the Contract requirements; or (iii) the amount deemed appropriate by the District to provide compensation for impacts to affected parties, such as future maintenance and/or other costs relating to the Nonconforming Work. In certain events, the District shall be entitled to a pay adjustment (or reimbursement) as expressly set forth elsewhere in the Contract Documents. Such reimbursement shall be deducted from future payments or, if future payments are insufficient to cover the amount owing, shall be payable to the District within 30 Days after DB Contractor's receipt of an invoice.

Access to Site, Utility Relocations, and Environmental Compliance

8.1 Access to ROW Identified on ROW Drawings

8.1.1 Obligation to Provide Access

The District has identified certain ROW to be used for permanent improvements included in the Project (the ROW in the Section 106 MOA), which are depicted in Attachment A, CDR. The District will provide access to the ROW identified on the Intermediate Plans in accordance with Attachment C, Technical Provisions.

8.1.2 ROW Access Requirements

Concurrently with the review of the Preliminary Baseline Schedule, the DB Contractor and the District shall discuss the access requirements for the ROW identified on the Intermediate Plans associated with the scheduled Activities. The District will issue the DB Contractor right of access for the ROW areas shown on the Intermediate Plans.

8.1.3 Delay in Providing Access

If the District at any time determines it will be unable to provide access to a particular parcel, the District shall notify the DB Contractor regarding the revised projected date for delivery of access. The DB Contractor shall take appropriate action to minimize any cost and time impact and shall work around such parcel until access can be provided, including rescheduling and re-sequencing Work so as to avoid any delay to the Project. Subject to Section 8, to the extent that a delay to the Critical Path cannot be avoided due to a material lack of access to a parcel(s), the DB Contractor shall be entitled to additional compensation and/or time in accordance with Section 14.

8.1.4 Obligation to Provide Written Notice

In addition to the requirements of Section 8, and as a necessary condition for obtaining any increase in the Contract Price or extension of a Completion Date related to the District's delivery of access to the parcels identified on the Intermediate Plans, the DB Contractor shall provide the District written notice within five (5) Business Days after receipt of a revised projected date if the lack of availability will result in an impact to the cost or schedule.

8.1.5 Access to ROW Not Identified on ROW Drawings

The cost of obtaining any ROW not identified on the Intermediate Plans and within the Section 106 MOA associated with a Value Engineering Change Proposal (VECP) will be included in calculating the Contract Price adjustment discussed in Section 15. Any such VECP must include complete approval of the Section 106 MOA signatories.

The DB Contractor shall reimburse the District for any costs (including attorneys', accountants', and expert witness fees and costs) of acquiring any real property that is not the District's responsibility and that the DB Contractor determines is necessary or advisable in order to complete the Project, including obtaining any Temporary Easements. The District may deduct such amounts from payments otherwise owing hereunder or may invoice the DB Contractor. The DB Contractor shall reimburse the District for any such amounts paid by the District within a month after receipt of an invoice from the District.

8.1.6 Failure to Have Necessary Rights of Access

If the DB Contractor enters any property in connection with the Project without having all necessary rights of access, the District may, in its sole discretion, but is not obligated to obtain consent from the landowner for the DB Contractor's access. The DB Contractor shall be responsible for all costs incurred by the District as a result thereof.

8.2 Utility Relocations

Except as otherwise noted, the DB Contractor shall be responsible for all costs (both direct and indirect) associated with the performance/coordination of all Utility adjustment work within the ROW of Alabama Avenue SE, Martin Luther King Jr Avenue SE and other public ROW, that remains in conflict following NTP-1 and the performance/coordination of any Utility adjustment work beyond the ROW caused by DB Contractor's final design.

All costs associated with the design and construction of the complete wet and dry utility system are to be included in the DB Contractor's Contract Price.

The DB Contractor is not entitled to any time extensions caused by delays attributable to Utilities, except for delays due to the discovery of unknown Utilities requiring adjustment or uncooperative Utility Companies as described in Section 8. Any change in the scope of the Work pursuant to this Section 8.2 shall not be considered a District-Directed Change.

8.2.1 Utility Delays

The DB Contractor shall not be entitled to any extension of any completion deadline caused by delays attributable to Utilities unless all of the following conditions are satisfied:

1. The Contractor has provided evidence reasonably satisfactory to the District that: (i) the Contractor has fulfilled its obligation under the applicable Utility Agreement(s) to coordinate with the Utility Company to prevent or reduce such delays; and (ii) the Contractor has otherwise made diligent efforts to obtain the timely cooperation of the Utility Company but has been unable to obtain such timely cooperation.
2. If the Contractor is responsible for the Relocation, the Contractor has provided a reasonable Relocation plan to the Utility Company and the Contractor has obtained, or is in a position to timely obtain, all applicable approvals, authorizations, certifications, consents, exemptions, filings, leases, licenses, permits, registrations, options, and/or rulings required by or with any Governmental Person in order to design and construct such Relocations.
3. No circumstances exist which have delayed or are delaying the affected Relocation, other than those which fit within the definition of a Utility Delay.

8.2.2 Certain Obligations of DB Contractor and Utility-Related ROW Costs

The DB Contractor shall endeavor to avoid multiple Relocations of the same Utility, whether by the Utility Company or by the DB Contractor. Accordingly, after a Utility has been relocated once in order to accommodate the Project based on the pre-award relocations by DGS (if any) or DB Contractor's design, the DB Contractor shall be responsible for all costs incurred by either the DB Contractor or the Utility Company in order to subsequently relocate such Utility to accommodate the Project. If the Utility Company performs such subsequent Relocation at the District's expense, then the DB Contractor shall reimburse the District for all amounts paid by the District to such Utility Company in reimbursement for such subsequent Relocation. If the DB Contractor performs such subsequent Relocation, then the DB Contractor shall not receive any extension of the Completion Deadline or increase in the Contract Price on account of the performance of such subsequent Relocation.

In designing and constructing the Project, the DB Contractor shall take all reasonable steps to minimize costs to the Utility Companies to the extent practicable and otherwise consistent with other requirements of the Contract Documents. For Relocations, the DB Contractor shall bear the burden of proving that the Relocation cannot reasonably be avoided.

8.2.3 Coordination Costs

The DB Contractor shall not be entitled to an increase in the Contract Price for any costs of coordinating with Utility Companies or assisting the District in coordinating with Utility Companies.

8.2.4 Voluntary Action by DB Contractor

If the DB Contractor elects to make payments to Utility Companies or to undertake any other efforts not required by the terms of the Contract Documents, the DB Contractor shall not be entitled to a Change Order in connection therewith. The DB Contractor shall promptly notify the District of the terms of any such arrangements.

8.2.5 Betterments

Utility Betterments may be added to the Work pursuant to Section 15.

If any Betterment has been added to the Work and the Contract Price has been increased accordingly by Change Order, but subsequently for any reason the Betterment is deleted from the Work, or the scope of the Contractor's Work with regard to such Betterment is materially reduced, then the District shall be entitled to issue a Change Order reducing the Contract Price to reflect the value of any reduction in the costs of the Work that is directly attributable to such deletion or reduction.

Any change in the scope of the Work pursuant to this Section 8.2.5 shall not be considered a District-Directed Change.

8.3 Environmental Compliance

In performance of the Work, the DB Contractor shall comply with all requirements of all applicable Environmental Laws and Governmental Approvals issued there under, whether obtained by the District or the DB Contractor. The DB Contractor acknowledges and agrees that it will be responsible for all fines and penalties that may be assessed in connection with its failure to comply with such requirements.

8.3.1 Mitigation Requirements

The DB Contractor shall perform all environmental mitigation measures (which term shall be deemed to include all requirements of the Environmental Approvals and similar Governmental Approvals, regardless of whether such requirements would be considered to fall within a strict definition of the term). The mitigation requirements for the Project are described in the FONSI and as set forth in Attachment A of the RFP. The Contract Price includes compensation for the DB Contractor's performance of all such mitigation measures that are included in the agreed-upon scope of the Contract, for performance of all mitigation measures arising from New Environmental Approvals, which Section 8 designates as the DB Contractor's responsibility, for mitigation measures required by any Governmental Approvals, and for all other Activities to be performed by the DB Contractor as described in Attachment A of this RFP.

8.3.2 New Environmental Approvals to be Obtained by the District

The District will be responsible for obtaining any New Environmental Approvals necessitated by a time and money change order described in Section 14. The DB Contractor shall provide all necessary support to the District with respect to obtaining any such New Environmental Approval.

8.3.3 New Environmental Approvals to be Obtained by Contractor

If a New Environmental Approval becomes necessary for any reason other than those specified in Section 8.3.2, the DB Contractor shall be fully responsible for obtaining the New Environmental Approval and any other Environmental Approvals that may be necessary, and for all resulting requirements, as well as for any litigation arising in connection therewith. The District will reasonably assist the DB Contractor in obtaining any New Environmental Approvals. If the New Environmental Approval is associated with a VECP, or other DB Contractor-requested Change Order, the costs of obtaining and complying with the terms of the New Environmental Approval shall be considered in calculating the Contract Price adjustment under Section 15.

8.3.4 NEPA Section 106 MOA Obligations by DB Contractor

DB Contractor shall be responsible for monitoring and reporting requirements as detailed in paragraph XII. of the June 2012 Memorandum of Agreement (MOA) included within Attachment A, RID.

Equal Employment Opportunity; Subcontracts; Labor

9.1 Equal Employment Opportunity

9.1.1 Equal Employment Opportunity Policy

The DB Contractor confirms that it has an equal opportunity policy ensuring equal employment opportunity. The DB Contractor shall comply with D.C. Official Code §2-1401.01 et seq., the District's Equal Employment Opportunity (EEO) Policy, the requirements set forth in the Federal Highway Administration (FHWA) Form 1273, and in all Exhibit C, Federal Requirement forms.

9.1.2 Non-Discrimination

1. The DB Contractor shall not discriminate against any employee or applicant for employment because of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the D.C. Human Rights Act (DCHRA), 2-1401.01 et seq. In addition, harassment based on any of the above protected categories is prohibited by the DCHRA.
2. The DB Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business.

The affirmative action shall include, but not be limited to, the following:

- a. Employment, upgrading or transfer;
- b. Recruitment or recruitment advertising;
- c. Demotion, layoff, or termination;
- d. Rates of pay, or other forms of compensation; and
- e. Selection for training and apprenticeship.
3. The DB Contractor agrees to post in conspicuous places, available to employees and applicants for employment, noticed to be provided by the District, setting forth the provisions in paragraphs 1 and 2 of this section concerning non-discrimination and affirmative action.
4. The DB Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the DB Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in paragraph 2 of this section.
5. The DB Contractor agrees to send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the District, advising said labor union or workers' representative of the DB Contractor's commitments under this nondiscrimination clause and the DCHRA, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
6. The DB Contractor agrees to permit access to its books, records, and accounts pertaining to its employment practices, by the District's Chief Procurement Officer or designee, or the Director of Human Rights or designee, for purposes of investigation to ascertain compliance with the DCHRA and its rules at

4 DCMR Ch. 11, and to require under terms of any subcontractor agreement each subcontractor to permit access of such subcontractor's books, records, and accounts for such purposes.

7. The DB Contractor agrees to comply with the provisions of 4 DCMR and with all guidelines for equal employment opportunity applicable in the District of Columbia adopted by the Director of the Office of Human Rights, or any authorized official.
8. The DB Contractor shall include in every subcontract, except construction subcontractors for standard commercial supplies or raw materials, the equal opportunity clauses, paragraph 1 through 8 of this section, so that such provisions shall be binding upon each subcontractor or vendor.
9. The DB Contractor shall take such action with respect to any subcontract as the CO may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided, however, that in the event the DB Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the CO, the DB Contractor may request the District to enter into such litigation to protect the interest of the District.

9.1.3 Reserved

9.1.4 Federal Workforce Requirements

The DB Contractor must comply with the applicable and most current federal work force requirements for Washington, DC, as specified by the Department of Labor and the Living Wage Act of 2006, D.C. Official Code § 2-220.01, et. seq.

9.2 Certified Business Enterprises (CBE)

9.2.1 CBE Policy

The Contractor shall comply with the District's CBE Policy ensuring that CBE firms shall have a full and equal opportunity to compete fairly in the performance of contracts financed with Local funds. The Contractor shall subcontract at least 35% of the contract dollar value to certified CBE firms in accordance with the policy. If there are insufficient qualified CBE firms completely fulfill the requirement, then the subcontracting may be satisfied by subcontracting the outstanding amount of the 35% to other firms certified by DSLBD. The Contractor shall meet or exceed the CBE requirement for the Project, which is 35 percent for design and construction.

9.2.2 Inclusion in Subcontracts

The DB Contractor shall include Section 9 in every contract and Subcontract (including purchase orders), so that such provisions will be binding upon each Subcontractor.

9.3 Limitation on Subcontracted Work

The DB Contractor shall perform with his own organization, Work amounting to not less than 35 percent of the construction Work. The percentage of construction Work sublet shall be determined by dividing the total dollar value of the Subcontracts for construction Work, excluding any Subcontracts with Major Participants but including any Subcontracts under and through Major Participants, by the portion of the Contract Price allocable to construction Work (as determined by the District).

9.4 Subcontracting Requirements

The DB Contractor shall comply with all applicable requirements of the Contract Documents relating to Subcontracts and shall ensure that all Subcontractors performing Work on the Project comply with all applicable requirements of the Contract Documents relating to Subcontracting. The DB Contractor shall not

add, delete, or change the role of any Major Participant or Key Subcontractor without the prior written approval of the District.

9.5 Assignment of Subcontract Rights

Each Subcontract shall provide that, pursuant to terms in form and substance satisfactory to the District: (i) the District is a third-party beneficiary of the Subcontract and shall have the right to enforce all terms of the Subcontract for its own benefit; and (ii) all guarantees and Warranties, express and implied, shall inure to the benefit of the District as well as the DB Contractor. Any acceptance of assignment of a Subcontract from the District, its successor(s), or assign(s) shall not operate to make the assignee(s) responsible or liable for any breach of the Subcontract by the DB Contractor or for any amounts due and owing under the Subcontract included in an invoice paid by the District.

9.6 Subcontract Terms

Each Subcontract shall include all terms and conditions of the Contract Documents in the Subcontracts and ensure compliance by the Subcontractor with all applicable requirements of the Contract Documents, including Sections 3, 4, 5, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 20, 21, 23, 24, 25, and 26 of this DB Agreement.

9.7 Subcontract Data

The DB Contractor shall notify the District, in writing, of the name and address of, and licenses held by, each Subcontractor (excluding Suppliers) as soon as the potential Subcontractor has been identified by the DB Contractor, but in no event, less than 14 Days prior to the scheduled initiation of Work by such proposed Subcontractor. The DB Contractor shall provide the District with a list of its Subcontractors (including Suppliers) from time to time upon request by the District; shall allow the District access to all Subcontracts and records regarding Subcontracts; and shall deliver to the District, within 10 Days after execution, copies of all Subcontracts with Major Participants and Key Subcontractors and, within 10 Days after receipt of a request from the District, copies of all other Subcontracts.

9.8 Responsibility for Work by Subcontractors

Notwithstanding any Subcontract or agreement with any Subcontractor, the DB Contractor shall be fully responsible for all Work. The District shall not be bound by any Subcontract, and no Subcontract shall include a provision purporting to bind the District.

9.9 Key Personnel

9.9.1 Key Personnel

The District may, with the DB Contractor's approval, add Key Personnel at no cost to the District. The District shall have the right to review the qualifications of each individual to be assigned as Key Personnel (including personnel employed by Subcontractors) and to Approve or disapprove use of such key person in such key position prior to the commencement of any Work by such individual or during the prosecution of the Work. The DB Contractor shall notify the District in writing of any proposed changes in any Key Personnel and shall include a resume of proposed Key Personnel. The DB Contractor shall not change any Key Personnel without the prior written Approval of the District.

9.9.2 Key Personnel; Qualifications of Employees

The Contract Documents identify certain job categories of Key Personnel for the Project. The DB Contractor shall not change, or permit any change in, any Key Personnel.

The DB Contractor shall designate an Authorized Representative who shall have onsite field and office authority to represent and act for the DB Contractor. An Authorized Representative shall be present at the jobsite at all times while Work is actually in progress. The DB Contractor shall provide office phone numbers, email addresses, and mobile telephone numbers for all Key Personnel. DGS requires the ability to

contact the following selective Key Personnel 24 hours per day, 7 days per week: (a) Project Manager; (b) Construction Manager; (c) Maintenance of Traffic Manager; and (d) Environmental Compliance Manager.

The DB Contractor acknowledges and agrees that the award of this DBA by the District to the DB Contractor was based, in large part, on the qualifications and experience of the personnel listed in the Proposal and DB Contractor's commitment that such individuals would be available to undertake and perform the Work. The DB Contractor represents, warrants, and covenants that such individuals are available for and will fulfill the roles identified for them in the Proposal in connection with the Work. Unless otherwise agreed to by the District in writing, individuals filling Key Personnel roles shall be available for the Work and shall maintain active involvement in the prosecution and performance of the Work. In addition to the foregoing, DGS reserves the right to require a 100 percent time commitment per position from any Key Personnel if DGS, in its sole discretion, determines that such personnel are not devoting sufficient time to the prosecution and performance of the Work.

If NTP-1 has not been issued within 180 days after the Proposal Due Date through no act, omission, negligence, intentional misconduct, or breach of Applicable Law, contract, or Governmental Approval of any DB Contractor-Related Entity, the DB Contractor shall have 30 days after issuance of NTP-1 to identify any change in Key Personnel. Following any DGS-approved substitution or replacement of a Key Personnel pursuant to the terms hereof, the new individual shall be considered a Key Personnel for all purposes under this DBA.

9.10 First Source Act Requirements

9.10.1 First Source Hiring Requirements for Contractors and Subcontractors

The Proposer shall comply with subchapter X of Chapter II of Title 2, and all successor acts thereto, including but not limited to the *Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011* (D. C. Law 19-84, D. C. Official Code §§ 2-219.01 *et seq.*) and the rules and regulations promulgated there under, including, but not limited to the following requirements:

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

Proposer shall specify its response to this RFP whether 51% of the new employees hired will be either (see D. C. Official Code § 2-219.03(e)(1)(B):

- Cumulative of all hours worked, including those hours worked by subcontractors at any tier who work on the project or contract; or
- Met by the Proposer and each individual subcontractor at any tier who works on the project or contract.

As a part of its response to this RFP, Proposers shall include an initial employment plan outlining the Proposer's strategy for meeting the local hiring requirements. The initial employment plan shall describe Proposer's pre-construction and on-going strategy for locating, attracting and marketing employment opportunities to residents of the District, with a special emphasis on its plan for hiring residents of Ward 8, graduates of District public and charter schools, and hard-to-employ residents. The initial employment plan should include;

- Descriptions of the health and retirement benefits provided to employees who worked on any of the Proposer's past 3 completed projects or contracts;

- A description of the Proposer's efforts to provide District residents with ongoing employment and training opportunities after they complete work on the job for which they were initially hired: and
- A disclosure of Proposer's past compliance with the Workforce Act and the Davis-Bacon Act of 1931, approved March 3, 1931 (*46 stat. 1491; 40 U.S.C.S. § 3141 et seq.*) ("Davis-Bacon Act"), where applicable, on projects or contracts completed within the last 2 years.

If selected, the Proposer's initial employment plan will be included in the employment plan required under D. C. Official Code §§ 2-219.03(F).

Apprenticeship Act

The *Apprenticeship Requirements Amendment Act of 2004* (D. C. Law 15-295, D. C. Official Code § 32-1431) shall apply to this project. All subcontractors selected to perform work on the project on a craft-by-craft basis shall be required to comply with the requirements set forth in D. C. Official Code §§ 32-1401 *et seq.* All terms and conditions of the D. C. Apprenticeship Council Rules and Regulations shall be implemented. Please note that 35% of all apprenticeship hours worked must be performed by District residents. The Proposer shall be liable for any subcontractor non-compliance.

9.10.2 First Source Act Employment Plan

Following award of the contract, the DB Contractor shall, in accordance with the First Source Act and the contract documents, submit a revised employment plan to DOES for review and approval prior to receiving NTP 2. The revised employment plan shall include but not be limited to:

- A projection of the total number of hours to be worked on the project by trade;
- A projection of the total number of journey worker hours, by trade, to be worked on the project and the total number of journey worker hours, by trade, to be worked by District residents;
- A projection of the total number of apprentice hours, by trade, to be worked on the project and the total number of apprentice hours, by trade, to be worked by District residents;
- A projection of the total number of skilled laborer hours, by trade, to be worked on the project and the total number of skilled laborer hours, by trade, to be worked by District residents;
- A projection of the total number of common laborer hours, by trade, to be worked on the project and the total number of common laborer hours, by trade, to be worked by District residents;
- A timetable outlining the total hours worked by trade over the life of the project and an associated hiring schedule;
- Descriptions of the skill requirements by job title or position, including industry-recognized certifications required for the different positions;
- A strategy to fill the hours required to be worked by District residents pursuant to the contract documents and District of Columbia Official Code, including a component on communicating these requirements to contractors and subcontractors and a component on potential community outreach partnerships with the University of the District of Columbia, the University of the District of

Columbia Community College, the Department of Employment Services, Jointly Funded Apprenticeship Programs, or other government-approved, community-based job training providers;

- A remediation strategy to ameliorate any problems associated with meeting these hiring requirements, including any problems encountered with contractors and subcontractors;
- The designation of a senior official from the DB Contractor who will be responsible for implementing the hiring and reporting requirements;
- Descriptions of the health and retirement benefits that will be provided to District residents working on the Project;
- A strategy to ensure that District residents who work on the Project receive ongoing employment and training opportunities after they complete work on the job for which they were initially hired and a review of past practices in continuing to employ District residents from one project of contract to the next;
- A strategy to hire graduates of District of Columbia Public Schools, District of Columbia public charter schools, and community-based job training providers, and hard-to-employ residents;
- A disclosure of past compliance with the Workforce Act and the Davis-Bacon Act, where applicable, and the Proposer's general District-resident hiring practices on projects or contracts completed within the last two (2) years; and
- A statement by the DB Contractor choosing whether all residency work requirements shall be; (a) Cumulative of all hours worked, including those hours worked by subcontractors at any tier who work on the project; or (b) Met by the DB Contractor and each individual subcontractor at any tier who works on the project.

Each month following the start of the Project, the DB Contractor shall submit to DOES copies of their monthly and cumulative certified payrolls, monthly and cumulative certified payrolls from all subcontractors at any tier working on the Project, as well as a report of the total monthly direct and indirect labor costs associated with the Project.

Once approved, the employment plan shall not be amended except with the approval of the Department of Employment Services (DOES).

Collective bargaining agreements shall not be a basis for a waiver of the First Source Act.

The Project shall be subject to the hiring and reporting requirements set forth in the First Source Act until construction is completed and a final acceptance has been issued.

9.10.3 First Source Act Employment Agreement

The DB Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code, §§ 2-219.01 et seq. ("First Source Act"). The DB Contractor shall enter into and maintain, during the term of the contract, a First Source Employment Agreement, in which the DB Contractor shall agree to the following:

- The first source for finding employees to fill all jobs created in order to perform this contract shall be the Department of Employment Services (DOES);
- The first source for finding employees to fill any vacancy occurring in all jobs covered by the First Source Employment Agreement shall be the First Source Register;
- The DB Contractor shall submit to DOES, no later than the 10th each month following execution of the contract, a First Source Agreement Contract Compliance Report (contract compliance report) verifying its compliance with the First Source Agreement the preceding month. The contract

compliance report shall include; the number of employees needed, number of current employees transferred, number of new job openings created, number of job openings listed with DOES, total number of District residents hired for the reporting period, the cumulative number of District residents hired, the total number of employees hired for the reporting period, the cumulative number of employees hired;

- Information on employees shall include; name, job title, hire date, residence, and the referral source for all new hires;
- As a condition of receiving monthly progress payments, the DB Contractor shall include a current copy of the contract compliance report with each payment voucher submitted to DGS.

Surety Bonds

The DB Contractor shall provide to the District and maintain at all times during the term of the Contract security for performance of the Work as described below (or other assurance satisfactory to the District in its sole discretion). Each bond required hereunder shall be provided by an Eligible Surety or Eligible Sureties. The Contract bonds may not be in excess of the cumulative underwriting limitation listed in the circular of the underwriting capacities of the DB Contractor's surety companies.

10.1 Performance Bond

The DB Contractor shall provide a Performance Bond in accordance with Title 27 Regulations § 2703.3, in the amount of 100 percent of the original Contract Price to the extent that this differs from the Standard Specification. Additional Performance Bond protection shall be required in connection with any modification effecting an increase in price under the Contract if: (i) the modification is for new or additional Work that is beyond the scope of the existing Contract, or (ii) the modification is pursuant to an existing provision of the Contract and is expected to increase the Contract value by more than \$50,000.

10.2 Payment Bond

The DB Contractor shall provide a Payment Bond in accordance with Title 27 Regulations § 2703.6, in the amount of 100 percent of the total amount of the original Contract Price. The Surety must be authorized to do business in the District of Columbia. The Payment Bond may also be the equivalent in cash or other security considered satisfactory to the District.

The Payment Bond shall be for the protection of all businesses supplying labor and materials, including lessors of equipment to the extent of the fair rental value of the equipment, to the DB Contractor or a Subcontractor in the performance of Work provided for by the Contract.

Before receiving a progress or final payment under a contract covered by this Section, the DB Contractor shall certify in writing that the DB Contractor has made payment from the proceeds of prior payments, and that the DB Contractor will make timely payments from the proceeds of the progress or final payment then due the DB Contractor, to the DB Contractor's Subcontractors and suppliers in accordance with its contractual arrangements with them.

The Payment Bond shall be released one (1) year after Final Acceptance or the District's receipt of the DB Contractor's Affidavit Regarding Settlement of Claims, whichever occurs later.

Additional Payment Bond protection shall be required in connection with any modification effecting an increase in price under the Contract if: (i) the modification is for new or additional Work that is beyond the scope of the existing Contract, or (ii) the modification is pursuant to an existing provision of the Contract and is expected to increase the Contract value by more than \$50,000.

10.3 Replacement of Performance Bond

Provided that all conditions to Final Acceptance have occurred, the DB Contractor shall have the right to replace the Performance Bond with a replacement performance bond in an amount and in a form satisfactory to the District in its sole discretion (provided that it shall not be required to exceed 5 percent of the Contract Price) or with such other security as is Approved by the District in its sole discretion, guaranteeing due and punctual performance of all obligations of the DB Contractor under the Contract Documents, for the duration of those obligations, that survive Final Acceptance including, but not limited to Warranty.

10.4 No Relief of Liability

Notwithstanding any other requirements of the Contract Documents, performance by a Surety of any of the obligations of the DB Contractor shall not relieve the DB Contractor of any of its obligations hereunder.

Insurance

11.1 General Insurance Requirements

11.1.1 Evidence of Insurance

The DB Contractor shall provide evidence of insurance as proof of compliance for all insurance requirements contained in this Section 11. These insurance requirements are applicable to the DB Contractor only. The DB Contractor shall require its Subcontractors to obtain insurance in amounts deemed appropriate by the DB Contractor.

The DB Contractor's insurance shall cover all Work under this Contract, whether the Work is performed by the DB Contractor or its Subcontractors. The DB Contractor's insurance shall cover the entire Project. The DB Contractor has the option of providing evidence of the insurance required in Section 11 either: (a) as part of its existing insurance, or (b) as Project-specific insurance. If the DB Contractor provides insurance as part of its existing insurance, its insurance premiums shall be included as part of its Proposal Price without any reimbursement from the District. If the DB Contractor purchases Project-specific insurance, such premiums shall be included in the DB Contractor's Proposal Price.

Evidence of the DB Contractor's insurance shall provide for 10 Days' written notice of cancellation for nonpayment of premiums, or 45 Days' written notice of cancellation for any other reason, including non-renewal. The DB Contractor shall delete the phrase "will endeavor to" preceding all references to provisions of notice by the insurance company in the evidence of insurance.

A Certificate of Insurance on an ACORD form indicating certain specified amendments and attachments shall be submitted by DB Contractor to the District, but DB Contractor must provide, simultaneously with the execution of the DB Agreement, a complete certified copy of the policies to the District. DB Contractor shall provide District with a copy of endorsement(s) to the policies and cancellation and/or non-renewal notices evidencing the same. All policies shall include a waiver of subrogation endorsement and a severability of interest's endorsement. The District shall not be liable for amounts that may represent a deductible or self-insured retention in any insurance policy, and the payment of such deductibles and self-insured retentions shall be the sole responsibility of the DB Contractor, Major Participant, subcontractor, or consultant providing such insurance. DB Contractor, Major Participants, its subcontractors and consultants shall reveal the amount of such deductibles and self-insured retentions, if any, for each policy. All insurance must be written on an occurrence basis, except for professional liability insurance which may be written on a claims made basis. No Work will start until proof of insurance has been submitted to the District.

11.1.2 A.M. Best Rating

All insurance companies providing policies obtained to satisfy the insurance requirements must have an A.M. Best Company, Inc. rating of A-, Class XII, or better and licensed to provide insurance in the District.

11.1.3 Full Force and Effect

The commercial general liability, excess (umbrella) liability, contractor's pollution liability, and professional liability insurance coverage requirements will remain in full force and effect until Final Acceptance, at which time the DB Contractor shall maintain completed operations insurance throughout the term of all Warranties or as otherwise required by the Contract Documents, whichever is greater.

11.1.4 No Recourse

There shall be no recourse against the District for payment of premiums or other amounts with respect to the insurance provided by the DB Contractor or for deductibles under these policies. This provision does not affect any rights the DB Contractor is entitled to pursuant to Section 14.

11.1.5 Indemnification

The insurance coverage provided hereunder shall provide coverage for, but is not intended to limit, the DB Contractor's indemnification obligations under Section 20.

11.2 Contractor-Provided Insurance

The DB Contractor shall procure, at its own expense, insurance acceptable to the District, as described herein, and shall maintain such insurance, as specified herein, in accordance with the requirements stated in this Section 11, or as otherwise Approved by the District at its sole discretion.

11.2.1 Workers' Compensation and Employer's Liability Coverage

The DB Contractor shall furnish evidence to the District that, with respect to the Work, the DB Contractor carries workers' compensation insurance according to the statutes of the District of Columbia.

11.2.2 Commercial General Liability Insurance

The DB Contractor shall provide commercial general liability broad form coverage for bodily injury, property damage, personal injury, and advertising liability written on an occurrence form that shall be no less comprehensive or more restrictive than the coverage provided by Insurance Services Office form CG 00 01 10 01.

1. Limits of liability. General liability:
\$2,000,000—each occurrence.
\$2,000,000—per aggregate.
\$2,000,000—products/completed operations liability.
2. Such insurance shall include, by its terms or appropriate endorsements, bodily injury, property damage, legal liability, personal injury, blanket contractual, independent contractors, premises, operations and products and completed operations. Such insurance shall also include blanket coverage for explosion, collapse, and underground hazards.
3. Products and completed operations coverage shall be continued for a minimum of two (2) years from Final Acceptance.
4. The District shall be an additional insured with respect to liability arising out of acts or omissions of the DB Contractor or its Subcontractors, whether on or off the Site.

11.2.3 Automobile Liability Insurance

The DB Contractor shall provide occurrence-based commercial automobile liability insurance covering all owned/leased, non-owned, and hired vehicles used in the performance of Work, both on and off the Site, including loading and unloading.

The following limits of liability and other requirements shall apply:

1. \$1,000,000 per occurrence combined single limit for bodily injury and property damage liability.
2. Coverage shall be provided on Insurance Services Office form number CA 00 01 10 01 or equivalent.
3. The policy shall be endorsed to include Motor Carrier Act endorsement—Hazardous Materials Cleanup (Motor Carrier Safety -90), if applicable.

11.2.4 Excess (Umbrella) Liability Insurance

The DB Contractor shall provide umbrella or excess liability insurance coverage and when combined with the general liability policy has an aggregate limit of at least Fifteen Million Dollars (\$15,000,000).

11.2.5 Contractor's Pollution Legal Liability Coverage

The DB Contractor shall provide pollution legal liability coverage for the Project. The limit of liability per occurrence shall be \$2,000,000 and the total Project aggregate shall be \$2,000,000.

11.2.6 Additional Insureds

Each policy of commercial general liability insurance, commercial auto liability, and excess liability (umbrella) insurance shall name the District and the District's members, agents, consultants, and employees including, but not limited to, the District's General Engineering Consultant, as additional insureds. The insurance afforded by the DB Contractor shall be the primary insurance.

11.2.7 Reserved

11.2.8 Professional Liability Insurance

The DB Contractor and the Major Participant in the DB Contractor entity who will perform the design function (i.e., the engineer in charge or "Designer") shall maintain project-specific professional liability insurance appropriate to the consultant's profession that is endorsed to include contractual liability with provisions at least as follows:

1. Each policy shall protect against any negligent act, error or omission arising out of the design or engineering Activities of the policyholder.
2. Each policy shall have a retroactive date of no later than the date the first design or engineering Activities have been conducted by the respective policyholder.
3. Each policy shall be required to cover up to \$2,000,000 per Claim and \$2,000,000 per aggregate for each wrongful act.

The DB Contractor shall ensure that the policies cover Claims arising out of acts, errors, or omissions that occur and are reported for a period of five (5) years after Final Acceptance.

11.2.9 Railroad Protective Insurance

The DB Contractor shall be responsible for providing all additional insurance as required and in the values stipulated in the Washington Metropolitan Area Transit Authority's (WMATA) Adjacent Construction Project Manual.

11.2.10 Builder's Risk

DB Contractor shall provide an all risk policy, including workmanship acceptable to the District, in the amount equal at all times to 100% of the Contract Price attributable to completed construction value including potential redesign. The policy shall include coverage for loss or damage caused by certified acts of terrorism as defined in the Terrorism Risk Insurance Act. The policy shall be issued in the name of the DB Contractor and shall name its Subcontractors as additional insureds. The District shall be named as a loss payee on the policy.

This insurance shall be specific as to coverage and not considered as contributing insurance with any permanent insurance maintained on the present premises. If off site storage is permitted, coverage shall include transit and storage in an amount sufficient to protect property being transported or stored.

11.2.11 Crime Insurance

The DB Contractor shall be responsible for crime insurance in the amount of \$2,000,000 for each wrongful act and \$2,000,000 aggregate for each wrongful act.

Risk of Loss

12.1 Site Security and Access

The DB Contractor shall provide appropriate security for the Site, including securing any buildings from entry; shall take all reasonable precautions; and shall provide protection to prevent damage, injury, or loss to the Work and materials and equipment to be incorporated therein, as well as all other property at the Site, whether owned by the DB Contractor, the District, or any other Person.

12.2 Maintenance and Repair of Work and Onsite Property

12.2.1 Responsibility of Contractor

The DB Contractor shall maintain, rebuild, repair, restore, or replace all Work (including Design Documents, Released for Construction Documents, As-Built Documents, and materials, equipment, supplies, and maintenance equipment that are purchased for permanent installation in or for use during construction of the Project, regardless of whether the District has title thereto under the Contract Documents) that is damaged prior to the date of acceptance of maintenance liability by the District or third parties as specified in Section 12. All such Work shall be at no additional cost to the District except to the extent that the District is responsible for such costs as provided in Section 14. Additional requirements regarding maintenance of roadways during construction are set forth in Appendix C, Technical Provisions.

12.2.2 Relief from Liability for Maintenance

Effective as of the date of Final Acceptance by the District of the Project, the District is responsible for maintenance for all elements of the Project that have been Accepted. Nothing in the Contract Documents, however, shall be construed to relieve the DB Contractor of full responsibility for making good any non-latent defect in Work or material found on any portion of Work prior to Final Acceptance of the entire Project, to alter in any manner the method of payment prescribed in the Contract Documents, or to constitute a waiver of any Claim the District may have against the DB Contractor on the entire Project. Notwithstanding the foregoing, all elements of the Work that will be owned by Persons other than the District (such as Utility facilities) will be considered accepted for purposes of maintenance responsibility only as of the date of acceptance of maintenance responsibilities by such Persons.

12.3 Damage to Offsite Property

The DB Contractor shall take all required precautions and provide protection to prevent damage, injury, or loss to property adjacent to the Site or likely to be affected by the Work. The DB Contractor shall restore damaged, injured, or lost property caused by an act or omission of any DB Contractor-Related Entity to a condition similar or equal to that existing before the damage, injury, or loss occurred.

12.4 Third-Party Agreements and District-Obtained Permits

The DB Contractor shall comply with all provisions in the third-party agreements and District-obtained permits.

12.5 Title

The DB Contractor warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools, and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for the District for the operation, maintenance, or repair thereof, and are free and clear of all Liens. Title to all such materials, equipment, tools, and supplies that shall have been delivered to the Site shall pass to the District, free and clear of all Liens, upon the sooner of: (i) incorporation into the Project; or (ii) payment by the District to the DB Contractor of invoiced amounts

pertaining thereto. Notwithstanding any such passage of title and subject to Section 12, the DB Contractor shall retain sole care, custody, and control of such materials, equipment, tools, and supplies and shall exercise due care with respect thereto as part of the Work until Final Acceptance or until the DB Contractor is removed from the Project.

Payment

13.1 Contract Price

13.1.1 Contract Price

As full compensation for the Work and all other obligations to be performed by the DB Contractor under the Contract Documents, subject to the provisions of this Design-Build Agreement, the District shall pay to the DB Contractor the Lump Sum Contract Price of [\$_____].

13.1.2 Items Included in Contract Price

The DB Contractor acknowledges and agrees that, subject only to the DB Contractor's rights under Section 15, the Contract Price includes the following as proffered in Attachment D offer letter):

1. Performance of each and every portion of the Work.
2. All designs, equipment, materials, labor, insurance and bond premiums, home office, jobsite and other overhead, profit, and services relating to the DB Contractor's performance of its obligations under the Contract Documents (including all Work, Warranties, equipment, materials, labor, and services provided by Subcontractors and intellectual property rights necessary to perform the Work). This includes the assignment of the DGS contract for Professional Services for completion of the 100% (final) plans and construction administration services for the Engineer of Record.
3. The cost of obtaining all Governmental Approvals (except for approvals that are the responsibility of the District, as specifically provided elsewhere in the Contract Documents).
4. All costs of compliance with and maintenance of the Governmental Approvals and compliance with Legal Requirements, including environmental commitments and mitigation measures.
5. Payment of any taxes, duties, and permit and other fees and/or royalties imposed with respect to the Work and any equipment, materials, labor, or services included therein.
6. All DB Contractor's Utility Work as described in this DBA and Attachment C, Technical Provisions.

13.1.3 Delay in Award of Contract

The District will award the Contract and issue NTP-1 upon execution of the Contract by the DB Contractor, and delivery of the executed Contract to DGS, subject to the requirements in Section 6, including Contractor providing bonds and insurance certificates. If the District has not issued NTP-1 (letter authorization) within 15 Business Days after execution and delivery of the Contract by the DB Contractor, through no fault, negligence, act or failure to act of DB Contractor, the DB Contractor may seek to negotiate a Change Order including an extension in the time allowed to the District for issuance of NTP-1, extension in the time allowed for the DB Contractor to reach the Project Completion Dates, and an increase in the Contract Price mutually acceptable to the DB Contractor and the District. Any price increase under this Section 13 shall be amortized proportionally over all Work remaining to be performed and shall be evidenced by a Change Order.

13.1.4 Reserved

13.2 Reserved

13.3 Limitations on Payment

1. In no event shall the District have any obligation to pay the DB Contractor any amount that would result in:
 - a. payment for any Activity in excess of the value of the Activity times the completion percentage of such Activity;
 - b. aggregate payments hereunder in excess of: (a) the overall completion percentage for the Project times the Contract Price; or (b) the Payment Caps described herein;
2. The District may withhold payment in whole or in part if the difference between the Contract Price and the sum of the amount requested in an invoice and amounts paid pursuant to prior invoices is not sufficient, in the District's reasonable judgment to (a) pay for completion of the Work, (b) pay any unpaid liens properly and timely filed under applicable laws, or (c) satisfy all obligations of the DB Contractor, present or future, for Work provided or to be provided under this Contract.
3. The District does not have the obligation to pay the DB Contractor for any Nonconforming Work.

13.3.1 Requirement to Provide Corrected Monthly Update

After Approval of the Original Baseline Schedule, no payment will be processed or owing to the DB Contractor for Work performed during any period not covered by the accepted current Monthly Progress Schedule.

13.3.2 NTP-1 Payment Cap

The amount of funds available to pay the DB Contractor for Work performed prior to issuance of NTP-2 is limited to the amount of the NTP-1 Payment Cap. The NTP-1 Payment Cap is \$980,000. The District has no obligation to make any payment to the DB Contractor in excess of this amount until such time (if any) as NTP-2 is issued. If the DB Contractor performs any Work in excess of the NTP-1 Payment Cap, it does so at its own risk.

13.3.3 Stockpiled Materials

Payment for stockpiled materials shall be included in the monthly progress payments provided the following conditions are met:

1. The stockpile site is under the control of the DB Contractor and will remain so until the material is incorporated in the Work. The stockpile materials must be specifically authorized by and acquired for the Project. The stockpile site must be bonded and acceptable to the District and must be kept secure at all times by the DB Contractor. Proof of such bond and control shall be submitted to the District.
2. Appropriate test reports, if required, shall be submitted to the District and show that the materials meet the requirements of the Contract. The District has the authority to inspect, test, and approve the stockpiled materials.
3. If the stockpiled materials are stored in a site that is more than 20 miles from the Project Site, the DB Contractor shall be responsible for payment of all costs for the District to inspect the stockpile site and the materials stored at the site.
4. Contractor requests for payment shall be in writing and shall include the written consent of the Surety as well as insurance in the District's name that covers loss, damage, or destruction of the stockpiled materials.

5. Copies of suppliers' invoices shall accompany all requests for payment. Copies of paid invoices for materials shall be submitted to the District within one (1) month after the DB Contractor has received payment for the materials. Failure to provide timely submission of paid invoices shall be cause to deduct payment for the materials from the subsequent monthly progress payment.
6. Payment shall be limited to the following stockpiled materials unless specifically approved by the District: sewer pipe, water pipe, water and sewer valves, electrical work materials, piling, Portland Cement Concrete (PCC) form materials, reinforcing steel. No payment will be made for invoices less than \$10,000.00 or for materials that will be stored for less than 30 Days. No payment greater than \$1,000,000 shall be made for stockpiled materials for any given month.

13.4 Mobilization and Insurance Payment, Retainage and Deductions

The amount of premiums identified in the bid item price by the DB Contractor for the Payment and Performance Bonds and for insurance required to be provided by the DB Contractor under Sections 10 and 11 may be invoiced as described in Attachment C, Technical Provisions.

The DB Contractor will be entitled to payment for mobilization, in an amount equal to the bid item price in the schedule of values in the offer letter (Attachment D of the RFP) for mobilization, not to exceed 2 percent of the Contract Price. Payments will be made in four equal monthly installments commencing the first month following issuance of NTP 2.

13.4.1 Retainage

The District shall withhold 10 percent retainage from each progress payment to be made to the DB Contractor in accordance with Section 103, Article 9, Standard Contract Provisions, and DDOT Standard Specifications for Highways and Structures. Retainage may be reduced after 50% of the Work is completed and accepted by the District.

Upon obtaining substantial completion and compiling a punch list, retainage may be reduced by the District to a value of 200% of the value of the punch list items remaining to be completed until the DB Contractor obtains Final Completion of the Work.

13.4.2 Deductions

The District may deduct from any amounts otherwise owing to the DB Contractor, including each monthly progress payment and the final payment, the following:

1. Any accrued losses, liability, Liquidated Damages, or other damages for which the DB Contractor is responsible hereunder including, without limitation, amounts based on reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or Liquidated Damages for the anticipated delay.
2. The estimated cost of remedying any Nonconforming Work or otherwise remedying any breach or default of the Contract by the DB Contractor.
3. The average daily value of QC/QA costs for any day in which DGS issues an NCR.
4. The amount of any outstanding Claim relating to the Work.
5. Amounts of third-party claims filed, or of probable claims for which reasonable evidence indicates probable filing unless security acceptable to the District is provided by the DB Contractor.
6. The amount for Work that the DB Contractor is obligated to perform under the Contract, which the DB Contractor has failed to perform.
7. Damage to the District or a separate contractor.

8. Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment.
9. Any other sums which the District is entitled to recover from the DB Contractor under the terms of the Contract.

The District's failure to deduct from a progress payment any amount, which the District is entitled to recover from the DB Contractor under the Contract, shall not constitute a waiver of the District's right to such amounts.

13.5 Final Payment

Final payment will be made in accordance with this Section 13.5.

13.5.1 Application for Final Payment

On or about the date of delivery of its Affidavit of Final Completion, the DB Contractor shall prepare and submit a proposed Application for Final Payment to the District showing the proposed total amount due the DB Contractor. In addition to meeting all other requirements for invoices hereunder, the Application for Final Payment shall include the following: (a) an affidavit, on the form prescribed by the District, to the effect that all payments have been made and all Claims have been released for all material, labor and other items covered by the Contract bond; or (b) a list of any outstanding or pending Potential Change Order (PCO) Notices and all existing or threatened Claims, Liens and stop notices by Subcontractors, laborers, Utility Companies or other third parties relating to the Project, including any notices filed or to be filed with the Affidavit of Final Completion, stating the amount at issue associated with each such notice; (c) the written consent by the Surety to such payment; and (d) such other documentation as the District may reasonably require. Prior applications and payments shall be subject to correction in the proposed Application for Final Payment. PCO Notices filed concurrently with the Application for Final Payment must be otherwise timely and meet all requirements under Sections 14 and 15. If a Subcontractor refuses to furnish a release or waiver required by the District, the DB Contractor may furnish a bond satisfactory to the District to indemnify the District against such Lien. If such Lien remains unsatisfied after payments are made and is not bonded over as provided in the previous sentence, the DB Contractor shall promptly pay to the District all money that the District may be compelled to pay in discharging such Lien, including all costs and attorneys' fees.

The District will review the DB Contractor's proposed Application for Final Payment, and changes or corrections will be forwarded to the DB Contractor for correction. If no changes or corrections are required, the District will approve the Application for Final Payment.

13.5.2 Payment

As a condition to its obligation to make payment to the DB Contractor based on the Application for Final Payment, the District shall have received an Affidavit Regarding Settlement of Claims from the DB Contractor, releasing and waiving any Claims against the Indemnified Parties and those matters identified in any PCO Notices listed as outstanding in the Application for Final Payment, and otherwise satisfactory in form and content to the District.

The Settlement of Claims Affidavit shall include, as a minimum, a certification by the DB Contractor that:

1. It has resolved any Claims made by Subcontractors, Utility Companies, and others against the DB Contractor or the Project.
2. It has no reason to believe that any Person has a valid Claim, against the DB Contractor or the Project, which has not been communicated in writing by the DB Contractor to the District as of the date of the certificate.
3. All guarantees and Warranties are in full force and effect.

The Settlement of Claims Affidavit shall survive Final Payment. The payment amount will be reduced by any amounts deductible under this Section 13.5.

All prior partial estimates and payments shall be subject to correction in the Final Payment. The DB Contractor's acceptance of Final Payment shall constitute a waiver of affirmative Claims by the DB Contractor except those previously made in writing and identified as unsettled at the time of final payment.

13.6 Prompt Payment to Subcontractors

The DB Contractor shall ensure that all Subcontractors and suppliers at every tier are promptly paid in accordance with D.C. Code §2-221.02. The DB Contractor shall include in all subcontracts a provision that this requirement for prompt payment to the Subcontractors and suppliers must be included in all subcontracts at every tier. If the DB Contractor fails to comply with this requirement, the District may withhold the amount due from any monthly progress payment until the required payment(s) have been made.

13.7 Disputes

Subject to the District's right to withhold from progress payments any amounts in dispute, and except as expressly stated otherwise in this Section, any disagreement between the District and the DB Contractor relating to this Section 13 shall be subject to Section 21. Failure by the District to pay any amount in dispute shall not alleviate, diminish, or modify in any respect the DB Contractor's obligation to perform under the Contract Documents, including the DB Contractor's obligation to achieve Final Acceptance in accordance with the Contract Documents. The DB Contractor shall not cease or slow down performance under the Contract Documents on account of any such amount in dispute. The DB Contractor shall proceed as directed by the District pending resolution of the Dispute. Upon resolution of such Dispute, each party shall promptly pay to the other any amount owing.

Change Orders

14.1 Time and Money Changes

The DB Contractor may request a Change Order, subject to the limitations set forth in Section 15, for increased costs and/or additional time for Completion Dates only for the following:

1. Additional costs and/or time directly attributable to additional Work resulting from District-Directed Changes.
2. Additional costs and/or time directly attributable to unavoidable delays arising from a suspension order pursuant to Section 16.
3. Additional costs and/or time directly attributable to a delay in issuance of NTP-1 to the extent provided in Sections 6 and 13.
4. Additional costs and/or time directly attributable to a delay in issuance of NTP 2 or in providing reasons why the District was unable to do so to the extent provided in Section 6. (Approval of Quality Plan and Approved Baseline Schedule).
5. Additional costs and/or time directly attributable to uncovering, removing, and restoring Work, to the extent provided in Section 7.
6. Additional costs and/or time directly attributable to the discovery at, near, or on the Site articles of historical, architectural, or archaeological significance discovered within the ROW, provided that the existence of such resources was not disclosed in the RFP.
7. Additional costs and/or time directly attributable to the suspension, termination, interruption, denial, failure to obtain, nonrenewal or amendment of any Environmental Approval or New Environmental Approval required to be obtained by the District, except as otherwise provided in Section 8.
8. Additional costs and/or time directly attributable to any change in a Legal Requirement, change in the judicial interpretation of a Legal Requirement, or adoption of any new Legal Requirement, which is materially inconsistent with Legal Requirements in effect on the Proposal Due Date (excluding any such change or new Legal Requirement which was passed or adopted as of the Proposal Due Date but has a defined future effective date) and which: (i) requires a material modification in the Project Work; (ii) requires the DB Contractor to obtain a major District or federal environmental approval not previously required for the Project; or (iii) specifically targets the Project or the DB Contractor. For the avoidance of doubt, it is understood and agreed that the DB Contractor shall not be entitled to additional costs and/or time should an agency (as opposed to a court of competent jurisdiction) change the manner in which it interprets a Legal Requirement.
9. Additional costs and/or time directly attributable to any lawsuit seeking to restrain, enjoin, challenge, or delay construction of the Project, except to the extent that the risk of such lawsuit has been assumed by the DB Contractor under Section 8.3; or the lawsuit otherwise arises out of any act, omission, or breach of obligation of Contractor, a Subcontractor or any person for whom Contractor is contractually or legally liable. Any increase in the contract completion date past the date specified in the RFP will negate the incentive payment portion of the design build fee as detailed in the RFP and Section 19.4 of this DB Agreement.
10. For the avoidance of doubt it is understood and agreed that all other risks are assumed by the DB Contractor and only those items set forth in this Section 14.1 shall entitle the DB Contractor to a change order in the Lump Sum Price or extension of time.

14.2 Time-Only Changes

The DB Contractor may request a Change Order for time extensions, subject to the limitations set forth in Section 15.6.3, for additional time for Completion Dates, only for the following:

1. Force Majeure Events as described in Section 18.2.
2. Failure or inability of the District to provide responses to proposed schedules, design submittals or other submittals and matters for which response by the District is required within the time periods indicated in the Contract Documents, so long as such schedules, design submittals, or other submittals and matters meet all of the applicable requirements of the Contract Documents. Any increase in the contract completion date past the date specified in the RFP will negate the incentive payment portion of the design build fee as detailed in the RFP and Section 19.4 of this DB Agreement.
3. Additional costs and/or time directly attributable to failure or inability of the District to provide the DB Contractor with access to ROW identified on the Intermediate Plans on or before the deadline for such access set forth in this DB Agreement.
4. Additional costs and/or time directly attributable to Differing Site Conditions, to the extent provided in Section 15.8.
5. Certain additional costs (in the case of added Utility Work as described in Section 8) or time relating to discovery of unknown Utilities or uncooperative Utilities, as described in Section 8, to the extent provided therein.
6. Certain additional costs and/or time relating to material errors in the ROW Drawings, as described in Section 15, to the extent provided therein.

Changes in the Work

This Section 15 sets forth the requirements for obtaining all Change Orders under the Contract. The DB Contractor hereby acknowledges and agrees that the Contract Price constitutes full compensation for performance of all Work, subject only to those exceptions specified in this Section 15, and that the District is subject to constraints which limit its ability to increase the Contract Price or extend the Completion Dates. The DB Contractor hereby waives the right to make any Claim for a time extension or for any monetary compensation in addition to the Contract Price and other compensation specified in the Contract, except as set forth in this Section 15.

15.1 Procedure for Change Order Requests

15.1.1 Change Orders

The term “Change Order” shall mean a written amendment to the terms and conditions of the Contract Documents issued in accordance with this Section 15. A Change Order shall not be effective for any purpose unless executed by the District. Change Orders may be requested by the DB Contractor only pursuant to Section 14. Change Orders may be issued for the following purposes (or combination thereof):

1. To modify the Work
2. To revise a Completion Date
3. To revise the Contract Price
4. To revise other terms and conditions of the Contract Documents

The CO will notify the DB Contractor of the determination whether or not an adjustment of the Contract is warranted. Upon the determination by the CO that an adjustment to the Contract is warranted, the District will execute the Change Order.

15.1.2 Issuance of Directive Letter

The District may, at any time, issue a Directive Letter to the DB Contractor in the event of any Dispute regarding the Work or for any desired change in the Work. The Directive Letter will state that it is issued under this Section 15, will describe the Work in question, and will state the basis for determining compensation, if any. The DB Contractor shall proceed immediately with the Work as directed in the letter, pending the execution of a formal Change Order or, if the letter states that the Work is within the original scope of the Work, the DB Contractor shall proceed with the Work as directed but shall have the right pursuant to Section 15 to request that the District issue a Change Order with respect thereto.

Receipt of a Directive Letter from the District is a condition precedent to the DB Contractor’s right to claim that a District-Directed Change has occurred, provided that no Directive Letter shall be required for alleged District-Directed Changes directly attributable to delays caused by bad faith actions, active interference, gross negligence or comparable tortious conduct by the District. The fact that a Directive Letter was issued by the District shall not be considered evidence that in fact a District-Directed Change occurred. The determination as to whether a District-Directed Change in fact occurred shall be based on an analysis of the original Contract Document requirements and a determination whether the Directive Letter in fact constituted a change in those requirements. The foregoing requirements shall not imply that a Directive Letter would be required in order for the DB Contractor to have the right to receive compensation for Work within its original scope for which additional compensation is specifically allowed under this Section 15.

15.1.3 Performance of Changed or Extra Work

As a condition precedent to the DB Contractor’s right to receive additional payment or an extension of a Completion Date for changed or extra work, the DB Contractor shall have received either a Directive Letter from the District stating that it is issued pursuant to Section 15 or a Change Order for such work executed by the District. To the extent that the DB Contractor undertakes any such work without receiving a Directive

Letter or Change Order executed by the District, the DB Contractor shall be deemed to have performed such work voluntarily and may not be entitled to a Change Order in connection therewith. In addition, the DB Contractor may be required to remove or otherwise undo any such work at its sole cost.

15.2 Value Engineering Change Proposals

DGS desires the DB Contractor to have significant flexibility in determining how best to deliver the Project within the parameters established by the Contract Documents. The DB Contractor is encouraged to submit VECs whenever it identifies potential savings. Notwithstanding the foregoing, DGS's Approval is required with respect to any proposed changes in the requirements of the Contract Documents. DGS may solicit comment from Project stakeholders including Commission of Fine Arts, National Capitol Planning Commission and DC State Historic Preservation Office, on District approval that applies to VECs that modify Project visual quality. This Section 15.2 sets forth the requirements applicable to VECs.

15.2.1 Definition of Value Engineering Change Proposal

A VEC is a proposal developed and documented by the DB Contractor requesting a change in the requirements of the Contract Documents that must decrease the Contract Price and maintain or improve the finished product's required function, such as service life, reliability, economy of operation, ease of maintenance, necessary standardized features, or appearance, and must not require an extension of the Contract Completion Dates.

15.2.2 Required Information

At a minimum, the following information shall be submitted by the DB Contractor with each VEC:

1. A statement that the submission is a VEC, a narrative description of the proposed change, the advantages and disadvantages of the proposed change and the justification for changes in function or characteristics and the effect the proposed change has on performance.
2. Drawings or visualizations that show how the VEC will affect aesthetics.
3. Identification of all Contract requirements (with reference to specific Sections) that must be changed if the VEC is Approved.
4. A description of any previous use or tests of the proposal and the conditions and results.
5. Date or time by which a Change Order adopting the VEC must be issued in order to obtain the maximum cost reduction, noting any effect on the Contract Schedule.
6. A complete cost analysis including current pricing for the existing Contract requirements compared to the DB Contractor's cost estimate of the proposed changes.

The DB Contractor shall provide any additional information requested by the District in a timely manner. Additional information could include results of field investigations and surveys, design computations, and field change sheets.

15.2.3 District Review and Approval or Rejection

Upon receipt of a VEC, the District will process it but will not be liable for any delay in acting upon any proposal submitted pursuant to this Section 15.2. The DB Contractor may withdraw all or part of any VEC at any time prior to Approval by the District. Until and unless the VEC is approved, the DB Contractor shall comply with the Contract Documents.

The District may approve, in its sole discretion, in whole or in part, by Change Order, any VEC submitted. Until a Change Order is issued on a VEC, the DB Contractor shall remain obligated to perform in accordance with the Contract Documents. The decision of the District as to rejection or Approval of any VEC shall be at the sole discretion of the District and shall be final and not subject to partnering, Dispute resolution, or appeal. The DB Contractor shall have no Claim for any additional costs or delays resulting from the rejection

of a VECP, including but not limited to development costs, loss of anticipated profit, or increased material or labor costs.

15.2.4 Contract Price Adjustment

If the District Approves a VECP submitted by the DB Contractor pursuant to this Section 15.2, the Contract Price shall be adjusted in accordance with the following:

1. The term “estimated net savings,” as used in this Section 15.2, shall mean: (i) the difference between the cost of performing the Work according to the Contract Documents using current estimates, including DC Contractor’s labor, material, equipment, overhead and profit, and the actual cost to perform it according to the proposed change and in accordance with allowable costs under the Contract Documents; less (ii) the costs of studying and preparing the VECP as proven by the DB Contractor and Approved by the District in accordance with the Change Order procedures set forth herein; less (iii) any additional costs incurred by the District (including, without limitation, costs relating to any Relocations and ROW and implementation costs) resulting from the VECP.
2. Except as specified in Section 15.2.4, the DB Contractor is not entitled to share in either collateral or future contract savings. The term “collateral savings” means those measurable net reductions in the District’s costs resulting from the VECP, including costs of maintenance by the District, logistics, and the District-furnished property. The term “future contract savings” shall mean reductions in the cost of performance of future construction contracts resulting from a VECP submitted by the DB Contractor.
3. Subject to Section 15.2, the Contract Price shall be reduced by an amount equal to the sum of (i) 100 percent of any additional costs incurred by the District resulting from the VECP; plus (ii) 50 percent of the estimated net savings.
4. In a case where a VECP involves an adjustment to the ROW Plans (such as a proposal that additional real property be purchased to reduce construction costs), the VECP shall compare the following:
 - a. The incremental reduction in costs (such as for not designing and building a wall)
 - b. The costs involved in adjusting the ROW Drawings and Environmental Approvals (which shall be based on the DB Contractor’s additional costs, such as for providing real property acquisition support services, including profit; plus the District’s additional costs, including land acquisition, appraisals, negotiation, relocation, condemnation, closing, property management, and environmental permitting, specifically including allocated costs of the District personnel involved in the acquisition)
 - c. or (as appropriate) shall compare:
 - i. The incremental reduction in costs (if any) for not acquiring the unnecessary real property
 - ii. The additional construction costs to be incurred

Refer to Exhibit H for a sample calculation.

15.2.5 Use of Value Engineering Changes by the District

All Approved VECPs and negotiated changes will become the property of the District and shall contain no restrictions imposed by the DB Contractor on their use or disclosure. The District retains the right to use, duplicate, and disclose in whole or in part any data necessary for the utilization of the Approved VECP or negotiated change proposal on any other or subsequent projects without any obligation to the DB Contractor. This provision is not intended to deny rights provided by law with respect to patented materials or processes.

15.3 Lump Sum Change Orders

The preferred approach by both parties is that Change Orders will be paid on a lump sum payment basis, if the parties can agree on a lump sum amount. If the parties cannot agree on a lump sum amount for Change Orders, the Change Orders will be paid as Force Account Change Orders described in Section 15.4.

The DB Contractor is responsible for the SBE goal. Change Orders and modifications that eliminate work that was intended for SBE subcontractors does not absolve the DB team responsibility to meet the SBE goal.

15.3.1 Procedure for District-Initiated Lump Sum Change Orders

This Section 15.3.1 concerns Change Orders requested by the District.

15.3.1.1 Issuance of Request for Change Proposal

If the District desires to evaluate whether to initiate such a change, the District may, at its discretion, issue a Request for Change Proposal (RCP).

Within seven (7) Days after the DB Contractor's receipt of an RCP, the District and the DB Contractor shall consult to define the proposed scope of the change. Within seven (7) Days after the initial consultation, the District and the DB Contractor shall consult concerning an estimated rough order of magnitude (ROM) cost and time impacts, if any. The DB Contractor shall prepare the ROM at its cost. The DB Contractor shall provide data regarding such matters as requested by the District.

Within seven (7) Days after the ROM consultation meeting and provision of any data requested by the District, the District shall notify the DB Contractor whether the District:

1. Wishes to request the DB Contractor to prepare a Change Order form as discussed at the meeting.
2. No longer wishes to issue a Change Order.

The District may at any time, in its sole discretion, require the DB Contractor to provide two alternative change Order forms, one of which shall provide for a time extension if applicable and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Dates, as well as any additional costs permitted hereunder.

If requested by the District, the DB Contractor shall, within 21 Days after receipt of the notification, prepare and submit to the District for Approval a Change Order form for the requested change, complying with all applicable requirements of Section 15, and incorporating all requests made by the District. The DB Contractor shall bear the cost of developing the Change Order form, including any modifications thereto requested by the District, except costs of design and engineering Work required for preparation of plans or exhibits necessary to the Change Order form and pre-authorized by the District shall be included in the Change Order as reimbursable items. If the Change Order is approved, the design and engineering costs will be included within the Change Order. If the Change Order is not approved, the DB Contractor shall be separately reimbursed for the design and engineering costs through a separate Change Order.

If the District and the DB Contractor agree that a change in the requirements relating to the Work has occurred but disagree as to whether the change justifies additional compensation or time or disagree as to the amount of any change to be made to the Contract Price or a Completion Date, the District may, in its sole discretion, order the DB Contractor to proceed with the performance of the Work in question notwithstanding such disagreement. Such order may, at the District's option, be in one of the following forms:

1. Force Account Change Order
2. Directive Letter

15.3.2 Procedures for Contractor-Initiated Lump Sum Change Orders

The DB Contractor's entitlement to a Change Order for eligible changes is subject to the procedure, restrictions, and limitations contained in this Section 15.3.2.

15.3.2.1 Conditions Precedent

The requirements set forth in Sections 14.1 & 15 constitute conditions precedent to the DB Contractor's entitlement to request and receive a Change Order in all circumstances. The DB Contractor agrees that the filing of a PCO Notice and subsequent filing of a Request for Change Order (RCO) with the District pursuant to this Section are necessary in order to begin the administrative process for Contractor-requested Change Orders. The DB Contractor understands that it shall be forever barred from recovering against the District under Section 15 if it fails to give notice of any act, or failure to act, by the District or any of its representatives or the happening of any event, thing, or occurrence pursuant to a proper PCO Notice and thereafter complies with the remaining requirements of this Section.

The DB Contractor shall deliver to the District a PCO Notice stating that an event or situation has occurred and shall state whether it is entitled to additional time or money. The first notice shall be labeled "PCO No. 1," and subsequent notices shall be numbered sequentially.

Each PCO Notice shall be delivered as promptly as possible after the occurrence of such event or situation. If any PCO Notice is delivered later than 10 Days after the DB Contractor first discovered, or should have discovered in the exercise of reasonable prudence, the occurrence which is described therein, the DB Contractor shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the PCO Notice and shall be deemed to have waived the right to see an extension of any Completion Date with respect to any delay in the Critical Path that accrued prior to the date of delivery of the written notice. Furthermore, if any PCO Notice concerns any condition or material described in Section 7, the DB Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that the District is not afforded the opportunity to inspect such material or condition before it is disturbed. The DB Contractor's failure to provide a PCO Notice within 10 Days after the DB Contractor first discovered, or should have discovered in the exercise of reasonable prudence, the occurrence of a given event or situation shall preclude the DB Contractor from any relief. A PCO Notice shall be deemed delivered only if it fully conforms to the requirements of Section 15.

The PCO Notice shall (i) state in detail the facts underlying the potential Change Order, the reasons why the DB Contractor believes additional compensation or time will or may be due, and the date of occurrence; (ii) state in detail the basis that the work is not required by the Contract, if applicable; (iii) identify particular elements of Contract performance for which additional compensation may be sought under Section 15; (vi) identify any potential Critical Path impacts affecting a Completion Date; and (v) provide an estimate of the time within which a response to the notice is required to minimize cost, delay, or disruption of performance.

Any adjustments made to the Contract shall not include increased costs or time extensions for delay resulting from the DB Contractor's failure to provide requested additional information under this Section.

The DB Contractor shall deliver all RCOs under Section 15 to the District within 30 Days after delivery of the PCO Notice. The District may require design and construction costs to be covered by separate Change Order requests. If the DB Contractor requests a time extension, then the District, in its sole discretion, may require the DB Contractor to provide two (2) alternative Change Order requests, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Dates, as well as any additional costs permitted hereunder.

The DB Contractor acknowledges and agrees that, due to the limited availability of funds for the Project, timely delivery of notification of such events, situations, RCOs, and updates thereto are of vital importance to the District. The District is relying on the DB Contractor to evaluate promptly upon the occurrence of any event or situation, whether the event or situation will affect schedule or costs and, if so, whether the DB Contractor believes a time extension and/or price increase is required hereunder. If an event or situation occurs that may affect the Contract Price or a Completion Date, the District will evaluate the situation and determine whether it wishes to make any changes to the definition of the Project to bring it within the District's funding and time restraints.

Before the DB Contractor submits any PCO Notice or a RCO to the District that is based in whole or in part on a request by a Subcontractor to the DB Contractor for a price increase or time extension under its Subcontract, the DB Contractor shall have reviewed all Claims by the Subcontractor that constitute the basis for the RCO and determined in good faith that each such Claim is justified hereunder and that the DB Contractor is justified in requesting an increase in the Contract Price and/or change in Completion Dates in the amounts specified in the RCO. Each RCO involving Subcontractor Work shall include a sworn certification in a form acceptable to the District and signed by the DB Contractor's Project Manager stating that the DB Contractor has investigated the basis for the Subcontractor's Claims and has concluded that all such Claims are justified as to entitlement and the amount of money and/or time requested and has no reason to believe, and does not believe, that the factual basis for the Subcontractor's Claim is falsely represented. Any RCO involving Subcontractor Work shall be considered incomplete if it is not accompanied by such certification.

The District shall have 10 Days to investigate and respond to the DB Contractor's PCO Notice or RCO. If the District refuses to issue a Change Order based on the DB Contractor's request, the DB Contractor shall nevertheless perform all work as specified in an appropriate Directive Letter, with the right to submit the issue of entitlement to a Change Order to Dispute resolution in accordance with Section 21. The DB Contractor shall maintain and deliver to the District, upon request, contemporaneous records meeting the requirements of Section 15.6 for all work performed that the DB Contractor believes constitutes extra work, until all Disputes regarding entitlement or cost of such work are resolved.

15.4 Force Account Change Orders

The District may at its discretion issue a Force Account Change Order whenever the parties cannot agree to a Lump Sum Change Order or the District concludes that a Force Account Change Order is advisable. The Force Account Change Order shall instruct the DB Contractor to perform the Work, indicating expressly the intention to treat the items as changes in the Work and setting forth the kind, character, and limits of the Work as far as they can be ascertained; the terms under which changes to the Contract Price will be calculated; and the estimated total change in the Contract Price anticipated there under. Upon final calculation of the allowable costs, the District shall issue a modified Change Order setting forth the final adjustment to the Contract Price. The costs and additional amounts allowed in Section 15.8 (and no others) shall be used for calculating the change in the Contract Price. No direct compensation will be allowed for other miscellaneous costs for which no specific allowance is provided in Section 15.

The District and the DB Contractor may agree to negotiate unit prices for a Force Account Change Order. Measurement of any unit-priced quantities will be as specified in the Change Order. Unit prices shall be deemed to include all costs for labor, material, overhead, and profit; and shall not be subject to change regardless of any change in the estimated quantities. Upon final determination of the quantities, the District will issue a modified Change Order setting forth the final adjustment to the Contract Price.

15.4.1 Force Account Records

The DB Contractor shall maintain its records in a manner that provides a clear distinction between: (i) the direct cost of Work for which it is entitled (or for which it believes it is entitled) to an increase in the Contract Price; and (ii) the costs of other operations. The DB Contractor shall contemporaneously collect, record in writing, segregate, and preserve: (i) all data necessary to identify the costs described in Section 15.4 with respect to all Work that is the subject of a Change Order or a requested Change Order, specifically including costs associated with design Work as well as Utility Relocations; and (ii) all data necessary to show the actual impact (if any) of the change on the Critical Path affecting a Completion Date with respect to all Work that is the subject of a Change Order or a proposed Change Order, if the impact on the Critical Path affecting a Completion Date is in dispute. Such data shall be provided on forms Approved by the District. The cost of furnishing such reports is included in the DB Contractor's predetermined overhead and profit.

The DB Contractor shall furnish daily, on forms Approved by the District, reports of Force Account Change Order Work. The cost of furnishing such reports shall not be recovered as part of the Change Order. The reports shall include the following:

1. Name, classification, date, daily hours, total hours, rate, and extension for each worker (including both construction and non-construction personnel) and foreman.
2. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
3. Quantities of materials, prices, and extensions.
4. Transportation costs of materials, machinery, and equipment.
5. Invoices for materials used and transportation charges.

The reports shall also state the total costs to date for the Force Account Change Order Work.

If materials used on the Force Account Change Order Work are not specifically purchased for the Work but are taken from the DB Contractor's stock, the DB Contractor shall furnish an affidavit certifying that such materials were taken from the DB Contractor's stock, that the quantity claimed was actually used, and that the price and transportation costs claimed represent actual costs to the DB Contractor.

All Force Account Change Order reports shall be signed by the DB Contractor's Project Manager. The District will compare its records with the DB Contractor's reports, make the necessary adjustments, and compile the costs of Force Account Change Order Work. When such reports are agreed upon and signed by both parties, they will become the basis of payment but shall not preclude subsequent adjustment based on a later audit. The DB Contractor's (and each Subcontractor's) cost records pertaining to Work paid for on a Force Account basis shall be open, during all regular business hours, to inspection or audit by representatives of the District during the life of the Contract and for a period of not less than 7 years after Final Acceptance; and the DB Contractor (and each Subcontractor) shall retain such records for that period. If an audit is to be initiated more than 60 Days after Final Acceptance, the DB Contractor will be given a 20-day notice of the time when such audit is to begin.

15.5 Contents of Change Orders

The DB Contractor shall prepare a scope of work, cost estimate in the form attached as **Exhibit 6**, impacted delay analysis, if any, and other information as required by this Section for each Construction Change Order form and RCO:

Scope of Work: The scope of work shall describe in detail, satisfactory to the District, all Activities associated with the Change Order, including a description of additions, deletions, and modifications to the existing Contract requirements.

Cost Estimate: The cost estimate shall set out the estimated costs in such a way that a fair evaluation can be made. It shall include a breakdown for labor, materials, equipment, overhead (which includes all indirect costs) and profit, unless the District agrees otherwise. The estimate shall include costs allowable under Section 15, if any. If the work is to be performed by Subcontractors and is sufficiently defined to obtain Subcontractor quotes, the DB Contractor shall obtain quotes with breakdowns showing cost of labor, materials, equipment, overhead, and profit on the Subcontractor's stationery and shall include such quotes as backup for the DB Contractor's estimate. No additional payment shall be allowed except as provided in Section 15.

Impacted Delay Analysis: If the DB Contractor claims that such event, situation, or change affects the Critical Path affecting the Completion Date, it shall provide an impacted delay analysis indicating all Activities represented or affected by the change with Activity numbers, durations, predecessor and successor Activities, resources and cost, and with a narrative report, in a form satisfactory to the District, which

compares the proposed new schedule to the Original Baseline Schedule or Revised Baseline Schedule, as appropriate. Except as otherwise provided in this Section, the impacted delay analysis shall only modify the Activities that have been impacted by the event and that justify the requested extension. The DB Contractor may reschedule Activities not otherwise affected by the event in order to take advantage of additional float available as a result of the requested time extension. Any such rescheduling shall be reflected in the impacted delay analysis.

Other Supporting Documentation: The DB Contractor shall provide such other supporting documentation as may be required by the District.

15.5.1 Justification

All requests for Change Orders shall include a narrative justification therefor, detailing all causes of the proposed change, making specific reference to the applicable provisions of Section 15 that permit a Change Order to be issued, and describing the data and documents that establish the necessity of such proposed change.

15.5.2 Contractor Representation

DB Contractor (or Subcontractor, if applicable) shall submit a Cost Certification in the form of Exhibit J that the amount of time and/or compensation requested includes all known and anticipated impacts or amounts, direct, indirect, and consequential, that may be incurred as a result of the event or matter giving rise to such proposed change and that the DB Contractor has no reason to believe and does not believe that the factual basis for the Change Order is falsely represented.

15.5.3 Incomplete Change Orders

Each RCO provided under Section 15 shall meet all requirements set forth in Section 15, provided that if any such requirements cannot be met due to the nature of the occurrence, the DB Contractor shall provide an incomplete RCO, which shall meet the following criteria:

1. Comply with all requirements capable of being met.
2. Include a list of requirements that are not fulfilled, together with an explanation reasonably satisfactory to the District stating why such requirements cannot be met.
3. Provide such information regarding projected impact on the Critical Path affecting a Completion Date as requested by the District.
4. In all events include sufficient detail to ascertain the basis for the proposed Change Order and any price increase associated therewith, to the extent such amount is then ascertainable.

The DB Contractor shall furnish, when requested by the District, such further information and details as may be required to determine the facts or contentions involved. The DB Contractor agrees that it shall give the District access to any and all of the DB Contractor's books, records, and other materials relating to the Work, and shall cause its Subcontractors to do the same, so that the District can investigate the basis for such proposed Change Order. The DB Contractor shall provide the District with a monthly update to all outstanding incomplete requests for Change Order, describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to the District, time expenditures to date, and time anticipated for completion of the Activities for which the time extension is claimed. The District may reject the DB Contractor's Claim at any point in the process. Once a complete RCO is provided, the District's failure to respond thereto within 14 Days of delivery of the request shall be deemed a rejection of such request. Although the District intends to review incomplete Change Orders for the purposes of timely delivery described in Section 15, the District shall have no obligation to review the backup associated with any RCO until a complete RCO is provided.

15.5.4 Phased Change Orders

The District and DB Contractor may mutually agree to use a multiple-step process involving issuance of a Change Order that includes an estimated design cost and that provides for a revised Change Order to be issued after a certain design level has been reached, thus allowing a refinement and definition of the estimated construction cost.

15.6 Certain Limitations for all Change Orders

15.6.1 Limitation on Contract Price Increases

Any increase in the Contract Price allowed hereunder shall exclude the following:

1. Costs caused by the breach of Contract or fault or negligence, or failure to act of any DB Contractor-Related Entity.
2. Costs that could reasonably have been avoided by the DB Contractor, including by re-sequencing, reallocating, or redeploying its forces to other portions of the Work or to other activities unrelated to the Work, including any additional costs reasonably incurred in connection with such reallocation or redeployment.
3. Costs for any rejected Work that failed to meet the requirements of the Contract Documents and any necessary remedial Work.

15.6.2 Limitation on Acceleration Costs; Delay and Disruption Damages

Limitations on Acceleration Costs, Delay and Disruption Damages, and other limitations include the following:

Acceleration Costs; Delay and Disruption Damages: Acceleration Costs shall be compensable hereunder only with respect to Change Orders issued by the District as an alternative to allowing an extension of a Completion Date as contemplated by Section 14. Costs of rearranging the DB Contractor's work plan not associated with an extension of a Completion Date shall not be compensable hereunder.

Other Limitations: Delay and disruption damages shall be limited to direct costs directly attributable to the delays described in this Section incurred by the DB Contractor directly attributable to such delays. In addition, before the DB Contractor may obtain any increase in the Contract Price to compensate for any delay and disruption damages or Acceleration Costs, the DB Contractor shall have demonstrated to the District's satisfaction that:

1. Its schedule, which defines the affected Critical Path, in fact, sets forth a reasonable method for completion of the Work.
2. The change in the Work or other event or situation, which is the subject of the requested Change Order, has caused or will result in an identifiable and measurable disruption of the Work, which affected the Critical Path, in turn affecting a Completion Date.
3. The delay or disruption damage was not due to any breach of contract or fault or negligence, or act or failure to act by any DB Contractor-Related Entity and could not reasonably have been avoided by the DB Contractor, including by re-sequencing, reallocating, or redeploying its forces to other portions of the Work or other activities unrelated to the Work subject to reimbursement for additional costs reasonably incurred in connection with such reallocation or redeployment.
4. The delay for which compensation is sought is not concurrent with any other delay, excluding a District-caused delay.
5. The DB Contractor has suffered or will suffer actual costs due to such delay, each of which costs shall be documented in a manner satisfactory to the District.

The failure of the DB Contractor to achieve Substantial Completion on or before the contractually agreed-upon date for Substantial Completion shall not be the basis of a claim for damages for delay. Any increase in the contract completion date past the date specified in the RFP will negate the incentive payment portion of the design build fee as detailed in the RFP and Section 19.4 of this DB Agreement.

15.6.3 Limitation on Time Extensions

Any extension of a Completion Date allowed hereunder shall exclude any delay to the extent that it:

1. Did not impact the Critical Path affecting a Completion Date.
2. Was due to the fault or negligence, or act or failure to act of any Contractor-Related Entity.
3. Could reasonably have been avoided by the DB Contractor, including by re-sequencing, reallocating or redeploying its forces to other portions of the Work provided that if the request for extension involves a District-caused delay, the District shall have agreed, if requested to do so, to reimburse the DB Contractor for its costs incurred, if any, in re-sequencing, reallocating, or redeploying its forces.

The DB Contractor shall demonstrate to the District's satisfaction that the change in the Work or other event or situation, which is the subject of the RCO seeking a change in a Completion Date, has caused or will result in an identifiable and measurable disruption of the Work, which has affected the Critical Path Activity affecting a Completion Date.

15.7 Pricing of Change Orders

The District and the DB Contractor, on its own behalf and on behalf of its Subcontractors, shall endeavor to negotiate, in good faith, a reasonable cost for each Change Order. Subject to the foregoing exceptions, in general, the price of a Change Order shall be negotiated in accordance with this Section 15.7 or shall be based on Force Account records pursuant to Section 15.

15.7.1 Scope Development Risk

Risk associated with the Work described in the Change Order, defined as scope development risk, may be included in a Change Order through an additional amount agreed to by the District and the DB Contractor. For any such request, the DB Contractor shall include a justification detailing why the requested change order should be considered a scope development risk.

15.7.2 Labor Costs

The cost of labor shall be separated into construction-related Work and non-construction-related Work as described below. The use of a labor classification that would increase the extra work cost will not be permitted unless the DB Contractor establishes the necessity for such additional costs. The cost of labor shall be calculated based on straight time for all hours worked, unless the DB Contractor obtains the District's prior Approval for overtime.

Construction Labor: The cost of labor for workers used in the actual and direct performance of construction-related Work, including Lead Workers, whether provided by the DB Contractor or a Subcontractor, will equal the sum of the following: (i) actual unburdened wages (the base wage paid to the employee exclusive of any fringe benefits); plus (ii) the actual costs paid to, or on behalf of, employees for liability and worker's compensation insurance premiums, unemployment insurance contributions and social security taxes, health and welfare benefits, pension fund benefits or other benefits, if such amounts are required by the collective bargaining agreement or employment contract, applicable to the classes of labor employed on the work; plus (iii) 15 percent overhead and profit of the sum of the above items.

Non-Construction Labor: The cost of labor for non-construction-related Work, whether provided by the DB Contractor or a Subcontractor, will equal the sum of the following: (i) actual wages (the base wage paid to the employee exclusive of any fringe benefits); plus (ii) an overhead based on the audited Federal Acquisition Regulations (FAR) field rates not to exceed 145 percent, or if a company has no FAR rate, an

overhead of 145 percent. Contractor will also be paid for profit on non-construction labor of 10 percent of labor costs plus overhead.

15.7.3 Material Costs

Material costs will be addressed as described below:

Materials: Payment for cost of required materials will be free on board to the Project site with an allowance of up to 15 percent to cover overhead and profit. For landscape plantings, up to 25 percent will be allowed to cover overhead and profit.

Rented Equipment: The current edition of the *Rental Rate Blue Book for Construction Equipment* published by Data Quest shall be used to calculate the equipment rental rates.

Contractor's Equipment: Payment for required equipment owned by the DB Contractor or an Affiliate of the DB Contractor will be based solely on an hourly rate derived by dividing the current appropriate monthly rate from the *Rental Rate Blue Book for Construction Equipment* published by Data Quest by 176 hours. No payment will be made under any circumstance for repair cost, freight and fuel, lubricants, insurance, any other costs and expenses, or overhead and profit. Payment for such equipment made idle by delays attributable to the District will be based on one-half the derived hourly rate described in this subsection. Approved transportation charges will be paid (one way) from the nearest source if the equipment is brought to the Project specifically for use on the Change Order Work and is not to be used on any other Work.

Aggregate rental charges for an item of Contractor-owned equipment shall not exceed the fair market purchase price for such equipment at the time of its commitment to the Work. The original purchase price and date of purchase of the equipment will be documented with a copy of the purchase invoice and submitted to the District along with a proposed fair market value. The fair market values to be used for purposes of this contract clause will be subject to advance approval of the District. Such aggregate limitations will apply and no further rentals shall be charged even if a piece of equipment is later replaced by a similar piece of equipment.

Liability Insurance: When additional liability insurance is required, the payment for the additional insurance will be based on the additional premiums, up to which 3 percent of additional premium will be allotted to cover handling.

15.7.4 Permit Fees

The DB Contractor will be reimbursed for the cost of any additional permit fees payable as the result of a change in the Work requiring additional permit fees. Backup documentation supporting each cost item for this category shall be provided by the DB Contractor and Approved by the District prior to any payment authorization being granted.

The DB Contractor will be paid an additional 5 percent for overhead and profit.

15.7.5 Subcontracted Work

For administration and all overhead costs in connection with Subcontract Work, the DB Contractor will receive an amount equal to 3 percent of the cost of the Subcontracted Work. This shall fully compensate the DB Contractor for administration, general superintendence, overhead, profit, and expenses not otherwise recoverable with respect to subcontracted Work. This shall not apply to the following: (i) Subcontracts with Affiliates; or (ii) Subcontracts with Suppliers.

15.7.6 Overhead and Profit

Overhead and profit costs will be addressed as described below:

Items included in Overhead and Profit: Unless otherwise indicated in this Section 15, any overhead and profit and labor surcharges described herein are full and complete compensation for all indirect costs of the added or changed Work, as well as for profit thereon. The DB Contractor's overhead and profit percentages

and labor surcharges as described in this Section 15 shall be considered to include, among other costs, salary and expenses of executive officers, supervising officers or supervising employees, and clerical employees; charges for minor equipment, such as small tools, and other miscellaneous supplies and services; incidental job burdens; bonuses not otherwise covered; field, jobsite, and general home office expenses of all types (including timekeepers, bookkeepers, and other general office help); supervisory expenses of all types (excluding only direct supervision of force account work); and all other overhead, general condition and indirect costs and expenses, and profit. With respect to non-construction-related labor costs, overhead is included as part of the labor surcharge calculated in accordance with Section 15 and includes accessories such as computer-assisted drafting and design systems, computers, facsimile transmission machines, scanners, plotters, etc.

Payment of Overhead and Profit: The foregoing overhead and profit and labor surcharges will be paid to the DB Contractor only for Work it performs; in the case of Work that is subcontracted, the additional payment for Subcontract administration will be allowed to the DB Contractor as described in Section 15; and all other overhead and profit and labor surcharges will be allowed to the Subcontractor who actually performs the Work.

Materials and Equipment: No overhead, profit or other surcharges will be paid to the DB Contractor for any materials or equipment furnished by the District.

Credit Items: Where the DB Contractor's or any Subcontractor's portion of a change involves credit items, or the proposed change is a net deductive change, the DB Contractor shall include all DB Contractor's and Subcontractor's overhead and profit in computing the value of the credit.

15.7.7 Reserved

15.8 Differing Site Conditions

Refer to Attachment I, DGS Standard Contract Provisions for details regarding differing site conditions.

15.9 Removal and Disposal of Hazardous Materials

Refer to Attachment I, DGS Standard Contract Provisions for details regarding removal and disposal of hazardous materials.

15.10 Reserved

15.11 Waiver

The DB Contractor hereby expressly waives all rights to assert any and all Claims based on any change in the Work, delay or acceleration including any change, delay, suspension or acceleration that, but for the express terms of the Contract Documents, could be inferred or implied at law for which the DB Contractor failed to provide proper and timely notice or failed to provide a timely RCO, and agrees that the DB Contractor shall be entitled to no compensation or damages whatsoever in connection with the Work except to the extent that the Contract Documents expressly specify that the DB Contractor is entitled to a Change Order or other compensation or damages.

15.12 Disputes

If the District and the DB Contractor agree that a request to increase the Contract Price and/or extend any Completion Date by the DB Contractor has merit, but are unable to agree as to the amount of such price increase and/or time extension, the Dispute shall be subject to the provisions of Section 21.

The DB Contractor shall proceed with the performance of work in accordance with the provisions of Section 15 while negotiations or the Dispute resolution process is ongoing.

15.13 No Release or Waiver

15.13.1 Extension of Time for Performance

No extension of time granted hereunder shall release the DB Contractor's Surety from its obligations. The District shall not be deemed to have waived any rights under the Contract, including its right to abrogate the Contract for abandonment or for failure to complete within the time specified, or to impose and deduct damages as may be provided herein as the result of any grant of an extension of time beyond the date fixed for the completion of any part of the Work, any acceptance of performance of any part of the Work after a Completion Date, or the making of any payments to the DB Contractor after such date.

15.13.2 No Change Order Based on Course of Conduct Order by Unauthorized Person

No course of conduct or dealings between the parties, or express or implied acceptance of alterations or additions to the Work, and no Claim that the District has been unjustly enriched shall be the basis for any Claim, request for additional compensation, or extension of a Completion Date. Further, the DB Contractor shall undertake, at its risk, work included in any written or oral request, order, or other authorization issued by a Person in excess of that Person's authority as provided herein. The DB Contractor shall be deemed to have performed such work as a volunteer and at its sole cost. In addition, the District may require the DB Contractor to remove or otherwise undo any such work at the DB Contractor's sole cost.

Suspension of Work

16.1 Suspension for Convenience

The District may, at any time and for any reason by written notice, order the DB Contractor to suspend all or any part of the Work required under the Contract Documents for the period of time that the District deems appropriate for the convenience of the District. Such suspension for convenience will be considered a District-Directed Change. The DB Contractor shall promptly comply with any such written suspension order. The DB Contractor shall promptly recommence the Work upon receipt of written notice from the District directing the DB Contractor to resume Work.

16.2 Suspension for Cause

The District has the authority by written order to suspend the Work without liability to the District wholly or in part for the DB Contractor's failure to:

1. Correct conditions unsafe for the Project personnel or general public.
2. Comply with any Governmental Approval, Legal Requirement, or otherwise carry out the requirements of the Contract.
3. Carry out orders of the District.
4. Comply with environmental requirements.
5. Comply with the requirements for developing and implementing the Quality Manual.

The DB Contractor shall promptly comply with any such written suspension order. The DB Contractor shall promptly recommence the Work upon receipt of written notice from the District directing the DB Contractor to resume Work.

16.3 DB Contractor Responsibilities during Suspension

During periods that Work is suspended by the District, the DB Contractor shall prevent damage or injury to the Project and other facilities; protect and secure materials stored both on-site and off-site; provide for drainage; obtain and maintain compliance with all Governmental Approvals; maintain all Contractor-provided insurance and bonds; and erect necessary temporary structures, signs or other facilities required to maintain the Project and other facilities in the Project vicinity. During any suspension period, unless otherwise directed by the District, the DB Contractor shall continue to be responsible for maintenance of traffic in accordance with Attachment C, Technical Provisions. If the suspension is for the District's convenience, the additional work performed by the DB Contractor during the suspension period shall be considered a District-Directed Change.

Termination

17.1 Termination

Termination shall be addressed as proscribed in the DGS Standard Contract Provisions. See **Attachment I** of the RFP.

Default and Force Majeure Events

18.1 Default and Force Majeure

Default and Force Majeure shall be addressed as proscribed in the DGS Standard Contract Provisions. See **Attachment I** of the RFP.

Damages & Incentives

19.1 Liquidated Damages

19.1.1 Failure to Meet Contract Requirements

The DB Contractor understands and agrees that if the DB Contractor fails to complete the Work in accordance with the Contract Documents, the District will suffer substantial losses and damages. The DB Contractor agrees that it shall be liable for all such losses and damages. The DB Contractor acknowledges and agrees that because of the unique nature of the Project, the fact that it is an essential part of the St Elizabeths East Campus Project, and the fact that inconvenience to the local and regional traffic, especially commuters entering or leaving Washington, DC, will be one of the significant impacts of any completion delay, it is impracticable and extremely difficult to ascertain and calculate the actual damages which would accrue to the District and the public in the event of the DB Contractor's failure to achieve Substantial Completion and Final Completion by the applicable Project Completion Dates. Therefore, the DB Contractor and the District have agreed to stipulate the amount payable by the DB Contractor in the event of its failure to meet the Substantial Completion and Final Completion Dates. The DB Contractor acknowledges and agrees that such Liquidated Damages are intended to compensate the District solely for the DB Contractor's failure to meet these Contract Document requirements, and not as a penalty, and shall not excuse the DB Contractor from liability from any other breach of Contract requirements, including any failure of the Work to conform to applicable requirements.

19.1.1.1 Failure to Meet Substantial Completion Date

If the DB Contractor fails to achieve the Substantial Completion Date, the DB Contractor agrees to pay the District Liquidated Damages in the following amount: \$33,000 per Day or portion of a Day for the DB Contractor's failure to achieve Substantial Completion Date if not the fault of the District, and the DB Contractor agrees and acknowledges that such amount is an accurate estimate of the actual damages the District would incur in the event of such a delay.

19.1.1.2 Failure to Meet Final Completion Date

Following Substantial Completion, if the DB Contractor fails to achieve the Final Completion Date, the DB Contractor agrees to pay the District Liquidated Damages in the following amount: \$20,000 per Day or portion of a Day for the DB Contractor's failure to achieve Final Completion Date if not the fault of the District, and the DB Contractor agrees and acknowledges that such amount is an accurate estimate of the actual damages the District would incur in the event of such a delay.

19.1.1.3 Maximum Damage Amounts

There is no maximum cap on Cumulative Liquidated Damages under Section 19.1.1.

19.2 Offset/Waiver

19.2.1 Offset

The DB Contractor hereby agrees that the District may use all or any portion of any consideration or refund due the DB Contractor under the present contract to satisfy, in whole or in part, any debt due the District.

19.2.2 No Waiver

Permitting or requiring the DB Contractor to continue and finish the Work or any part thereof after a Substantial and/or Final Completion Date shall not act as a waiver of the District's right to receive Liquidated Damages hereunder or any rights or remedies otherwise available to the District.

19.3 Payment of Liquidated Damages

To the extent Liquidated Damages are not deducted in a monthly progress report payment from any amount owed to the District by the DB Contractor, the District may send the DB Contractor an invoice, and the Liquidated Damages shall be payable by the DB Contractor to the District within 10 Days after the DB Contractor's receipt of the invoice.

19.4 Incentive Payments

The Department intends to utilize an incentive award fee structure for this Project. One hundred percent (100%) of the Incentive Fee will be at-risk. The at risk Incentive Fee is set at \$400,000.00, which is approximately nine tenths of a percent (0.9%) of \$45 Million. The Design-Builder will be eligible to earn the Incentive Fee based on its performance regarding the goals listed below:

- Fort Percent (40%) of the Incentive Fee shall be earned for achieving substantial completion of the project no later than July 31, 2018 regardless of the reason failure to achieve timely completion;
- Thirty five Percent (35%) of the Incentive Fee shall be earned if the final contract price does not exceed the original contract price by more than three percent (3%) (i.e. if the total value of change orders (and irrespective of their cause) are less than 3%);
- Ten Percent (10%) of the Incentive Fee shall be earned based on construction quality.
- Fifteen Percent (15%) of the Incentive Fee will be earned if the contractor is able to commence construction on or before July 31, 2016.

In determining whether these goals have been met, the decision will be made irrespective of fault and regardless of whether the cause for failing to achieve these goals was within the Contractor's control.

Forty Thousand Dollars (\$40,000) shall be earned based on the level of construction quality of the Project as delivered. The award fee panel established by DGS shall determine entitlement to this portion of the Incentive Award Fee.

Upon Final Completion of the Project, the incentive award fee panel shall meet and determine the degree to which the workmanship and construction quality of the Project is appropriate for a roadway and infrastructure project, giving consideration to the intended uses of the various components. In making this determination, the panel shall endeavor to reach a consensus among its members and ascribe one of the following four words to the overall success of construction of the design intent: poor, fair, good or very good. If the panel determines that the overall level of success was poor, then the panel shall award Zero Dollars (\$0); if the panel determines that the overall level of success was fair, then the panel shall award Thirteen Thousand Five Hundred Dollars (\$13,500); if the panel determines that the overall level of success was good, then the panel shall award Twenty Six Thousand Five Hundred Dollars (\$26,500); and if the panel determines that the overall level of success was very good, then the panel shall award Forty Thousand Dollars (\$40,000).

In the event the panel cannot reach consensus, then each member of the panel shall make a determination and each such determination shall be averaged with poor equating to 0% of the available fee, fair equating to 33% of the available fee, good equating to 67% of the available fee, and very good equating to 100% of the available fee. Both the Design-Builder and the Department agree that the determination of the panel shall be final and binding upon all Parties.

Indemnification

20.1 Indemnifications by Contractor

1. The DB Contractor agrees to defend, indemnify and hold harmless the District, its officers, agencies, departments, agents, and employees (collectively the "District") from and against any and all claims, losses, liabilities, penalties, fines, forfeitures, demands, causes of action, suits, costs and expenses incidental thereto (including reasonable cost of defense and attorneys' fees), (collectively "Claims"), resulting from, arising out of, or in any way connected to activities or work performed by the DB Contractor, the DB Contractor's officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the DB Contractor in performance of this Contract. The DB Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed in performance of this Contract. The DB Contractor shall also repair or replace any District property that is damaged by the DB Contractor, DB Contractor's officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the DB Contractor while performing work hereunder.
2. The indemnification obligation under this section shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for DB Contractor or any subcontractor, and shall survive the termination of this Contract. The District agrees to give the DB Contractor written notice of any claim of indemnity under this section. Additionally, DB Contractor shall have the right and sole authority to control the defense or settlement of such claim, provided that no contribution or action by the District is required in connection with the settlement. Monies due or to become due to the DB Contractor under the contract may be retained by the District as necessary to satisfy any outstanding claim which the District may have against the DB Contractor.

20.2 Responsibility of the District for Certain Hazardous Materials

20.2.1 Pre-existing Site Contamination

Except for Hazardous Materials for which the DB Contractor is responsible as described in Attachment I, DGS Standard Contract Provisions, and, without contradiction of any assertion by the District of third-party liability, for purposes of the Contract only:

1. The DB Contractor shall not be required to execute any hazardous waste manifests as a "generator."
2. Hazardous Materials encountered in the performance of the Work shall be disposed of, if at all, using a U.S. Environmental Protection Agency Identification Number or other appropriate legal device obtained by, and carried in the name of, the District or another Person designated by the District. The DB Contractor is responsible for contacting DDOE and obtaining all permits and approvals associated with Hazardous Materials removal and disposal.

20.2.2 No Effect on Other Rights

The foregoing obligations shall not be construed to negate, abridge, or reduce other rights or obligations that would otherwise exist in favor of a party hereunder.

20.3 Comprehensive Environmental Response, Compensation, and Liability Act Agreement

Without limiting their generality, the indemnities set forth in Section 20 are intended to operate as agreements pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Section 9607(e), to insure, protect, hold harmless, and indemnify the parties indemnified in said Section 20.

Claims for Adjustment and Disputes

21.1 Claims for Adjustment and Disputes

Claims for Adjustment and Disputes shall be addressed as proscribed in the DGS Standard Contract Provisions. See Attachment I of the RFP.

Acceptance of Project

22.1 Substantial Completion

As a prerequisite to Substantial Completion, the DB Contractor shall provide written notice to the District when all of the following have occurred with respect to the Project:

1. The District and the DB Contractor have agreed upon a Punch List after Substantial Completion notice that reflects work to be completed to obtain Final Completion.
2. The DB Contractor has completed all Work except for Punch List items, final cleanup, and other items only included in the requirements for Final Acceptance.
3. The DB Contractor has ensured that the Work in connection with Substantial Completion has been performed in accordance with the requirements of the Contract Documents.
4. The DB Contractor has ensured that the Project may be operated safely without injury to any Person or damage to the Project or any other property on or off the Site.
5. The DB Contractor has ensured that the Project is ready to be opened for all traffic and that no further Work is required that would involve any lane, shoulder or sidewalk closure except as necessary to complete Punch List items.
6. The DB Contractor has received all applicable Governmental Approvals required for the Project.
7. The DB Contractor has furnished to the District certifications from the DB Contractor's Design Manager, in form and substance satisfactory to the District, certifying that the Design Documents meet the requirements of the Contract Documents.
8. The DB Contractor has furnished to the District certifications from the DB Contractor's Project Manager, in form and substance satisfactory to the District, certifying that the construction meets the requirements of the Contract Documents.
9. The DB Contractor has obtained all applicable third-party Approvals relating to the Work, and all third parties have completed all Work that involves obligations by the DB Contractor, including the Utility Companies and Washing Gas (third parties).

22.2 Notice of Substantial Completion

Upon receipt of the DB Contractor's notice under Section 22, the District, in addition to the requirements set forth in Section 108.09 of the DDOT Standard Specifications for Highways and Structures, will verify that the following have occurred:

1. All Nonconforming Work identified as prerequisites to Substantial Completion has been corrected.
2. All Punch List items identified as prerequisites to Substantial Completion have been completed.
3. All other requirements identified as prerequisites to Substantial Completion have been met.

If any Work does not meet the requirements of the Contract Documents or Work has not been completed, the District will promptly advise the DB Contractor as to Nonconforming Work or incomplete Work necessary to be corrected as a condition to Substantial Completion. Upon correction of the Nonconforming Work excluding Punch List items identified for Final Acceptance, the DB Contractor shall provide written notification to the District; and the District will verify that all prerequisites to Substantial Completion have been met and will issue a Notice of Substantial Completion.

22.3 Affidavit of Final Completion

The DB Contractor shall provide to the District an executed sworn Affidavit of Final Completion in accordance with this Section 22 when all of the following have occurred:

1. The District has received all Released for Construction Documents, Design Documents, As-Built Documents, ROW record maps, surveys, test data, and other deliverables required under the Contract Documents for the Project, whichever is applicable. The DB Contractor has furnished to the District alignment points as part of the As-Built Documents.
2. All special tools, equipment, furnishings, and supplies purchased by and/or used by the DB Contractor, as provided in the Contract Documents, have been delivered to the District free and clear of Liens and all Warranties have been transferred and assigned to the District.
3. All of the DB Contractor's and Subcontractors' personnel, supplies, equipment, waste materials, rubbish, and temporary facilities have been removed from the Site. The DB Contractor has restored and repaired all damage or injury arising from such removal to the satisfaction of the District, and the Site is in good working order and condition.
4. The DB Contractor has furnished to the District certifications from the DB Contractor's Quality Control Manager, in form and substance satisfactory to the District, certifying that there are no outstanding Nonconforming Work or Punch List items.
5. All of the DB Contractor's other obligations under the Contract Documents and other than obligations, which by their nature are required to be performed after Final Acceptance as determined by the District, have been satisfied in full or waived in writing by the District.

The Affidavit of Final Completion shall include the following statement:

To the best of the DB Contractor's knowledge and belief, the Work under the Contract has been completed in strict accordance with the Contract Documents, no lawful debts for labor or materials are outstanding and no federal excise tax has been included in the Contract Price; all requests for funds for undisputed Work under the Contract, including changes in the Work, and all billings of whatsoever nature are accurate, complete and final and no additional compensation over and above the final payment will be requested or is due under the Contract or under any adjustment issued for said undisputed Work; there are no outstanding Claims, Liens or stop notices relating to the Project, including Claims by Utility Companies; there is no existing default by the DB Contractor under any Utility Agreement, and no event has occurred which, with the passing of time or giving of notice or both, would lead to a Claim relating to the Work or event of default under any Utility Agreement; and upon receipt of final payment, the DB Contractor and Subcontractors acknowledge that the District and any and all employees of the District and their authorized representatives will thereby be released, discharged and acquitted from any and all Claims or liability for additional sums on account of undisputed Work performed under the Contract.

If the DB Contractor is unable to provide the affidavit in the above form, the affidavit shall certify that all such outstanding matters are set forth in an attached list that shall describe the outstanding matters in such detail as may be requested by the District. The affidavit shall include a representation of the DB Contractor that it is diligently and in good faith contesting all such matters by appropriate legal proceedings and shall provide a status report regarding the same, including an estimate of the maximum payable with respect to each such matter.

22.4 Notice of Final Acceptance

Upon the District's receipt of the Affidavit of Final Completion, the District will verify that the following have occurred:

1. All Nonconforming Work has been corrected other than obligations that by their nature are required to be performed after Final Acceptance as determined by the District.
2. All Punch List items have been completed other than obligations which by their nature are required to be performed after Final Acceptance as determined by the District.
3. All other requirements identified as prerequisites to Final Acceptance have been met.

If any Work does not meet the requirements of the Contract Documents or Work has not been completed, the District will promptly advise the DB Contractor as to Nonconforming Work or incomplete Work necessary to be corrected as a condition to Final Acceptance. Upon correction of the Nonconforming Work, including incomplete Work, the DB Contractor shall provide written notification to the District and the District will verify that all prerequisites to Final Acceptance have been met and will issue a Notice of Final Acceptance.

22.5 Overpayments; No Relief from Continuing Obligations

Final Acceptance will not prevent the District from correcting any measurement, estimate or certificate made before or after completion of the Work, or from recovering from the DB Contractor, the Surety, Sureties, or both, the amount of any overpayment sustained due to failure of the DB Contractor to fulfill the obligations under the Contract. A waiver on the part of the District of any breach by the DB Contractor shall not be held to be a waiver of any other or subsequent breach. Final Acceptance shall not relieve the DB Contractor from any of its continuing obligations hereunder, or constitute any assumption of liability by the District.

22.6 Opening of Sections of Project to Traffic

Opening of portions of the Project to traffic prior to Substantial Completion or Final Acceptance does not constitute Acceptance of the Work or a waiver of any provisions of the Contract Documents. Partial acceptance of portions of the Work will not be considered.

22.7 Assignment of Causes of Action

The DB Contractor hereby offers and agrees to assign to the District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC Section 15), arising from purchases of goods, services, or materials pursuant to the Contract or any Subcontract. The assignment shall be made and become effective at the time the District tenders final payment to the DB Contractor, without further acknowledgment by the parties.

Warranties

23.1 Warranties by Contractor

23.1.1 Project Warranties

The DB Contractor warrants the following:

1. When applicable law requires that services be performed by licensed professionals, the DB Contractor shall provide those services ("Professional Design Work") through qualified, licensed professionals. DB Contractor shall be responsible to the District for the professional negligence, errors and omissions, of such professionals.
2. DB Contractor agrees to use its best efforts to perform, or cause to be performed, all Professional Design Work (i) in accordance with the usual and customary professional standards of care, skill and diligence consistent with good professional design practices for professional design firms in the Washington, D.C. metropolitan area that provide professional design services for projects that are similar in size, scope, and budget to the Project, and (ii) in compliance with all applicable federal and District of Columbia laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. There are no obligations, commitments, or impediments of any kind known to the DB Contractor that will limit or prevent performance by the DB Contractor of its Professional Design Work. DB Contractor hereby agrees to correct, at its own cost, any of its Professional Design Work, and the services of its professional design consultants, that do not meet the standard of care.
3. DB Contractor warrants to the District the sufficiency and completeness of all Professional Design Work, and that all Professional Design Work including, without limitation, all drawings, specifications, and other information furnished or provided by DB Contractor, shall be reasonably accurate and free from any material errors or omissions. Neither acceptance nor approval of DB Contractor's Professional Design Work by the District shall relieve DB Contractor of any of its duties or release it from any liability with respect to Professional Design Work, it being understood that the District is, at all times, relying upon DB Contractor for its skill and knowledge in performing DB Contractor's Professional Design Work. The District shall have the right to reject any of DB Contractor's Work because of any fault, damage, or defect in the Work due to any material errors or omissions in the plans, drawings, specifications, and other Professional Design Work prepared or furnished by DB Contractor. Upon notice of any such errors or omissions, DB Contractor shall promptly provide any and all services necessary to correct or remedy them at no additional cost to the District. Should the DB Contractor refuse or neglect to correct any such damage or defect within a reasonable time after notice, the District may cause the damage or defect to be corrected and withhold payment or collect monetary damages equal to the cost of replacing or repairing the defective Work. DB Contractor's obligation to correct its errors and omissions is in addition to, and not in substitution for, any other remedy for defective services or Work which the District may have at law or in equity, or both.
4. The construction Work furnished pursuant to the Contract Documents shall be performed in a good, workmanlike manner and shall conform to the standards of care and diligence normally practiced by recognized construction firms performing construction of a similar nature in the District.
5. Materials and equipment furnished under the Contract Documents shall be of good quality and, when installed, shall be new, or as allowed under this Contract, recycled materials shall be in good condition and shall meet all contractual requirements.
6. The Work shall meet all of the requirements of the Contract Documents.
7. The specifications and/or drawings selected or prepared for use during construction are appropriate for their intended use.

8. The Project shall be fit for use for the intended purpose.

23.1.2 Transfer of Title

The DB Contractor warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for the District for the operation, maintenance, or repair thereof, free and clear of all Liens. Title to all of such materials, equipment, tools and supplies, which shall have been delivered to the Site, shall pass to the District, free and clear of all Liens, upon the sooner of: (i) incorporation into the Project; or (ii) payment by the District to the DB Contractor of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, the DB Contractor shall retain sole care, custody and control of such materials, equipment, tools and supplies, and shall exercise due care with respect thereto as part of the Work until Final Acceptance or until the DB Contractor is removed from the Project.

23.1.3 Project Warranty Term

The Warranty term shall commence upon Final Acceptance by the District. Warranties regarding all elements of the Project shall remain in effect until two (2) years after Final Acceptance, provided that the Warranty term for elements of the Project that will be owned by Persons other than the District (such as Utility Companies) shall remain in effect for such a term as may be required under any applicable agreement (such as Utility Agreements). If the District concludes that any of the Work has not met the standards set forth in this Section 23 at any time within the Warranty period, then the DB Contractor shall correct such Work as specified below within the 2-year Warranty term.

Warranties for installed equipment such as traffic signals, electronic message boards, lighting, and related facilities provided by manufacturers shall be transferred to or assigned to the District in accordance with the Standard Specifications.

The Warranties apply notwithstanding maintenance work performed by DGS or the Maintenance Contractor during the Warranty period.

23.1.4 Corrective Work

Within seven (7) Days of receipt by the DB Contractor of notice from the District specifying a failure of any of the Work to satisfy the DB Contractor's Warranties, or of any Subcontractor representation, Warranty, guarantee, or obligation that the DB Contractor is responsible to enforce, the DB Contractor and the District shall mutually agree when and how the DB Contractor shall remedy such violation; provided, however, that in case of an emergency as indicated by the District in its notice requiring immediate curative action, the DB Contractor and the District shall agree on a remedy immediately upon notice by the District of such emergency. If the DB Contractor does not use its best efforts to proceed to effectuate such remedy within the agreed time, or if the DB Contractor and the District fail to reach such an agreement within such 7-Day period or immediately, in the case of emergency conditions, then the District, after notice to the DB Contractor, shall have the right to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by the DB Contractor. The DB Contractor shall reimburse the District for such costs within 30 Days after the DB Contractor's receipt of the invoice. The District may agree to accept Nonconforming Work in accordance with Section 7.

The District and the DB Contractor shall conduct a walkthrough of the Site prior to expiration of the Warranty period and shall produce a Punch List of those items requiring Warranty Work.

23.1.5 Contractor's Costs of Correction of Work

All costs of correcting such rejected Work, including additional testing and inspections, shall be deemed included in the Contract Price. The DB Contractor shall reimburse the District and pay the District's expenses made necessary thereby within 30 Days after the DB Contractor's receipt of invoice. The

DB Contractor shall be responsible for obtaining any required Governmental Approvals or other consents from any other Person in connection with the Warranty Work.

23.2 Subcontractor Warranties

23.2.1 Assignment

Without in any way derogating the DB Contractor's own representations and Warranties and other obligations with respect to all Work, the DB Contractor shall obtain from all Subcontractors and cause to be extended to the District, appropriate representations, Warranties, guarantees and obligations with respect to the design, materials, workmanship, equipment, tools and supplies furnished by such Subcontractors, including all such representations, Warranties, guarantees, and obligations required to be furnished by Subcontractors pursuant to the Contract Documents. All representations, Warranties, guarantees, and obligations of Subcontractors shall: (i) be written so as to survive the entire District and the DB Contractor inspections, tests, and approvals; and (ii) run directly to and be enforceable by the DB Contractor and/or the District and their respective successors and assigns. The DB Contractor hereby assigns to the District all of the DB Contractor's rights and interest in all extended Warranties for periods exceeding the applicable Warranty period that are received by the DB Contractor from any of its Subcontractors.

23.2.2 Enforcement

Upon receipt from the District of notice of a failure of any of the Work to satisfy any Subcontractor Warranty, representation, guarantee, or obligation, the DB Contractor shall enforce or perform any such representation, Warranty, guarantee, or obligation, in addition to the DB Contractor's other obligations hereunder. The District's rights under this Section 23 shall commence at the time such representation, warranty, guarantee, or obligation is furnished, and shall continue until the expiration of the DB Contractor's relevant Warranty. Until such expiration, the DB Contractor shall be responsible for the cost of any equipment, material, labor (including re-engineering), or shipping; and the DB Contractor shall be required to replace or repair defective equipment, material, or workmanship furnished by any Subcontractor.

23.3 No Limitation of Liability

The foregoing Warranties are in addition to all rights and remedies available under the Contract Documents or Applicable Law and shall not limit the DB Contractor's liability or responsibility imposed by the Contract Documents or Applicable Law with respect to the Work, including liability for design defects, latent construction defects, strict liability, negligence, or fraud.

23.4 Warranty Beneficiaries

In addition to benefiting the District and its successors and assigns, the Warranties and Subcontractor Warranties provided under this Section 23 shall inure to the benefit of, and shall be directly enforceable by, any local agencies and Utility Companies with respect to those portions of the Work owned or controlled by each such Person.

23.5 Remedies for Breach of Warranty

In addition to the District's other rights and remedies hereunder, at law or in equity, the DB Contractor shall be liable for actual damages resulting from its failure to provide corrective Work in accordance with this Section 23 and any breach of an express Warranty or any defect in the Work.

23.6 Warranty Disputes

Any disagreement between the District and the DB Contractor relating to Section 23 shall be subject to the Dispute resolution provisions contained in Section 21, provided that the DB Contractor shall proceed as directed by the District pending resolution of the Dispute.

Documents and Records

24.1 Project Records

24.1.1 Maintenance of Records

The DB Contractor shall maintain at the DB Contractor's Project Manager's office in the District a complete set of all books, records, and documents prepared or employed by the DB Contractor with respect to the Project. The project records and documentation shall be maintained in a manner that meets or exceeds District of Columbia and Federal Requirements.

24.1.2 Audit and Inspection Rights

The DB Contractor shall grant to the District, FHWA and their respective authorized representatives such audit and inspection rights and allow such Persons such access to and the right to copy such books and records including all tax returns and supporting documentation filed with any Governmental Persons as such Persons may reasonably request from time to time in connection with the issuance of Change Orders, the resolution of Disputes, and such other matters as such Persons reasonably deem necessary for purposes of complying or verifying compliance with the Contract and Legal Requirements, including responding to requests pursuant to the D.C. Freedom of Information Act (FOIA).

24.1.3 Audit of Force Account Work

Where the payment method for any Work is on a Force Account basis, such examination and audit rights shall include all books, records, documents, and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Work. If an audit indicates the DB Contractor has been over-credited under a previous progress report or progress payment, that over-credit will be credited against current progress reports or payments.

24.1.4 Change Order Pricing Data

For cost and pricing data submitted in connection with pricing Change Orders, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, DGS has the right to examine all books, records, documents, and other Contractor data related to the negotiation of or performance of Work under such Change Orders for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents deemed necessary by such Persons to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

24.1.5 Claims Audits

All Claims filed against the District shall be subject to audit at any time following the filing of the Claim. The audit may be performed by employees of the District or by an auditor under contract with the District. No notice is required for any audit beginning before 60 Days after Final Acceptance. Thereafter, the District shall provide a 20-Day notice to the DB Contractor, any Subcontractors, or their respective agents before beginning an audit. The DB Contractor, Subcontractors, or their agents shall provide adequate facilities, acceptable to the District, for the audit during normal business hours. The DB Contractor, Subcontractors, and their agents shall cooperate with the auditors. Failure of the DB Contractor, Subcontractors, or their agents to maintain and retain sufficient records to allow the auditors to verify all or a portion of the Claim or to permit the auditors access to the books and records of the DB Contractor, Subcontractors, or their agents shall constitute a waiver of the Claim and shall bar any recovery thereunder. At a minimum, the auditors shall have available to them the following documents:

1. Daily time sheets, superintendent's log books, and supervisor's daily reports

2. Union agreements
3. Insurance, welfare, and benefits records
4. Payroll registers
5. Earnings records
6. Payroll tax forms
7. Material invoices and requisitions
8. Material cost distribution worksheet
9. Equipment records (such as lists of company equipment and/or rates)
10. Subcontractors' (including Suppliers) and agents' invoices
11. Subcontractors' and agents' payment certificates
12. Canceled checks (payroll and Suppliers)
13. Job cost report
14. Job payroll ledger
15. General ledger
16. Cash disbursements journal
17. Email, letters, and correspondence
18. Network servers, data storage devices, backup media
19. All documents that relate to each and every Claim, together with all documents that support the amount of damages as to each Claim.
20. Work sheets used to prepare the Claim establishing the cost components for items of the Claim including labor, benefits and insurance, materials, equipment, and Subcontractors; and all documents that establish the time periods, individuals involved, and the hours worked and the rates for the individuals.

Full compliance by the DB Contractor with the provisions of this Section 24 is a contractual condition precedent to the DB Contractor's right to seek relief under Section 21. The DB Contractor represents and warrants the completeness and accuracy of all information it or its agents provides in connection with this Section 24.

24.1.6 Ownership of Documents

All data, sketches, charts, calculations, plans, specifications, electronic files, correspondence and other documents created or collected under the terms of the DBA Documents shall be considered "works made for hire" for which DGS owns the copyright. Design Documents shall become DGS's property upon preparation; Construction Documents shall become DGS's property upon delivery to DGS; and other documents prepared or obtained by DB Contractor in connection with the performance of its obligations under the DBA Documents, including studies, manuals, Record Drawings, technical and other reports and the like, shall become the property of DGS upon DB Contractor's preparation or receipt thereof. Copies of all Design Documents and Construction Documents shall be furnished to DGS upon preparation or receipt thereof by DB Contractor. DB Contractor shall maintain all other documents described in this Section 24 in accordance with the requirements stated and shall deliver copies to DGS as required by the DBA Documents or upon request if not otherwise required to be delivered, with an indexed set delivered to DGS as a condition to Final Acceptance.

24.2 Retention of Records

The DB Contractor shall establish and maintain all books, records and documents (including electronic storage media) relating to the Contract, in accordance with generally accepted accounting principles and practices which sufficiently and properly reflect all revenues and expenditures of funds provided by the District under the Contract.

The DB Contractor shall retain all records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media), collectively referred to as “Records”, pertinent to the contract until three years after the earlier to occur of: (i) the date Final Acceptance is achieved; or (ii) the termination date. If any audit, litigation, or claim, or other action involving the records has been started before the end of the three-year period, the DB Contractor must retain the Records until completion of the litigation, claim, audit, or other action and resolution of all issues which arise from it, or until the end of the three-year period, whichever is later.

The DB Contractor shall make these Records available, at the DB Contractor’s office and at all reasonable times, for inspection, review, or audit by the CO, federal, District, or other personnel duly authorized by the CO. The DB Contractor shall make such Records available, without charge, and shall allow such Persons to make copies of such Records at no expense to the District.

The requirements of this section further apply to any Subcontractor or any agents of the DB Contractor or any Subcontractor.

24.3 District of Columbia Freedom of Information Act

24.3.1 Applicability of Law

The DB Contractor acknowledges and agrees that all records, documents, drawings, plans, specifications, and other materials in the DB Contractor’s or the District’s possession directly related to the Project, including materials submitted to the District by the DB Contractor, are subject to the provisions of the D.C. FOIA. The DB Contractor shall be solely responsible for all determinations made by it under such act and for clearly and prominently marking each and every page or sheet of its materials with trade secret, privileged information, or confidential commercial, financial, geological, or geophysical data as it determines to be appropriate. The DB Contractor is advised to contact legal counsel concerning such act and its application to the DB Contractor.

24.3.2 Confidential Materials

If any of the materials submitted by the DB Contractor to the District are clearly and prominently labeled as trade secret, privileged information, or confidential commercial, financial, geological, or geophysical data by the DB Contractor, the District will endeavor to advise the DB Contractor of any request for the disclosure of such materials prior to making any such disclosure. Under no circumstances, however, will the District be responsible or liable to the DB Contractor or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by law or by court order or occurs through inadvertence, mistake, or negligence on the part of the District, except for any disclosure of trade secrets or proprietary information.

24.3.3 Contractor to Defend Against Disclosure Request

In the event of litigation concerning the disclosure of any material submitted by the DB Contractor to the District, the District’s sole involvement will be as a Stakeholder retaining the material until otherwise ordered by a court, and the DB Contractor shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk.

24.3.4 Cooperation with the District Regarding D.C. FOIA Requests

The District of Columbia Freedom of Information Act, at D.C. Official Code §2-352(a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the DB Contractor receives a request for such information, the DB Contractor shall immediately send the request to the CA who will provide the request for the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the DB Contractor pursuant to the contract, the CA will forward a copy to the DB Contractor. In either event, the DB Contractor is required by law to provide all responsive records to the CA within the timeframe designated by the CA. The FOIA officer for the agency with programmatic responsibility will determine the releasability of the records. The District will reimburse the DB Contractor for the costs of searching and copying the records in accordance with D.C. Official Code §2-352 and Chapter 4 of Title 1 of the D.C. Municipal Regulations.

24.4 Escrowed Proposal Documents

Prior to execution of this DBA, the DB Contractor delivered to DGS one copy of all cost, unit pricing, price quote and other documentary information used in preparation of the Contract Price (Escrowed Proposal Documents [EPDs]). Upon execution of this DBA, the EPDs shall be stored at a mutually agreed bank, the storage costs to be paid by the DB Contractor. Concurrently with approval of each Change Order or amendment to any Contract Document, one copy of all documentary information used in preparation of the Change Order or amendment shall be added to the files to be held with the other EPDs. The EPDs will be held at the bank until all of the following have occurred: (a) 180 Days have elapsed from the later of Final Acceptance or termination of this Contract, as applicable; (b) all Claims or Disputes regarding the Work have been settled; and (c) Final Payment has been made and accepted.

24.4.1 Availability for Review

The EPDs shall be available during normal bank business hours for joint review by the DB Contractor, DGS and any Dispute resolver in accordance with Section 21, in connection with approval of the Project Schedule, negotiation of Change Orders, resolution of Claims or Disputes under the Contract Documents, and also as described in this Section 24. DGS shall be entitled to review all or any part of the EPDs in order to satisfy itself regarding the applicability of the individual documents to the matter at issue.

24.4.2 Proprietary Information

The EPDs are, and shall always remain, the property of the DB Contractor and shall be considered to be in the DB Contractor's possession, subject to DGS's right to review the EPDs as provided in this Section 24.4. DGS acknowledges that the DB Contractor may consider that the EPDs constitute trade secrets or proprietary information. DGS shall have the right to copy the EPDs for the purposes set forth in this Section 24.4, provided that the Parties execute a mutually agreeable confidentiality agreement with respect to EPDs that constitute trade secrets or proprietary information.

24.4.3 Representation

The DB Contractor represents and warrants that the EPDs constitute all documentary information used in the preparation of its Contract Price. The DB Contractor agrees that no other Price Proposal preparation information will be considered in resolving Disputes or Claims. The DB Contractor further agrees that the EPDs are not part of the Contract Documents and that nothing in the EPDs shall change or modify any Contract Document.

24.4.4 Contents of EPDs

The EPDs shall, inter alia, clearly detail how each cost or price included in the Proposal has been calculated and shall show cost or price elements in sufficient detail to enable DGS to understand how the

DB Contractor calculated the Contract Price. The EPDs provided in connection with quotations and Change Orders shall, inter alia, clearly detail how the total cost or price and individual components of that cost or price were calculated. The EPDs shall itemize the estimated costs or price of performing the required work separated into usual and customary items and cost or price categories to present a detailed estimate of costs and price, such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, supplies, Subcontract costs, plant and equipment, indirect costs, contingencies, markup, overhead, and profit. The EPDs shall itemize the estimated annual costs of insurance premiums for each coverage required to be provided by DB Contractor under Section 11. The EPDs shall include all assumptions, detailed quantity takeoffs, price reductions and discounts, rates of production and progress calculations, and quotes from Subcontractors used by DB Contractor to arrive at the Contract Price, and any adjustments to the Contract Price under this Agreement.

24.4.5 Form of EPDs

Except as otherwise provided in the RFP, the DB Contractor shall submit the EPDs in such format as used by the DB Contractor in connection with its Proposal. The DB Contractor represents and warrants that the EPDs provided with the Proposal were personally examined by an authorized officer of the DB Contractor prior to delivery and that the EPDs meet the requirements of Section 24. The DB Contractor further represents and warrants that all EPDs provided were or will be personally examined prior to delivery by an authorized officer of the DB Contractor and that they shall meet the requirements of this Section 24.

24.4.6 Review by DGS to Confirm Completeness

DGS may at any time review the EPDs to assess whether they are complete. If DGS concludes that any data are missing from an EPD, the DB Contractor shall provide such data within three (3) Business Days after delivery of DGS's request for such data. At the time of its submission to DGS, such data will be date-stamped, labeled to identify it as supplementary EPD information, and added to the EPD. The DB Contractor shall have no right to add documents to the EPDs except upon DGS's request. The EPDs associated with any Change Order or Contract Price adjustment under this DBA shall be reviewed, organized, and indexed in the same manner described herein.

Cooperation and Coordination with Others

25.1 Cooperation with Other Contractors

The District and other agencies may undertake or award other contracts for additional work on or near the Site. The DB Contractor shall cooperate and coordinate with the District and such other Projects, contractors and stakeholders to the extent reasonably necessary for the performance by the District and such other Projects, contractors and stakeholders of their work and shall cause its employees, agents, officers, and Subcontractors and other Persons for whom the DB Contractor may be contractually or legally responsible to so cooperate. If other separate contracts are awarded by the District that affect the Work, the DB Contractor shall conduct its Work without interfering with or hindering the progress or completion of the work being performed by others. Other work anticipated in the area of the Stage 1 Phase 1 infrastructure improvements contract include, but may not be limited to the following:

- Entertainment & Sports Arena (Wizards facility)'
- DMPED Phase 1 Real Estate Development,
- Washington Gas third party utility installations,
- DGS building restoration and miscellaneous site work on East Campus,
- R.I.S.E Center and Gateway Pavilion ongoing operations,
- DC Water elevated storage tank and 24 inch water main installation,
- St Elizabeths Hospital 24/7/365 access required
- DGS Building demolition of buildings 119 and 124,
- DGS rerouting of on-site power supply lines connected to building 124,
- WMATA circulation improvements to Congress Heights Metro station,

25.2 Interference by Other Contractors

If the DB Contractor asserts that any of the District's other contractors have hindered or interfered with the progress or completion of the Work, then the DB Contractor will use its best efforts to settle Disputes with other contractors. The DB Contractor shall have the right to request the District CO to resolve such Dispute, provided the other contractor and its sureties have agreed to submit the Dispute to the CO and that such proceeding shall be conducted at no cost to the District.

Miscellaneous Provisions

26.1 Amendments

The Contract may be amended by a written instrument duly executed by the parties or their respective successors or assigns, or by unilateral change order issued by the CO.

26.2 Waiver

26.2.1 No Waiver of Subsequent Rights

Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of the Contract Documents at any time shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

26.2.2 Custom Does not Constitute Waiver

No act, delay, or omission done, suffered, or permitted by one party or its agents shall be deemed to waive, exhaust, or impair any right, remedy, or power of such party under the Contract Documents, or to relieve the other party from the full performance of its obligations under the Contract Documents. No custom or practice between the parties in the administration of the terms of the Contract Documents shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of the Contract Documents.

26.2.3 Waivers Must be in Writing

No waiver of any term, covenant, or condition of the Contract Documents shall be valid unless in writing and signed by the party providing the waiver.

26.3 DB Contractor

The DB Contractor is an independent contractor, and nothing contained in the Contract Documents shall be construed as constituting any relationship with the District other than that of an independent contractor. In no event shall the relationship between the District and the DB Contractor be construed as creating any relationship whatsoever between the District and any of the DB Contractor's employees. Neither the DB Contractor nor any of its employees is or shall be deemed to be an employee of the District. Except as otherwise specified in the Contract Documents, the DB Contractor has sole authority and responsibility to employ, discharge, and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors, and for all other Persons whom the DB Contractor or any Subcontractor hires or engages to perform or assist in performing the Work.

26.4 Successors and Assigns

The Contract Documents shall be binding upon and inure to the benefit of the District and the DB Contractor and their permitted successors, assigns, and legal representatives.

26.4.1 Assignment by the District

The District may assign all or part of its right, title and interest in and to the Contract, including rights with respect to the Surety bonds required hereunder and any other performance security provided, to any Person, with the prior written approval of the DB Contractor.

26.4.2 Assignment by DB Contractor

The DB Contractor may assign its rights to receive payment under the Contract Documents and may Subcontract Work in accordance with the Approved Subcontracting Plan and in compliance with the requirements of the Contract Documents. The DB Contractor shall not otherwise sublet, transfer, assign or dispose of any portion of the Contract, or delegate any of its duties hereunder, except with the District's prior written Approval, at the District's sole option and discretion. The DB Contractor's assignment or delegation of any of its Work under the Contract Documents shall be ineffective to relieve the DB Contractor of its responsibility for the Work assigned or delegated, unless the District, in its sole discretion, has approved such relief from responsibility.

26.5 Designation of and Cooperation with Representatives

26.5.1 Designation of Representatives

Concurrently with execution hereof, the District and the DB Contractor shall each designate an individual or individuals, who shall be authorized to make decisions and bind the parties on matters relating to the Contract Documents. Such designations may be changed by a subsequent writing delivered to the other party in accordance with this Section 26. The parties may also designate technical representatives, who shall be authorized to investigate and report on matters relating to the construction of the Project and negotiate on behalf of each of the parties but who do not have the authority to bind the District or the DB Contractor.

26.5.2 Cooperation

The DB Contractor shall cooperate with the District and all representatives of the District designated as described above.

26.6 Gratuities and Conflicts of Interest

Neither the DB Contractor nor any of its employees, agents, or representatives shall offer or give to an officer, official, or employee of the District of Columbia gifts, entertainment, payments, loans, or gratuities. The DB Contractor represents and warrants that it has not previously offered or given any gifts, entertainment, payments, loans, or gratuities in violation of such prohibitions.

26.7 Survival

The Dispute resolution provisions contained in Section 21, and all other provisions, which by their inherent character should survive termination of the Contract, shall survive the termination of the Contract.

26.8 Limitation on Third-Party Beneficiaries

It is not intended by any of the provisions of the Contract Documents to create any third-party beneficiary hereunder, or to authorize anyone not a party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the Warranty and indemnity provisions) identify third parties and state that they are entitled to benefits hereunder. The duties, obligations, and responsibilities of the parties to the Contract Documents with respect to such third parties shall remain as imposed by law. The Contract Documents shall not be construed to create a contractual relationship of any kind between the District and a Subcontractor or any other Person except the DB Contractor.

26.9 No Personal Liability

The District's authorized representatives are acting solely as agents and representatives of the District when carrying out the provisions of or exercising the power or authority granted to them under the Contract Documents. They shall not be liable either personally or as employees of the District for actions in their ordinary course of employment.

26.10 Notices and Communications

26.10.1 Delivery of Notices

Notices under the Contract Documents shall be in writing and: (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (iv) sent by email communication, followed by a hard copy or with receipt confirmed by telephone, to the following addresses or to such other address as may from time to time be specified in writing by such Person:

All correspondence with the DB Contractor shall be sent to the DB Contractor's Project Manager or as otherwise directed by such Project Manager. The address for such communications shall be:

DB Contractor's Project Manager contact information.

All communications to the District shall be marked with the District's Project identification number and shall be delivered to the District's Contracting Officer, with copies to such additional Persons as may be designated by the District's CO, at the address set forth below:

District Contracting Officer:

Jamar Spruill
Contract Specialist
2000 14th Street NW, 8th Floor
Washington, DC 20005
Jamar.Spruill@dc.gov
Phone (202) 671-2255

DGS has designated an employee to act as the Contracting Administrator (CA) for the Project. The CA is responsible for general administration of the Contract and advising the CO as to the DB Contractor's compliance or noncompliance with the Contract. The CA has the responsibility of ensuring the Work conforms to the requirements of the Contract and such other responsibilities and authorities as may be specified in the Contract. These include:

1. Keeping the CO fully informed of any technical or contractual difficulties encountered during the term of the DBA and advising the CO of any potential problem areas under the Contract.
2. Coordinating site entry for Contractor personnel, if applicable.
3. Reviewing invoices for completed work and recommending approval by the CO if the DB Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure.
4. Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions.
5. Maintaining a file that includes all Contract correspondence, modifications, records of inspections (site, data, and equipment) and invoices or vouchers.

The CA shall NOT have the authority to:

1. Award, agree to, or sign any contract, delivery order, or task order. Only the CO shall make contractual agreements, commitments, or modifications.
2. Grant deviations from or waive any of the terms and conditions of the Contract.
3. Increase the dollar limit of the Contract or authorize work beyond the dollar limit of the Contract.
4. Authorize the expenditure of funds by the DB Contractor.
5. Change the period of performance.
6. Authorize the use of District property, except as specified under the Contract.

The DB Contractor shall be fully responsible for any changes not authorized in advance, in writing, by the CO, may be denied compensation or other relief for any additional Work performed that is not so authorized, and may also be required, at no additional cost to the District of Columbia, to take all corrective action necessitated by reason of the unauthorized changes.

The CA shall be:

Mrs. Vanessa Simmons
District Department of General Services
1250 U Street, NW 4th floor
Washington, DC 20009

26.10.2 Receipt of Notices

Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier, or other Person making the delivery. Notwithstanding the foregoing, notices sent by email after 4:00 p.m. Eastern Standard Time and all other notices received after 5:00 p.m. Eastern Standard Time (as applicable) shall be deemed received on the first Business Day following delivery—that is, in order for an email to be deemed received on the same Day, the email must have been received before 4:00 p.m.

26.10.3 Copies of Correspondence to the District

The DB Contractor shall copy the District on all written correspondence pertaining to the Contract between the DB Contractor and any Person other than the DB Contractor's Subcontractors, consultants and attorneys.

26.11 Further Assurances

The DB Contractor shall promptly execute and deliver to the District all such instruments and other documents and assurances as are reasonably requested by the District to further evidence the obligations of the DB Contractor hereunder, including assurances regarding assignments of Subcontractors contained herein.

26.12 Severability

If any clause, provision, Section, or part of the Contract is ruled invalid under Section 21 or otherwise by a court of competent jurisdiction, then the parties shall: (i) promptly meet and negotiate a substitute for such clause, provision, Section, or part, which shall, to the greatest extent legally permissible, effect the original intent of the parties, including an equitable adjustment to the Contract Price to account for any change in

the Work resulting from such invalidated portion; and (ii) if necessary or desirable, apply to the court or other decision maker (as applicable) that declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, Section, or part shall not affect the validity or enforceability of the balance of the Contract, which shall be construed and enforced as if the Contract did not contain such invalid or unenforceable clause, provision, Section, or part.

26.13 Headings

The captions of the Sections of the Contract Documents are for convenience only and shall not be deemed part of the Contract or considered in construing the Contract.

26.14 Governing Law

The Contract Documents shall be governed by and construed in accordance with the law of the District of Columbia.

26.15 Entire Agreement

The Contract Documents contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations, and negotiations between the parties with respect to its subject matter.

26.16 Incorporation by Reference

All of the Documents and Exhibits thereto listed below are hereby incorporated by reference into the DBA and made a part hereof.

1. RFP Attachment B, Design-Build Agreement as executed by the District and the DB Contractor, including all exhibits of this DBA
2. RFP Attachment I, DGS Standard Contract Provisions
3. RFP Attachment C, Technical Provisions
4. RFP Attachment A, Contract Data and Reports (CDR) and Reference Information Documents (RID).
5. The Proposal Documents and the Proposal Attachments, to the extent that they meet or exceed the requirements of the other Contract Documents, including the Approved Alternative Technical Concepts. In other words, if the Proposal Documents or Proposal Attachments include statements that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the Contract Documents, or to perform services in addition to those otherwise required or otherwise contain terms which are more advantageous to the District than the requirements of the other Contract Documents, the DB Contractor's obligations hereunder shall include compliance with all such statements, offers, and terms.

26.17 Counterparts

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed the Contract as of the date and year first set forth above.

DISTRICT OF COLUMBIA

DISTRICT CONTRACTING OFFICER:

Date: _____, 201____

By: _____
[NAME]

DESIGN BUILD CONTRACTOR

[DB Contractor's name] -

By: [DB Contractor's name] -

By: _____

Name: [DB Contractor's Authorized Representative] -

Title: _____

Date: _____, 201____

Exhibit 1

Abbreviations, Acronyms and Definitions

ACRONYMS

Abbreviation	Title or Description
ATC	Alternative Technical Concept
CA	Contract Administrator
CFR	Code of Federal Regulations
CPM	Critical Path Method
DB	Design-Build
DBA	Design-Build Agreement
D.C. or DC	District of Columbia
DDOT	District Department of Transportation
DGS	District of Columbia Department of General Services
DOL	Department of Labor
EEO	Equal Employment Opportunity
FAPA	Fuel and Asphalt Price Adjustment
FAR	Federal Acquisition Regulation
FOIA	Freedom of Information Act
ITP	Instructions to Proposers
ITS	Intelligent Transportation Systems
MWUCP	Metropolitan Washington Uniform Certification Program
NTP1	First Notice to Proceed
NTP 2	Second Notice to Proceed
OCR	Office of Civil Rights
PCO	Potential Change Order
PPI	Producers Price Index
QA	quality assurance
QC	quality control
RCO	Request for Change Order
RCP	Request for Change Proposal
RCRA	Resource Conservation and Recovery Act
RFP	Request for Proposal
RID	Reference Information Documents
ROM	Rough Order of Magnitude
ROW	right-of-way
USDOT	U.S. Department of Transportation
VECP	Value Engineering Change Proposal

DEFINITIONS

Term	Meaning
Abandonment	After a Utility Company has decommissioned a Utility, the Work necessary for each Utility (including appurtenances) for a Utility that is not removed, using proper Utility Company and/or industry procedures (e.g., flushing, capping, filling with grout or sand) or other procedures Approved by the District. Contractor is responsible to coordinate with the Utility Company when it is necessary for the Utility Company to be involved in decommission of a Utility (including appurtenances).
Acceleration Costs	Those fully documented increased costs reasonably incurred by the DB Contractor otherwise allowable by the Contract; (i.e., costs over and above what the DB Contractor would otherwise have incurred) that are directly attributable to increasing the performance level of the Work in an attempt to complete necessary Activities of the Work earlier than otherwise anticipated, such as for additional equipment, additional crews, lost productivity, overtime and shift premiums, increased supervision, and any unexpected movement of materials, equipment, or crews necessary for re-sequencing in connection with acceleration efforts.
Activity	Parts of the Work, including finished products or functional processes required as subcomponents of the Work Breakdown Structure as defined by the DB Contractor.
Addendum	Change in Contract Documents issued in writing prior to the opening of Proposals.
Affected Area	As related to mined land reclamation, the total disturbed surface of a pit or quarry such as sand, gravel, topsoil, or borrow, that is being mined or will be mined. The area includes, but is not limited to, the excavation area, plant, and stockpile areas, parking and storage areas, and the haul roads.
Affidavit of Final Completion	The meaning set forth in Attachment B.
Affiliate	(1) Any Person who directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with the: (i) DB Contractor or (ii) any Major Participant; and (2) Any Person for which 10% or more of the equity interest in such Person is held directly or indirectly, beneficially, or of record by the: (i) DB Contractor, (ii) any Major Participant, or (iii) any Affiliate of the DB Contractor under Part (1) of this definition. For purposes of this definition, the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship, or otherwise.
Alternative Technical Concepts	The meaning set forth in Attachment B.
Applicable Laws	See Legal Requirements.

DEFINITIONS

Term	Meaning
Applicable Standards	The standards included in Attachment C, including Additional Applicable Standards submitted by the DB Contractor and accepted by the District.
Application for Final Payment	The application described in Attachment B.
Approve or Approval	Formal conditional determination in writing by the District that a particular matter or item is good or satisfactory for the Project. Such determination may be based on requirements beyond those set forth in the Contract Documents and may reflect preferences of the District.
Architectural and Engineering Services	All Work relating to the design, including preparation and interpretation of architectural and engineering plans and specifications, development of design solutions for conformance with all codes and public safety requirements and other design-related decision-making, and any other activities, collectively, which are required to be practiced by an architect or engineer in accordance with the laws of the District of Columbia.
As-Built Documents	The documents to be provided by the DB Contractor as described in Attachment C.
Award	The Acceptance of the Proposal by the Contracting Officer (with the understanding that the order of priority of the various Contract Documents shall be as set forth in Attachment C, and that the Contracting Officer shall have the right to require compliance with the requirements of the Contract Documents, even though it may necessitate performance of Work by the DB Contractor not contemplated in the Proposal Documents).
Backfill	Material used to replace or the act of replacing material removed during construction.
Baseline Schedule	The meaning set forth in Attachment B.
Betterment	As related to Utilities, a betterment is generally defined as the upgrading; (e.g. increase in capacity) of a Utility being relocated that is not attributable to the construction of the Project or is made solely for the benefit of and at the election of the Utility Company (not including a technological improvement which is able to achieve such upgrade at a cost equal to or less than the cost of a "like for like" replacement or relocation). The use of new materials or compliance with current standards in the performance of the Utility Work is not considered a Betterment.
Bridge Roadway Width	The clear width of the superstructure measured along the center of the roadway between the bottom of curbs or, if curbs are not used, between the inner faces of parapet or railing.
Business Day	A day that DGS is open for business, excluding holidays, Saturdays and Sundays.
Calendar Day	Each and every day shown on the calendar, including Saturdays and Sundays, beginning and ending at midnight.

DEFINITIONS

Term	Meaning
Certified Invoice	Any invoice or billing endorsed by the DB Contractor, certifying that material, specialty work, subcontract work, rental, lease, services, etc. were acquired for the Project and that the invoiced or billed amount represents the actual costs.
Certified Test Report	A test report from the manufacturer or an independent testing laboratory, including a signature by a person having legal authority to act for the manufacturer or the independent testing laboratory, stating that the test results show that the product or assembly to be incorporated into the Project has been sampled and tested and the samples have passed all specified tests.
Change Order	The meaning set forth in Attachment B.
Claim	The meaning set forth in Attachment B.
Commercial Vehicle(s)	A vehicle used on highways, in interstate commerce, that meets one of the following criteria: (i) has a Gross Vehicle Weight Rating or Gross Combination Weight Rating, or gross vehicle weight or gross combination weight of 10,001 pounds or more, whichever is greater; (ii) is designed to transport more than eight passengers (including the driver) for compensation; (iii) is designed to transport 16 or more people, including the driver, and is not used to transport passengers for compensation; (iv) functions to transport hazardous materials in quantities requiring the vehicle to be placarded.
Completion Date	Any or all of the following deadlines, depending on the context: the Substantial Completion Date and/or Final Completion Date and/or Final Acceptance Date.
Conceptual Design Plans	Means those plans provided as reference information.
Contaminated Soils and Materials	Soils or other materials that may contain Hazardous Substances but do not contain levels of Hazardous Substances that cause the soils or other materials to be disposed of as hazardous waste in a hazardous waste facility pursuant to the Resource Conservation and Recovery Act (RCRA). Contaminated Soils and Materials include those that may require disposal as a solid waste pursuant to RCRA but are not required to be treated as hazardous waste.
Contract	Depending on the context: (i) the Design-Build Agreement, or (ii) collectively, the Contract Documents, which establish the rights and obligations of the District and the DB Contractor.
Contract Documents	The meaning set forth in Attachment B.
Contract Price	The meaning set forth in Attachment B.
Contract Schedule	The meaning set forth in Attachment B.
Contracting Officer	The Contracting Officer designated in Attachment B.
Contractor Specifications	The specifications describing the Work that are developed by the DB Contractor.

DEFINITIONS

Term	Meaning
Contractor's Engineer	A professional engineer registered in the District of Columbia who is responsible for engineering and administrative supervision of the Project on behalf of the DB Contractor, who is either an employee of the DB Contractor, or a consulting engineer under contract to the DB Contractor.
Cost	The actual cost incurred, as distinguished from forecasted cost and determined in accordance with prevailing principles applicable to public contracts including Contract Cost Principles and Procedures, 48 CFR, Part 31 and Government Auditing Standards, as published by the Comptroller General of the United States.
Critical Path	The longest sequence of activities in a project plan which must be completed on time for the project to complete on schedule.
Day	The meaning set forth in Attachment B.
DB Contractor	The meaning set forth in Attachment B.
DB Contractor-Related Entity or Related Entity	(a) DB Contractor, (b) DB Contractor's shareholders, partners, joint venture partners and/or members, (c) Subcontractors (including Suppliers), (d) any other Persons performing any of the Work, (e) any other Persons for whom DB Contractor may be legally or contractually responsible, and (f) the employees, agents, officers, directors, shareholders, representatives, consultants, successors, assigns and invitees of any of the foregoing.
Defect or Defective Condition	Nonconforming Work.
Delay and Disruption Damages	The meaning set forth in Attachment B.
Department	The District Department of General Services
Design-Build Agreement	The Design-Build Agreement St Elizabeths East Campus Project (to which this Exhibit A is attached), and any and all amendments thereof.
Design Documents	All drawings (including plans, elevations, sections, details, and diagrams), specifications, reports, calculations and records, at any stage of development or revision necessary for design of the Project in accordance with the Contract Documents.

DEFINITIONS

Term	Meaning
Differing Site Conditions	"Differing Site Conditions" is defined in Attachment I, DGS Standard Contract Provisions.
Directive Letter	A written order issued by the CO directing the DB Contractor to modify the Work within the general scope of the Contract as described in Attachment B.
Disadvantaged Business	Means a small business concern, (a) which is at least fifty-one percent (51%) owned by one or more socially and economically disadvantaged individuals or in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
Dispute	Means any claim, disagreement, or controversy between DGS and DB Contractor concerning their respective rights and obligations under the Contract Documents including any alleged breach of Contract or failure to perform and remedies.
District	The District of Columbia and any of its agencies.
District-Directed Changes	Any changes in the Work (including changes in the standards applicable to the Work), which the District has directed the DB Contractor to perform as described in Attachment B.
Divided Highway	A highway with separated traveled ways for traffic in opposite directions. Traveled ways separated by painted medians will not be considered divided.
Drainage Ditch	An open depression constructed for the purpose of carrying off surface water.
Effective Date	The date shown in Attachment B upon which the Design-Build Agreement (DBA) is entered into.

DEFINITIONS

Term	Meaning
Eligible Surety	A surety company rated in the top two (2) categories by two (2) major rating agencies or at least A-/VIII or better according to A.M. Best's Financial Strength Rating and Financial Size, Licensed by the District of Columbia and listed on the US Treasury Circular 570
Engineer	Shall be defined as the "Contractor's Engineer of Record." The DB Contractor acknowledges and agrees that the District will be responsible for certain oversight and other matters with respect to the Project, and that as a result certain rights in favor of the Engineer may be exercised by and inure to the benefit of the District rather than the DB Contractor's Engineer. In the event any question arises regarding whether any such rights are applicable to the District or how to apply such rights, the District's interpretation regarding such matter shall control.
Environmental Laws	All Legal Requirements now or hereafter in effect relating to the environment or to emissions, discharges, releases, or threatened releases of Hazardous Substances into the environment, including into the air, surface water or groundwater, or onto land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Substances or otherwise relating to the protection of public health, public welfare, or the natural environment (including protection of nonhuman forms of life, land, surface water, groundwater, and air), including the statutes listed in the definition of Hazardous Substances; the National Environmental Policy Act, 42 USC §§ 4321 et seq.; the Occupational Safety and Health Act, 29 USC §§ 651 et seq.; and the Hazardous Materials Transportation Act, 49 App. USC §§ 1801; the Endangered Species Act, 16 USC §§ 1531 et seq.; the Clean Water Act, 33 USC §§ 1251, et seq.; the Safe Drinking Water Act, 42 USC §§ 300f, et seq.; the Migratory Bird Treaty Act, 16 USC §§ 703 et seq.; and the Eagle Protection Act, 16 USC § 668.
Equipment	All machinery, tools, and apparatus together with supplies for upkeep and maintenance, necessary for the proper construction/design and acceptable completion of the Work.
Error	An error, omission, inconsistency, inaccuracy, or deficiency.
Federal Requirements	All Legal Requirements applicable to Work financed with federal funds and the provisions required to be included in FHWA-assisted contracts.
Final Completion	Final Completion of the Project as described in Attachment B.
Final Acceptance	Acceptance of the Project as described in Attachment B.
Final Design Documents	The meaning as described in Attachment C.

DEFINITIONS

Term	Meaning
First Notice to Proceed (NTP1)	The meaning as described in Attachment B.
Force Majeure	an unexpected and disruptive event caused by an irresistible force or compulsion that prevents a party from performing his or her part of a contract
Lump Sum Price	The meaning as described in Attachment B.
Force Account Change Order	The meaning set forth in Attachment B.
Governmental Approval	Any approval, authorization, certification, consent, decision, exemption, filing, lease, license, permit, agreement, concession, grant, franchise, registration or ruling, required by or with any Governmental Person in order to design and construct the Project.
Governmental Person	Any federal, state, local or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity. The term includes the District of Columbia and agencies and subdivisions thereof, other than the Department of Transportation.
Hazardous Materials	<p>Any of the following:</p> <p>(a) Substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 USC Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 USC Section 6901 et seq. ("RCRA"); the Toxic Substances Control Act, 15 USC Sections 2601 et seq.; the Clean Water Act, 33 USC Sections 1251 et seq.; the Clean Air Act, 42 USC Sections 7401 et seq.; or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect,</p> <p>(b) Any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court,</p> <p>(c) Petroleum or crude oil excluding de minimis amounts and excluding petroleum and petroleum products contained within regularly operated motor vehicles, and</p> <p>(d) Asbestos or asbestos-containing materials in structures and or other improvements on or in the Site (other than mineral asbestos naturally occurring in the ground).</p>

DEFINITIONS

Term	Meaning
Holidays	<p>New Year's Day</p> <p>Inauguration Day</p> <p>Martin Luther King Jr. Birthday</p> <p>Presidents' Day</p> <p>Memorial Day</p> <p>Emancipation Day</p> <p>Independence Day</p> <p>Labor Day</p> <p>Columbus Day</p> <p>Veterans Day</p> <p>Thanksgiving Day</p> <p>Christmas Day.</p> <p>When any of the above holidays falls on Sunday, the holiday will be observed on the following Monday; when any of the above holidays falls on a Saturday; the holiday will be observed on the immediately preceding Friday. If Approved in writing by the District, the DB Contractor may work on holidays.</p>
Including, or, include, includes, included	All references in the Contract Documents to "including," "include," "includes," or "included" shall mean "including, but not limited to."
Incremental Costs	Those costs, if any, which the DB Contractor incurs as a result of a particular circumstance, which the DB Contractor would not have incurred but for the circumstance. In determining such costs, one would determine the total cost that the DB Contractor would have incurred had the circumstance not occurred, and subtract such amount from the costs actually incurred; the difference is the "increment." (For example, if the DB Contractor originally has to relocate three water lines, and a fourth water line is discovered in the same general area which can be relocated by the same crew, then if the DB Contractor is entitled (pursuant to Attachment B) to a Change Order increasing the Contract Price on account of such newly discovered water line, the District will be charged with only the costs of keeping the crew working the additional time to relocate the fourth water line and will not be charged any portion of the expense of moving the crew to the site in the first place.)
Indemnified Parties	The meaning set forth in Attachment B.
Informational Documents	The RFP Documents designated as Reference Information Documents.
Inspection	The act of viewing or looking carefully at construction, manufacturing, design, and maintenance practices, processes, and products, including document control and shop drawing review, to ensure that the practices, processes, and

DEFINITIONS

Term	Meaning
	products comply with the quality requirements contained in the Contract Documents.
Inspector	The DB Contractor's authorized representative assigned to perform inspection of Contract performance.
Instructions to Proposers	The RFP Document identified as Instructions to Proposers.
ITS Work	All elements of the Work necessary for completion of the ITS Elements, including providing equipment to meet specified performance measures, development of computer software, installation of equipment, testing and acceptance of equipment and software, integration of newly installed components with existing ITS infrastructure and maintenance of ITS components.
Laboratory	The testing laboratory of the DB Contractor or any other certified testing laboratory.
Lead Workers	Hourly employees in direct charge of the specific operations on a project. Formerly referred to as the foremen.
Legal Requirements	All applicable federal, state and local laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, orders and decrees of any Governmental Person having jurisdiction over the Project or Site, the practices involved in the Project or Site, any Work, or any Utility Work being performed by a Utility Company. The term "Legal Requirements" does not include Governmental Approvals or tax laws excluded in Attachment B.
Lien	Any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument, and the filing of or agreement to file any financing statement or other instrument intended to perfect a security interest).
Liquidated Damages	The damages described in Attachment B.
Localized Damage	Damage caused by a blast, impact, or other means which is contained/limited to the local area of origination, allowing the structural system as a whole to remain stable.
Lump Sum Change Order	The meaning set forth in Attachment B.

DEFINITIONS

Term	Meaning
Major Participant	Any of the following entities: (1) All general partners or joint venture members of the Submitter; all individuals, persons, partnerships, limited liability partnerships, corporations, limited liability companies, business associations, or other legal entities, however organized, directly or indirectly holding a 15 percent or greater interest in the Submitter; (2) the lead engineering/design firm(s); (3) each Subcontractor that will perform Work valued at 10 percent or more of the construction Work; and (4) each Subconsultant that will perform 20 percent or more of the design Work.
Materials	All components required for use in the construction of the Project.
Median	The portion of a divided highway separating the traveled ways for traffic in opposite directions.
Monthly Progress Schedule	The meaning set forth in Attachment B.
New Environmental Approval	Any of the following: (a) A new Governmental Approval of the same type as an Environmental Approval; and (b) A renewal, revision, modification or amendment to one or more of the Environmental Approvals.
Nonconforming Work	Work performed that does not meet the requirements of the Contract Documents.
Notice	The meaning set forth in Attachment B.
Notice of Final Acceptance	The notice delivered to the DB Contractor under Attachment B stating that Final Acceptance of the Project has occurred.
Notice of Termination (or Partial Termination)	A notice issued by the District to terminate the Contract and the performance of Work by the DB Contractor, either in whole or in part, pursuant to Attachment B.
Overburden	Any material that overlays material designated for road or bridge construction.
Payment Bond	The payment bond described in Attachment B.
PCO Notice	The potential change order notice described in Attachment B.
Performance Bond	The performance bond described in Attachment B.
Person	Any individual, corporation, company, voluntary association, partnership, trust, unincorporated organization, or Governmental Person, including the District.
Preliminary Baseline Schedule	The meaning set forth in Attachment B.
Price Proposal	The Price Proposal, as described in the RFP.

DEFINITIONS

Term	Meaning
Profile Grade	The trace of a vertical plane usually intersecting the top surface of the proposed rail or wearing surface and usually along the longitudinal centerline of the roadbed. Profile grade means either elevation or gradient of such trace according to the context.
Project	The St Elizabeths East Campus Design-Build Project as described by the Contract Documents within the Project Limits provided by the DB Contractor in the Proposal Documents.
Project Limits	Defined as per the Technical Provisions, Attachment C.
Proposal or Proposal Documents	Those documents constituting the DB Contractor's Proposal in response to the RFP, including any best and final offers or supplements to Proposals as may have been requested by the District.
Proposal Due Date	The date the Technical Proposal and Price Proposal is due as specified in the Instructions to Proposers.
Proposer	An individual, firm, partnership, corporation, joint venture, or combination thereof that was shortlisted under the District's Request for Qualifications and that submits a Proposal in response to the RFP.
Punch List	The list of Work items with respect to the Project that remain to be completed prior to Final Acceptance.
Quality Assurance (QA)	All those planned and systematic actions necessary for the DB Contractor to certify to the District that all Work fully complies with the requirements of the Contract Documents and that all materials incorporated in the Work, all equipment used, and all elements of the Work will perform satisfactorily for the purpose(s) intended.
Quality Control (QC)	The Activities performed by the DB Contractor, designer, producer or manufacturer to ensure and document that a product meets the requirements of the Contract Documents. Activities may include checking, materials handling and construction procedures, calibrations and maintenance of equipment, shop drawing review, document control, production process control, and any sampling, testing, and inspection done for these purposes.
Recovery Schedule	The schedule described in Attachment B and which Contractor is required to provide.
Reference Information Documents	The documents described in Attachment A.
Registered Professional Engineer	Registered Professional Engineer in the fields of civil, structural, mechanical or electrical engineering, whose registration is acceptable to the District's Board of Registration for Professional Engineers.

DEFINITIONS

Term	Meaning
Released for Construction Documents	The documents described in Attachment C.
Relocation or Relocate	As related to Utilities, each relocation, (including provision of temporary services as necessary) of any and all Utilities that is necessary or advisable in order to accommodate or permit construction of the Project.
Remediation Work	After identification by the DB Contractor that a Hazardous Substance(s) exists, sampling, treatment, and/or off-site disposal of Hazardous Substances and materials containing Hazardous Substances, as Approved by the District.
Request for Change Order (RCO)	A Contractor-initiated request for a change order under Attachment B.
Request for Change Proposal (RCP)	A proposal issued by the District under Attachment B.
Request for Proposals (RFP)	The Final Request for Proposals for the St Elizabeths East Campus Design-Build Project issued by the District, including all addenda thereto. The RFP includes the ITP, Contract Documents, Technical Provisions, and RID. The RFP is issued only to Proposers that have been shortlisted following SOQ review.
Revised Baseline Schedule	The meaning set forth in Attachment B.
RFP Documents	The documents listed in the RFP.
Roadbed Material	Material in cuts, embankments, and in embankment foundations from the subgrade down that supports the pavement structure.
Roadside	A general term denoting the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside.
Salvable Material	Material that can be saved or salvaged. Unless otherwise specified in the Contract, all salvable material shall become the property of the DB Contractor.
Second Notice to Proceed (NTP 2)	The meaning as described in Attachment B.
Service Line	As related to Utilities, a Utility line, the function of which is to directly connect the improvements on an individual property to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system. (The term "Service Line" also includes any Utility on public or private property that services structures located on such property.)

DEFINITIONS

Term	Meaning
Shall	When used in the Contract Documents, states a mandatory duty on the part of the DB Contractor.
Shop Drawings	Drawings prepared by the fabricator or supplier showing the layout and details of components fabricated in a shop for inclusion in the permanent facility (e.g., structural steel, reinforcing steel, railing, etc.).
Site	The parcels of ROW identified on the ROW Drawings or upon which the Project is to be constructed and installed as well as all other areas in the vicinity used by the DB Contractor for construction Work.
Small Business Concern	Means, with respect to firms seeking to participate as SBE's in DGS-assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65(b).
Socially and Economically Disadvantaged Individual	<p>Means any individual who is a citizen (or lawful admitted permanent residents) of the United States and who is:</p> <ol style="list-style-type: none"> 1) Any individual whom the MWUCP finds to be a socially and economically disadvantaged individual on a case-by-case basis. 2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged: <ol style="list-style-type: none"> i. Native Americans — which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; or ii. Asian-Pacific Americans — persons having origins from Japan, China, Taiwan, Korea, Burma, Vietnam, Laos, Cambodia, Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Territories of the Pacific Islands, the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong; or iii. Hispanic Americans — persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American or other Spanish or Portuguese culture or origin, regardless of race; or iv. Black Americans — persons having origins in any of the Black racial groups of Africa; or v. Subcontinent Asian Americans — persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka; vi. Women; vii. Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration, at such times as the Small Business Administration designation becomes effective.

DEFINITIONS

Term	Meaning
Specialty Item	Work requiring highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organization qualified and expected to bid on the Contract as a whole, and generally limited to minor components of the overall Contract.
Stakeholder	An individual or group whose interests may be impacted similarly (whether real or perceived) by the construction of the Project.
Stabilization	Modification of soils or aggregates by incorporating materials that increase load-bearing capacity, firmness, and resistance to weathering or displacement.
Standard Drawings	District of Columbia Department of Transportation Standard Drawings
Standards of the Industry	Practices, procedures, methods and standards that: (i) are consistent with current best industry practices established for, or employed by, leading Participants in the design, construction, operation, and maintenance industries; (ii) comply with Applicable Laws and applicable industry underwriters' and the fire and life safety codes and standards; and (iii) promote reliability, efficiency, safety, and security. Standards of the Industry include, without limitation, taking reasonable steps to assure that sufficient personnel are employed and available to perform the Work and that such personnel are adequately skilled, experienced, and trained to design, construct, install, operate, and maintain the Work properly and efficiently, and that appropriate coordination, monitoring, and testing is performed to assure that all elements of the Work are designed, constructed, and installed so as to function as required by the Contract Documents.
Street	A general term denoting a public way for purposes of vehicular travel, including the entire area within the ROW.
Subbase	Layer(s) of specified material thickness placed on a subgrade to support a base course.
Subcontract	Any subcontract to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work between the DB Contractor and a Subcontractor, or between any Subcontractor and its lower tier Subcontractor, at any tier.
Subcontractor or Subconsultant	Any Person with whom the DB Contractor has entered into any Subcontract and any other Person with whom any Subcontractor has further subcontracted any part of the Work, at any tier.
Subgrade Treatment	Modification of roadbed material by stabilization.
Substantial Completion	Substantial Completion of the Project as described in Attachment B.
Substructure	All of that part of a bridge below the bearings of simple or continuous spans and tops of footings of rigid frames, including backwalls.
Superstructure	All parts of a bridge structure not defined as substructure.

DEFINITIONS

Term	Meaning
Supplier	Any Person other than employees of the DB Contractor not performing Work at the Site that supplies machinery, equipment, materials or systems to the DB Contractor or any Subcontractor in connection with the performance of the Work; Persons who merely transport, pick up, deliver, or carry materials, personnel, parts, or equipment or any other items or persons to or from the Site shall not be deemed to be performing Work at the Site.
Surety	A corporation, partnership or individual, other than the DB Contractor, authorized to do business in the District of Columbia, and which has issued one or more of the Payment and Performance Bonds.
Technical Proposal	The Technical Proposal, as described in the RFP.
Technical Provisions	Means, collectively, the documents that are set forth in Volume II Book II of the Project Documents, together with such documents as may be incorporated into Volume II by reference therein. The technical criteria described in Attachment C, establish the minimum acceptable standards of quality, materials, and performance for the Work, which will be used as a basis for review and as a basis for Final Acceptance.
Temporary Structures	Structures required for the use of traffic while construction is in progress and not designated to remain a part of the permanent roadway.
Test	The procedure and method of acquiring and recording physical data and comparing it to set standards and submitting a statement to such conditions or operations as will lead to its Acceptance or rejection (deficiency, Defective Condition, Nonconformance) of the item.
Test-Based Acceptance	Acceptance based on each test meeting minimum requirements.
Test Procedure	Methods that detail the practice of acquiring the Test data.
Through Traffic	Traffic that has neither its origin nor its destination within the Limits of the Project.
Traveled Way	The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.
Tree Space	The portion of the public right-of-way used or reserved for trees.
Ultimate Infrastructure Configuration	The meaning set forth in Attachment C.
United States Department of Transportation (USDOT)	United States Department of Transportation or any executive department or agency thereof, or as the context may require, the USDOT Secretary or other Person who may at the time be acting in the capacity of Secretary, or an authorized representative or any other Person otherwise authorized to perform the functions to be performed hereunder by USDOT.
United States of America	Any of the 50 states, the District of Columbia, Puerto Rico and any other territories and possessions of the United States of America.

DEFINITIONS

Term	Meaning
Utility or Utilities	(i) A privately, publicly or cooperatively owned line, facility and/or system for producing, transmitting or distributing communications, power, cable television, electricity, light, heat, gas, oil, crude products, water, steam, waste, signal systems and other products that directly or indirectly serve the public; and/or (ii) a privately owned irrigation facility; and/or (iii) streetcar, WMATA and CSX owned or operated facilities. The necessary appurtenances to each utility facility shall be considered part of such utility including access hatches, vaults, fire hydrant feeds and rails. Without limitation, any Service Line connecting directly to a utility shall be considered an appurtenance to that utility, regardless of the ownership of such Service Line. The term "Utility" is sometimes also used to refer to the owner or operator of any such line, facility and/or system (a "Utility Company"). The term "Utility" shall specifically exclude existing storm water facilities, traffic signals and street lights, without regard to whether or not such items are included in the definition of "Utility" in the Utility Agreements.
Utility Company	The owner or operator of any Utility.
Utility Relocation	As related to Utilities, each relocation, (including provision of temporary services as necessary) of any and all Utilities that is necessary or advisable in order to accommodate or permit construction of the Project.
Utility Relocation Design	The meaning set forth in Attachment C.
Utility Work	The meaning set forth in Attachment C.
Value Engineering Change Proposal (VECP)	The meaning set forth in the Volume II, Book I, Section 15.2.
Verification/Verify	The act of testing or inspecting performed by qualified testing or inspecting personnel employed by the District or its designated agent to independently establish Conformity to the Contract.
Volume I	The Contract Document named "Instructions to Proposers" and designated as Volume I in the RFP.
Attachment B	The Contract Document named "Design-Build Agreement"
Attachment C	The Contract Document named "Technical Provisions"
Warranty	Any warranty made by the DB Contractor in Volume II, Book I, Section 23.1.3.
Work	All duties and services to be furnished and provided by the DB Contractor as required by the Contract Documents, including but not limited to the administrative, design, engineering, quality control, quality assurance, Utility coordination, procurement, legal, professional, manufacturing, supply, installation, construction, demolition, supervision, management, testing, verification, labor, Materials, equipment, documentation and other efforts necessary or appropriate to achieve Final Acceptance except for those efforts which the Contract Documents specify will be performed by the District or other Persons. In certain cases, the term is also used to mean the products of the Work.

DEFINITIONS

Term	Meaning
Work Breakdown Structure	A distinct activity ID for each work activity included in the Baseline Schedule.

Exhibit 2

Completion Dates

Completion Dates

FINAL COMPLETION SCHEDULE

Description	Not Later Than Completion Dates of Contract	Contractor Proposed Early Completion Dates
Obtaining of NTP 2 to start construction	August 8, 2016	
Completion of MOT -1 Phase of Construction	April 17, 2017	
Completion of MOT -2 Phase of Construction	October 26, 2017	
Completion of MOT -3 Phase of Construction	March 29, 2018	
Completion of MOT -4 Phase of Construction	July 31, 2018	
Substantial Completion of Stage 1 Phase 1 contract	July 31, 2018	
Final Completion of Stage 1 Phase 1 contract	August 30, 2018	

Exhibit 3

Cost and Pricing Data Certification

EXHIBIT 3

Cost and Pricing Data Certification

Contract: _____

Firm: _____

Project: _____

As required by Section 1624 of 27 DCMR, the undersigned

Authorized Agent for the DB Contractor

certifies that, to the best of my knowledge, the cost and pricing data (as defined under Section 1699 - DEFINITIONS of DCMR, 1988) submitted was accurate, complete and current as of

The undersigned further agrees that it is under a continuing duty to update cost and pricing data through the date that negotiations, if any, with the District are completed. The undersigned further agrees that the price, including profit or fee, will be adjusted to exclude any significant price increases occurring because the cost or pricing data was inaccurate, incomplete or not current.

Signed: _____

Date: _____

Exhibit 4

DB Contractor's Proposal Commitments, ATCs, and Schematics

EXHIBIT 4

DB Contractor's Proposal Commitments, ATCs, and Schematics

Appendix 1: Proposal Commitments

Appendix 2: ATCs

Appendix 3: Schematics

Form of letter contract for NTP-1

Form of Construction Change Order

APPENDIX 3

Schematics

[To be provided from the Proposal.]