

**Attachment A**  
**Form of Offer Letter**

Mr. Christopher Weaver  
[DATE]  
Page 1

[Contractor's Letterhead]

[Insert Date]

District of Columbia Department of General Services  
2000 14<sup>th</sup> Street, NW, 8<sup>th</sup> Floor  
Washington, DC 20009

Attn: Mr. Christopher Weaver  
Director

Reference: Request for Proposals (RFP)  
DCAM-16-CS-0117  
Design-Build for DYRS Site Lighting Repair and Renovations

Dear Mr. Weaver:

On behalf of [INSERT NAME OF OFFEROR] (the "Offeror"), I am pleased to submit this proposal in response to the Department of General Services' (the "Department" or "DGS") Request for Proposal (the "RFP") for Design-Build for DYRS Site Lighting Repair and Renovations. The Offeror has reviewed the RFP and the attachments thereto, any addenda thereto, and the proposed Form of Contract (collectively, the "Proposal Documents") and has conducted such due diligence and analysis as the Offeror, in its sole judgment, has deemed necessary in order to submit its Proposal in response to the RFP. The Offeror's Proposal and the Lump Sum Price (as defined in paragraph A) are based on the Proposal Documents as issued and assume no material alteration of the terms of the Proposal Documents. (Collectively, the Proposal and the Lump Sum Price are referred to as the "Offeror's Proposal".)

The Offeror's Proposal is as follows:

**Base Proposal**

CLIN	DESCRIPTION	LUMP SUM PRICE
0001	Design-Build for DYRS Site Lighting Repair and Renovations	\$ _____
0002	Pre-Construction Design Fee	\$ _____
Total Lump Sum Price/ including Pre-Construction Fee's		\$ _____

**LUMP SUM PRICE/ including Pre-Construction Fee's IN WORDS:**

---

The Offeror, for CLIN 0001, must submit for each of the components of work (Divisions) listed on the Price Breakdown Form (Exhibit 1), the price of each Division Component. The sum of all the prices for each Division Component must equal the Lump Sum Price for CLIN 0001. In the event of discrepancies between or among the Lump Sum Price and the Price Breakdown of each Division Component, the Lump Sum Price shall control.

The Offeror acknowledges and understands that the Lump Sum Price is a firm, fixed price and intended to be Offeror's sole compensation for the services required under the contract and should include sufficient funding for all of the Offeror's costs associated with the work, including, but not limited to, labor, tools and equipment, materials and supplies, and overhead, insurance and profit. Failure to submit complete the Price Breakdown for CLIN 0001 shall not to any extent qualify the Offeror's commitment to complete the entire project at the above stated Lump Sum Price. The District may use the Price Breakdown as a guide during contract administration

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

1. The Offeror agrees to hold its proposal open for a period of at least one hundred twenty (120) days after the RFP closing date.
2. Assuming the Offeror is selected by the Department and subject only to the changes requested in paragraph 5, the Offeror agrees to enter into a contract with the Department on the terms and conditions described in the Proposal Documents within ten (10) days of the notice of the award.
3. Both the Offeror and the undersigned represent and warrant that the undersigned has the full legal authority to submit this Proposal form and bind the Offeror to the terms of the Offeror's proposal. The Offeror further represents and warrants that no further action or approval must be obtained by the Offeror in order to authorize the terms of the Offeror's proposal.
4. The Offeror and its principal team members hereby represent and warrant that they have not: (i) colluded with any other group or person that is submitting a proposal in response to the RFP in order to fix or set prices; (ii) acted in such a manner so as to discourage any other group or person from submitting a proposal in response to the RFP; or (iii) otherwise engaged in conduct that would violate applicable anti-trust law.

5. The Offeror's proposal is subject to the following requested changes to the Form of Contract: [INSERT REQUESTED CHANGES. OFFERORS ARE ADVISED THAT THE CHANGES SO IDENTIFIED SHOULD BE SPECIFIC SO AS TO PERMIT THE DEPARTMENT TO EVALUATE THE IMPACT OF THE REQUESTED CHANGES IN ITS REVIEW PROCESS. GENERIC STATEMENTS, SUCH AS "A MUTUALLY ACCEPTABLE CONTRACT" ARE NOT ACCEPTABLE. OFFERORS ARE FURTHER ADVISED THAT THE DEPARTMENT WILL CONSIDER THE REQUESTED CHANGES AS PART OF THE EVALUATION PROCESS.]

6. The Offeror hereby certifies that neither it nor any of its team members have entered into any agreement (written or oral) that would prohibit any contractor, subcontractor or subconsultant that is certified by the District of Columbia Office of Department of Small and Local Business Enterprises as a Local, Small, Resident Owned or Disadvantaged Business Enterprise (collectively, "LSDBE Certified Companies") from participating in the work if another company is awarded the contract.

7. This Offer Letter Form and the Offeror's Proposal are being submitted on behalf of [INSERT FULL LEGAL NAME, TYPE OF ORGANIZATION, AND STATE OF FORMATION FOR THE OFFEROR].

Sincerely,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**Exhibit 1**

**PRICE BREAKDOWN FORM**

<b>CSI DIVISION NO.</b>	<b>DESCRIPTION</b>	<b>PRICE OF EACH DIVISION COMPONENT</b>
Div. 01	General Requirements	
Div. 02	Existing Conditions (incl. abatement/demo. of exist. structure)	
Div. 03	Concrete	
Div. 04	Masonry	
Div. 05	Metals	
Div. 06	Woods and Plastics	
Div. 07	Thermal and Moisture Protection	
Div. 08	Openings	
Div. 09	Finishes	
Div. 10	Specialties	
Div. 11	Equipment	
Div. 12	Furnishings	
Div. 13	Special Construction	
Div. 14	Conveying Systems	
Div. 21	FireSuppressions	
Div. 22	Plumbing	
Div. 23	Heating, Ventilation and Air Conditioning	
Div. 26	Electrical	
Div. 27	Communications	
Div. 28	Electronic Safety and Security	
Div. 32	Exterior Improvements	
Div. 33	Utilities	
	<b>Lump Sum Price</b>	
CLIN 002	Pre-Construction Fee	
	<b>Total Lump Sum/including Pre-Construction Fee</b>	

- DIVISION means a discrete component of the work for which a separate price is requested. The sum of all components in the “Price Breakdown Form” must equal the Lump Sum Price.

**Attachment B**

**Bidder/Offeror Certification Form dated 4-25-2016**

## BIDDER/OFFEROR CERTIFICATION FORM

<b>COMPLETION</b>			
The person(s) completing this form must be knowledgeable about the bidder's/offeror's business and operations.			
<b>RESPONSES</b>			
Every question must be answered. Each response must provide all relevant information that can be obtained within the limits of the law. Individuals and sole proprietors may use a Social Security number but are encouraged to obtain and use a federal Employer Identification Number (EIN). Provide any explanation at the end of the section or attach additional sheets with numbered responses. Include the bidder's/offeror's name at the top of each attached page.			
<b>GENERAL INSTRUCTIONS</b>			
This form contains four (4) sections. Section I concerns the bidder's/offeror's responsibility; Section II includes additional required certifications; Section III relates to the Buy American Act (if applicable); and Section IV requires the bidder's/offeror's signature. Please note, a determination that a prospective contract is found to be "not responsible is final and not appealable.			
<b>SECTION I. BIDDER/OFFEROR RESPONSIBILITY CERTIFICATION</b>			
<i>Instructions for Section I: Section I contains eight (8) parts. Part 1 requests information concerning the bidder's/offeror's business entity. Part 2 inquires about current or former owners, partners, directors, officers or principals. Part 3 relates to the responsibility of the bidder's/offeror's business. Part 4 concerns the bidder's/offeror's business certificates and licenses. Part 5 inquires about legal proceedings. Part 6 relates to the bidder's/offeror's financial and organizational status. Part 7 requires the bidder/offeror to agree to update the information provided. Part 8 relates to disclosures under the District of Columbia Freedom of Information Act (FOIA).</i>			
<b>PART 1: BIDDER/OFFEROR INFORMATION</b>			
Legal Business Entity Name:		Solicitation #:	
Address of the Principal Place of Business (street, city, state, zip code)		Telephone # and ext.:	Fax #:
Email Address:		Website:	
Additional Legal Business Entity Identities: If applicable, list any other DBA, Trade Name, Former Name, Other Identity and EIN used in the last five (5) years and the status (active or inactive).			
Type:	Name:	EIN:	Status:
1.1 Business Type (Please check the appropriate box and provide additional information if necessary.):			
<input type="checkbox"/> Corporation (including PC)		Date of Incorporation:	
<input type="checkbox"/> Joint Venture		Date of Organization:	
<input type="checkbox"/> Limited Liability Company (LLC or PLLC)		Date of Organization:	
<input type="checkbox"/> Nonprofit Organization		Date of Organization:	
<input type="checkbox"/> Partnership (including LLP, LP or General)		Date of Registration or Establishment:	
<input type="checkbox"/> Sole Proprietor		How many years in business?:	
<input type="checkbox"/> Other		Date established?:	
If "Other," please explain:			
1.2 Was the bidder's/offeror's business formed or incorporated in the District of Columbia?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "No" to Subpart 1.2, provide the jurisdiction where the bidder's/offeror's business was formed or incorporated. Attach a Certificate or Letter of Good Standing from the applicable jurisdiction and a certified Application for Authority from the District, or provide an explanation if the documents are not available.			
State _____		Country _____	
1.3 Please provide a copy of each District of Columbia license, registration or certification that the bidder/offeror is required by law to obtain (other than those provided in Subpart 1.2). If the bidder/offeror is not providing a copy of its license, registration or certification to transact business in the District of Columbia, it shall either:			
(a) Certify its intent to obtain the necessary license, registration or certification prior to contract award; or			
(b) Explain its exemption from the requirement.			

1.4 If your company, its principals, shareholders, directors, or employees own an interest or have a position in another entity in the same or similar line of business as the Bidder/Offeror, please describe the affiliation in detail.	
1.5 If any officer, director, shareholder or anyone holding a financial interest in the Bidder/Offeror has a relationship with an employee of the Department or any District agency for whom the Department is procuring goods or services, please describe the nature of the relationship in detail.	
<b>PART 2: INDIVIDUAL RESPONSIBILITY</b>	
<i>Additional Instructions for Section I, Parts 2 through 8: Provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).</i>	
Within the past five (5) years, has any current or former owner, partner, director, officer, principal or any person in a position involved in the administration of funds, or currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the bidder/offeror with any government entity:	
2.1 Been sanctioned or proposed for sanction relative to any business or professional permit or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.2 Been under suspension, debarment, voluntary exclusion or determined ineligible under any federal, District or state statutes?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.3 Been proposed for suspension or debarment?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.4 Been the subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation for any business-related conduct?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.5 Been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime, or subject to a judgment or a plea bargain for:	<input type="checkbox"/> Yes <input type="checkbox"/> No
(a) Any business-related activity; or	
(b) Any crime the underlying conduct of which was related to truthfulness?	
2.6 Been suspended, cancelled, terminated or found non-responsible on any government contract, or had a surety called upon to complete an awarded contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please provide an explanation for each "Yes" in Part 2.	
2.7 In the past ten (10) years has the Bidder/Offeror had a contract terminated, in whole or in part, for any reason? If so, describe each such determination in detail.	
2.8 In the past ten (10) years has the Bidder/Offeror ever been assessed liquidated damages, costs to re-procure, costs to complete, or any other monetary damages under a contract? If so, describe each such assessment in detail.	
<b>PART 3: BUSINESS RESPONSIBILITY</b>	
Within the past five (5) years, has the bidder/offeror:	
3.1 Been under suspension, debarment, voluntary exclusion or determined ineligible under any federal, District or state statutes?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.2 Been proposed for suspension or debarment?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.3 Been the subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation for any	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.4 Been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime, or subject to a judgment or plea bargain for:	<input type="checkbox"/> Yes <input type="checkbox"/> No
(a) Any business-related activity; or	
(b) Any crime the underlying conduct of which was related to truthfulness?	
3.5 Been disqualified or proposed for disqualification on any government permit or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.6 Been denied a contract award (in whole or in part, for any reason) or had a bid or proposal rejected based upon a non-responsibility finding by a government entity? If so, describe each such occurrence in detail.	<input type="checkbox"/> Yes <input type="checkbox"/> No



3.7 Had a low bid or proposal rejected on a government contract for failing to make good faith efforts on any Certified Business Enterprise goal or statutory affirmative action requirements on a previously held contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.8 Been suspended, cancelled, terminated or found non-responsible on any government contract, or had a surety called upon to complete an awarded contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please provide an explanation for each "Yes" in Part 3.	
<b>PART 4: CERTIFICATES AND LICENSES</b>	
Has the bidder/offoror:	
4.1 Had a denial, decertification, revocation or forfeiture of District of Columbia certification of any Certified Business Enterprise	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please provide an explanation for "Yes" in Subpart 4.1.	
4.2 Please provide a copy of the bidder's/offoror's District of Columbia Office of Tax and Revenue Tax Certification Affidavit.	
<b>PART 5: LEGAL PROCEEDINGS</b>	
Within the past five (5) years, has the bidder/offoror:	
5.1 Had any liens or judgments (not including UCC filings) filed against it which remain undischarged?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 5.1, provide an explanation of the issue(s), relevant dates, the Lien Holder or Claimant's name, the amount of the lien(s) and the current status of the issue(s).	
5.2 Had a government entity find a willful violation of District of Columbia compensation or prevailing wage laws, the Service Contract Act or the Davis-Bacon Act?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.3 Received any OSHA citation and Notification of Penalty containing a violation classified as serious or willful?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please provide an explanation for each "Yes" in Part 5.	
5.4 Engaged in litigation with any governmental entity. If so, please identify and/or describe all threatened and pending litigation and/or claims, including but not limited to matters pending before any Boards of Contracts Appeals:	
<b>PART 6: FINANCIAL AND ORGANIZATIONAL INFORMATION</b>	
6.1 Within the past five (5) years, has the Bidder/Offoror received any formal unsatisfactory performance assessment(s) from any government entity on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 6.1, provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).	
6.2 Has the Bidder/Offoror ever been assessed liquidated damages, costs to re-procure, costs to complete, or any other monetary damages under a contract? If so, describe each such assessment in detail.	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 6.2, provide an explanation of the issue(s), relevant dates, the government entity involved, the amount assessed and the current status of the issue(s).	
6.3 Within the last seven (7) years, has the bidder/offoror initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 6.3, provide the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as "initiated," "pending" or "closed".	
6.4 During the past three (3) years, has the bidder/offoror failed to file a tax return or pay taxes required by federal, state, District of Columbia or local laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 6.4, provide the taxing jurisdiction, the type of tax, the liability year(s), the tax liability amount the bidder/offoror failed to file/pay and the current status of the tax liability.	

6.5 During the past three (3) years, has the bidder/offeror failed to file a District of Columbia unemployment insurance return or failed to pay District of Columbia unemployment insurance?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
If "Yes" to Subpart 6.5, provide the years the bidder/offeror failed to file the return or pay the insurance, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s).			
6.6 During the past three (3) years, has the bidder/offeror failed to comply with any payment agreement with the Internal Revenue Service, the District of Columbia Office of Tax and Revenue and the Department of Employment Services?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
If "Yes" to Subpart 6.6, provide the years the bidder/offeror failed to comply with the payment agreement, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s).			
6.7 Indicate whether the bidder/offeror owes any outstanding debt to any state, federal or District of Columbia government.	<input type="checkbox"/> Yes <input type="checkbox"/> No		
If "Yes" to Subpart 6.7, provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).			
6.8 During the past three (3) years, Has the bidder/offeror been audited by any government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
(a) If "Yes" to Subpart 6.8, did any audit of the bidder/offeror identify any significant deficiencies in internal controls, fraud or illegal acts; significant violations of provisions of contract or grant agreements; significant abuse; or any material disallowance?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
(b) If "Yes" to Subpart 6.8(a), provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).			
<b>PART 7: CONTRACTOR PROCUREMENT ACTIVITY WITH THE DEPARTMENT</b>			
7.1 What is your organization's Design Capacity (total labor hours) to conduct or pursue business with the Department of General Services (DGS) in the current fiscal year? Design capacity is calculated by multiplying the total number of company employees dedicated to a particular line of business by no more than 12 hours per day. Person's completing this form may be required to provide supporting documentation to substantiate allocable labor hours presented.			
(a) Construction: _____ labor hours			
(b) Non-Construction: _____ labor hours			
7.2 In the table below, please list:			
(1) The active contracts your organization currently holds with the Department of General Services, please include the contract number(s) as a part of your response; and			
(2) The number of labor hours your organization has allocated to each active contract within the current fiscal year. (Note, if more entries are required, please list an attached addendum to this document).			
	<b>Contract Number</b>	<b>Labor Hours Allocated</b>	
<b>PART 8: RESPONSE UPDATE REQUIREMENT</b>			
8.1 In accordance with the requirement of Section 302(c) of the Procurement Practices Reform Act of 2010 (D.C. Official Code § 2-353.02), the bidder/offeror shall update any response provided in Section I of this form during the term of this contract:			
(a) Within sixty (60) days of a material change to a response; and			
(b) Prior to the exercise of an option year contract.			
<b>PART 9: FREEDOM OF INFORMATION ACT (FOIA)</b>			
9.1 Indicate whether the bidder/offeror asserts that any information provided in response to a question in Section I is exempt from disclosure under the District of Columbia Freedom of Information Act (FOIA), effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code §§ 2-531, et seq.). Include the question number(s) and explain the basis for the claim. (The District will determine whether such information is, in fact, exempt from FOIA at the time of request for disclosure under FOIA.)			<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>SECTION II. ADDITIONAL REQUIRED BIDDER/OFFEROR CERTIFICATIONS</b>			
<i>Instructions for Section II: Section II contains four (4) parts. Part 1 requests information concerning District of Columbia employees. Part 2 applies to the bidder/offeror's pricing. Part 3 relates to equal employment opportunity requirements. Part 4 relates to First Source requirements.</i>			
<b>PART 1. DISTRICT EMPLOYEES NOT TO BENEFIT</b>			
The bidder/offeror certifies that:			
1.2 No person listed in clause 13 of the Standard Contract Provisions, "District Employees Not To Benefit", will benefit from this contract.			

1.3 The following person(s) listed in clause 13 of the Standard Contract Provisions may benefit from this contract. (For each person listed, attach the affidavit required by clause 13.)

(a) \_\_\_\_\_

(b) \_\_\_\_\_

## **PART 2: INDEPENDENT PRICE DETERMINATION REQUIREMENTS**

The bidder/offeror certifies that:

2.1 The signature of the bidder/offeror is considered to be a certification by the signatory that:

- (a) The contract prices have been arrived at independently without, for the purpose of restricting competition, any consultation, communication or agreement
  - (i) Those prices;
  - (ii) The intention to submit a bid/proposal; or
  - (iii) The methods or factors used to calculate the prices in the contract.

(b) The prices in this contract have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid/proposal opening unless otherwise required by law; and

(c) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a contract for the purpose of restricting competition.

2.2 The signature on the bid/proposal is considered to be a certification by the signatory that the signatory:

(a) Is the person in the bidder's/offeror's organization responsible for determining the prices being offered in this contract, and that the signatory has not participated and will not participate in any action contrary to subparagraphs 2.1(a)(i) through (a)(iii) above; or

(b) Has been authorized, in writing, to act as an agent for the following principal in certifying that the principal has not participated, and will not participate, in any action contrary to subparagraphs 2.1(a)(i) through (a)(iii) above:

\_\_\_\_\_  
*[Insert full name of person(s) in the organization responsible for determining the prices offered  
in this contract and the title of his or her position in the bidder's/offeror's organization]*

(i) As an authorized agent, certifies that the principals named in subparagraph 2.2(b) above have not participated, and will not participate, in any action contrary to subparagraphs 2.1(a)(i) through (a)(iii) above; and

(ii) As an agent, has not participated and will not participate in any action contrary to subparagraphs 2.1(a)(i) through (a)(iii) above.

2.3 If the bidder/offeror deletes or modifies subparagraph 2.1(b) above, the bidder/offeror must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

2.4 The Bidder/Offeror certifies that:

(a) There are no other entities related to it that are responding to or bidding on the subject solicitation or invitation to bid. Related entities include, but are not limited to, any entity that shares management positions, board positions, shareholders, or persons with a financial interest in the Bidder/Offeror.

(b) There are no current or former owners, partners, officers, directors, principals, managers, employees or any persons with a financial interest in the Bidder/Offeror who have a financial interest in the request for proposal or invitation for bid or any asset, tangible or intangible, arising out of any contract or scope of work related to the request for proposal or invitation for bid.

With regards to 2.4 (b), if the Bidder/Offeror has knowledge of such a financial interest, please provide a detailed explanation.

## **PART 3: EQUAL OPPORTUNITY OBLIGATIONS**

3.1 I hereby certify that I am fully aware of the contents of Mayor's Order 85-85 and the Office of Human Rights' regulations in Chapter 11 of the DCMR, and agree to comply with them while performing this contract.

## **PART 4: FIRST SOURCE OBLIGATIONS**

4.1 I hereby certify that I am fully aware of the requirements of the Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011 (D.C. Law 19-84), and agree to enter into a First Source Employment Agreement with the Department of Employment Services if awarded any contract valued at \$300,000 or more which receives funds or resources from the District, or funds or resources which, in accordance with a federal grant or otherwise, is administered by the District government.

4.2 I certify that the Initial Employment Plan submitted with my bid or proposal is true and accurate.

## **SECTION III. BUY AMERICAN ACT CERTIFICATION**

**Instructions for Section III:** Section III contains one (1) part which should only be completed if goods are being provided that are subject to the requirements of the Buy American Act.

**PART 1: BUY AMERICAN ACT COMPLIANCE**

1.1 The bidder/offeror certifies that each end product, except the end products listed below, is a domestic end product (as defined in Paragraph 23 of the Standard Contract Provisions, "Buy American Act"), and that components of unknown origin are considered to have been mined, produced or manufactured outside the United States.

\_\_\_\_\_ EXCLUDED END PRODUCTS

\_\_\_\_\_ COUNTRY OF ORIGIN

**SECTION IV. CERTIFICATION**

**Instruction for Section IV:** This section must be completed by all bidder/offerors.

I, [\_\_\_\_\_] , as the person authorized to sign these certifications, hereby certify that the information provided in this form is true and accurate.

Name [Print and sign]:

Telephone #:

Fax #:

Title:

Email Address:

DUNS Number (If Applicable):

Date:

*The District of Columbia is hereby authorized to verify the above information with appropriate government authorities. Penalty for making false statements is a fine of not more than \$1,000.00, imprisonment for not more than 180 days, or both, as prescribed in D.C. Official Code § 22-2405. Penalty for false swearing is a fine of not more than \$2,500.00, imprisonment for not more than three (3) years, or both, as prescribed in D.C. Official Code § 22-2404.*

**Attachment C**

**Tax Affidavit**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Office of the Chief Financial Officer**

**Office of Tax and Revenue**



**TAX CERTIFICATION AFFIDAVIT**

**THIS AFFIDAVIT IS TO BE COMPLETED ONLY BY THOSE WHO ARE REGISTERED TO CONDUCT BUSINESS IN THE DISTRICT OF COLUMBIA.**

**Date**

**Authorized Agent**

**Name of Organization/Entity**

**Business Address (include zip code)**

**Business Phone Number**

**Authorized Agent**

**Principal Officer Name and Title**

**Square and Lot Information**

**Federal Identification Number**

**Contract Number**

**Unemployment Insurance Account No.**

I hereby authorize the District of Columbia, Office of the Chief Financial Officer, Office of Tax and Revenue to release my tax information to an authorized representative of the District of Columbia agency with which I am seeking to enter into a contractual relationship. I understand that the information released will be limited to whether or not I am in compliance with the District of Columbia tax laws and regulations solely for the purpose of determining my eligibility to enter into a contractual relationship with a District of Columbia agency. I further authorize that this consent be valid for one year from the date of this authorization.

I hereby certify that I am in compliance with the applicable tax filing and payment requirements of the District of Columbia. The Office of Tax and Revenue is hereby authorized to verify the above information with the appropriate government authorities.

**Signature of Authorizing Agent**

**Title**

The penalty for making false statement is a fine not to exceed \$5,000.00, imprisonment for not more than 180 days, or both, as prescribed by D.C. Official Code §47-4106.

**Attachment D**

**Subcontracting Plan Form**



## SBE SUBCONTRACTING PLAN

**INSTRUCTIONS:** All construction & non-construction contracts for **government-assisted projects** (**agency contracts** & **private project with District subsidy**) over \$250,000, shall require at least 35% of the amount of the contract (total amount of agency contract or total private project development costs) be subcontracted to Small Business Enterprises (SBE), if insufficient qualified SBEs to Certified Business Enterprises (CBE). The SBE Subcontracting Plan must list all SBE and CBE subcontracts at every tier. Once the SBE Subcontracting Plan is submitted for agency contracts, options & extensions, it can only be amended with DSLBD's consent.

**SUBMISSION OF SBE SUBCONTRACTING PLAN:**

▲ For **agency** solicitations - submit to agency with bid/proposal.

▲ For **agency** options & extensions - submit to agency before option or extension exercised.

▲ For **private projects** - submit to DSLBD, agency project manager and District of Columbia Auditor, with each quarterly report. As private projects may not have awarded all contracts at the time the District subsidy is granted, the SBE Subcontracting Plan may be submitted simultaneously with each quarterly report and list all SBE/CBE subcontracts executed by the time of submission.

**CREDIT:** For each subcontract listed on the SBE Subcontracting Plan, credit will only be given for the portion of the subcontract performed, at every tier, by a SBE/CBE using *its own organization and resources*. **COPIES OF EACH FULLY EXECUTED SUBCONTRACT WITH SBEs and CBEs (AT EVERY TIER) MUST BE PROVIDED TO RECEIVE CREDIT.**

**EXEMPTION:** If the **Beneficiary (Prime Contractor or Developer)** is a CBE and will perform the ENTIRE **government-assisted project** with its *own organization and resources* and will NOT subcontract any portion of the services and goods, then the CBE is not required to subcontract 35% to SBEs.

**BENEFICIARY (✓ which applies ☐ Prime Contractor or ☐ Developer) INFORMATION:**

Company: \_\_\_\_\_ Contact # \_\_\_\_\_ Email address: \_\_\_\_\_

Street Address: \_\_\_\_\_

✓ all that applies, Company is:

☐ a SBE ☐ a CBE ☐ CBE Certification Number: \_\_\_\_\_

☐ WILL perform the ENTIRE agency contract or private project with its own organization and resources

☐ WILL subcontract a portion of the agency contract or private project

Company's point of contact for agency contract or private project:

Point of Contact: \_\_\_\_\_

Title: \_\_\_\_\_

Contact # \_\_\_\_\_

Email address: \_\_\_\_\_

Street Address: \_\_\_\_\_

**GOVERNMENT-ASSISTED PROJECT (✓ which applies ☐ Agency Contract or ☐ Private Project) INFORMATION:**

**AGENCY SOLICITATION**

Solicitation Number \_\_\_\_\_

Solicitation Due Date: \_\_\_\_\_

Agency : \_\_\_\_\_

Total Dollar Amount of Contract: \$ \_\_\_\_\_

*\*Design-Build must include total contract amount for both design and build phase of project.*

35% of Total Dollar Amount of Contract: \$ \_\_\_\_\_

Total Amount of All SBE/CBE subcontracts: \$ \_\_\_\_\_  
(include every lower tier)

**PRIVATE PROJECT**

District Subsidy: \_\_\_\_\_

Agency Providing Subsidy: \_\_\_\_\_

Amount of District Subsidy: \_\_\_\_\_

Date District Subsidy Provided: \_\_\_\_\_

Project Name: \_\_\_\_\_

Project Address: \_\_\_\_\_

Total Development Project Budget: \$ \_\_\_\_\_  
(include pre-construction and construction costs)

35% of Total Development Project Budget: \$ \_\_\_\_\_

Total Amount of All SBE/CBE subcontracts: \$ \_\_\_\_\_  
(include every lower tier)



## SBE/ CBE SUBCONTRACTORS (FOR EACH TIER):

<b>SBE/ CBE SUBCONTRACTOR INFORMATION:</b> <i>(For design-build projects, the SBE Subcontracting Plan is not required to be submitted for preconstruction services; however, a full SBE Subcontracting Plan (35% of the contract amount <b>including total design and build costs</b>) is required to be submitted before entering into a guaranteed maximum price or contract authorizing construction.)</i>			
SBE/ CBE Company	Address/Telephone No./ Email	Subcontractor Tier (1 <sup>st</sup> , 2 <sup>nd</sup> , 3 <sup>rd</sup> , etc.)	Description of Subcontract scope of work to be PERFORMED WITH SBE/CBEs OWN ORGANIZATION & RESOURCES
_____	_____	<u>Select Tier</u>	_____
Period of subcontract: _____  Price to be paid to the SBE/CBE Subcontractor: \$_____			SBE/ CBE Point of Contact  Name: _____  Title: _____  Telephone Number: _____  Email Address: _____
✓ <i>all that applies</i> , Subcontractor is: <input type="checkbox"/> a SBE <input type="checkbox"/> a CBE <input type="checkbox"/> CBE Certification #: _____ <input type="checkbox"/> SBE/CBE will perform the ENTIRE subcontract with its own organization and resources <input type="checkbox"/> SBE/CBE will subcontract a portion of the subcontract (MUST LIST EACH LOWER TIER SBE/ CBE SUBCONTRACTS)			

<b>SBE/ CBE SUBCONTRACTOR INFORMATION:</b> <i>(For design-build projects, the SBE Subcontracting Plan is not required to be submitted for preconstruction services; however, a full SBE Subcontracting Plan (35% of the contract amount <b>including total design and build costs</b>) is required to be submitted before entering into a guaranteed maximum price or contract authorizing construction.)</i>			
SBE/ CBE Company	Address/Telephone No./ Email	Subcontractor Tier (1 <sup>st</sup> , 2 <sup>nd</sup> , 3 <sup>rd</sup> , etc.)	Description of Subcontract scope of work to be PERFORMED WITH SBE/CBEs OWN ORGANIZATION & RESOURCES
_____	_____	<u>Select Tier</u>	_____
Period of subcontract: _____  Price to be paid to the SBE/CBE Subcontractor: \$_____			SBE/ CBE Point of Contact  Name: _____  Title: _____  Telephone Number: _____  Email Address: _____
✓ <i>all that applies</i> , Subcontractor is: <input type="checkbox"/> a SBE <input type="checkbox"/> a CBE <input type="checkbox"/> CBE Certification # _____ <input type="checkbox"/> SBE/CBE will perform the ENTIRE subcontract with its own organization and resources <input type="checkbox"/> SBE/CBE will subcontract a portion of the subcontract (MUST LIST EACH LOWER TIER SBE/ CBE SUBCONTRACTS)			

I \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, swear or affirm the above is true and accurate  
 (Name) (Title) (Prime Contractor/ Developer)

\_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
 (Date)

**Complete additional copies as needed.**



☐ AGENCY CONTRACTING OFFICER'S USE ONLY OR ☐ AGENCY PROJECT MANAGER'S USE ONLY  
(✓ which applies. Only one option should be selected.)

AGENCY CONTRACT AWARD	PRIVATE PROJECT SUBSIDY AWARD
Agency: _____ Prime Contractor: _____ Contract Number: _____ Date SBE Subcontracting Plan Accepted: _____ Date agency contract signed: _____  Anticipated Start Date of Contract: _____ Anticipated End Date of Contract: _____  Total Dollar Amount of Contract: \$ _____  <i>*Design-Build must include total contract amount for both design and build phase of project.</i>  35% of Total Contract Amount: \$ _____  Total Amount of All SBE/CBE subcontracts: \$ _____ <i>(include every tier)</i>  <input checked="" type="checkbox"/> if applies <input type="checkbox"/> Base Period Contract -- Option/Extension Period: _____ <input type="checkbox"/> Multi-year Contract First year (period) of Contract: _____ Current year (period) of Contract: _____ <input type="checkbox"/> Design-Build --Date of Guaranteed Contract: _____  <input type="checkbox"/> Check if prime contractor is a CBE and will perform the ENTIRE government-assisted project (agency contract) with its <i>own organization and resources and NOT subcontract any portion of services or goods.</i>	Agency Providing Subsidy: _____ District Subsidy: _____ Developer: _____ Amount of District Subsidy: _____ Date District Subsidy Provided/ contract signed: _____  Anticipated Start Date of Project: _____ Anticipated End Date of Project: _____  Project Name: _____ Project Address: _____  Total Development Project Budget: \$ _____ <i>(include pre-construction and construction costs)</i>  35% of Total Development Project Budget: \$ _____  Total Amount of All SBE/CBE subcontracts: \$ _____ <i>(include every lower tier)</i>  <input type="checkbox"/> Check if developer is a CBE and will perform the ENTIRE government-assisted project (private project) with its <i>own organization and resources and NOT subcontract any portion of services or goods.</i>

☐ AGENCY CONTRACTING OFFICER'S AFFIRMATION OR ☐ AGENCY PROJECT MANAGER'S AFFIRMATION  
(✓ which applies)

The Below Agency Contracting Officer or Agency Project Manager Affirms the following (✓ to affirm):

- ☐ If the Beneficiary is a CBE, DSLBD was contacted to confirm Beneficiary's CBE certification;
- ☐ The fully executed Contract (Base or Option or Extension or Multi-Year) or subsidy document, between the Beneficiary and Agency, was emailed to DSLBD @ [Compliance.Enforcement@dc.gov](mailto:Compliance.Enforcement@dc.gov) within five (5) days of signing;
- ☐ **FOR AGENCY CONTRACT** the SBE Subcontracting Plan, submitted by Beneficiary, was emailed to DSLBD @ [Compliance.Enforcement@dc.gov](mailto:Compliance.Enforcement@dc.gov) within five (5) days of signing the contract between the Beneficiary and Agency.

Christopher E. Weaver

Name of Agency Contracting Officer or Agency Project Manager

Director/ Chief Contracting Officer

Title of Agency Contracting Officer or Agency Project Manager

Signature

Date

**Attachment E**

**2016 Living Wage Act Notice and Fact Sheet**

## **LIVING WAGE ACT FACT SHEET**

The “Living Wage Act of 2006,” Title I of D.C. Law 16-118, (D.C. Official Code §§ 2-220.01-.11) provides that District of Columbia government contractors and recipients of government assistance (grants, loans, tax increment financing) in the amount of \$100,000 or more shall pay affiliated employees no less than the current living wage rate.

**Effective January 1, 2016, the living wage rate is \$13.85 per hour.**

Subcontractors of D.C. government contractors who receive \$15,000 or more from the contract and subcontractors of the recipients of government assistance who receive \$50,000 or more from the assistance are also required to pay their affiliated employees no less than the current living wage rate.

“Affiliated employee” means any individual employed by a recipient who receives compensation directly from government assistance or a contract with the District of Columbia government, including any employee of a contractor or subcontractor of a recipient who performs services pursuant to government assistance or a contract. The term “affiliated employee” does not include those individuals who perform only intermittent or incidental services with respect to the government assistance or contract, or who are otherwise employed by the contractor, recipient or subcontractor.

**Exemptions** – The following contracts and agreements are exempt from the Living Wage Act:

1. Contracts or other agreements that are subject to higher wage level determinations required by federal law (i.e., if a contract is subject to the Service Contract Act and certain wage rates are lower than the District’s current living wage, the contractor must pay the higher of the two rates);
2. Existing and future collective bargaining agreements, provided that the future collective bargaining agreement results in the employee being paid no less than the current living wage;
3. Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;
4. Contracts for services needed immediately to prevent or respond to a disaster or imminent threat to public health or safety declared by the Mayor;
5. Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services, provided that the trainees do not replace employees subject to the Living Wage Act;
6. An employee, under 22 years of age, employed during a school vacation period, or enrolled as full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than 25 hours per week; provided that he or she does not replace employees subject to the Living Wage Act;

7. Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District of Columbia;
8. Employees of nonprofit organizations that employ not more than 50 individuals and qualify for taxation exemption pursuant to Section 501 (c) (3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68 A Stat. 163; 26. U.S.C. § 501(c)(3);
9. Medicaid provider agreements for direct care services to Medicaid recipients, provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for persons with intellectual disabilities as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501); provided however, that a home care agency, a community residence facility, or a group home for persons with intellectual disabilities shall not be required to pay a living wage until implementing regulations are published in the D.C. Register and any necessary state plan amendments are approved; and
10. Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

## Enforcement

The Department of Employment Services (DOES) and the D.C. Office of Contracting and Procurement (OCP) share monitoring responsibilities.

If you learn that a contractor subject to this law is not paying at least the current living wage, you should report it to the Contracting Officer.

If you believe that your employer is subject to this law is not paying at least the current living wage, you may file a complaint with the DOES Office of Wage - Hour, located at 4058 Minnesota Avenue, N.E. Fourth Floor, Washington, D.C. 20019, call (202) 671-1880, or file your claim on-line: [www.does.dc.gov](http://www.does.dc.gov). Go to “File a Claim” tab.

For questions and additional information, contact the Office of Contracting and Procurement at (202) 727-0252 or the Department of Employment Services on (202) 671-1880.

**Please note:** *This fact sheet is for informational purposes only as required by Section 106 of the Living Wage Act. It should not be relied on as a definitive statement of the Living Wage Act or any regulations adopted pursuant to the law.*

**Attachment F**

**First Source Employment Agreement Form**



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
FIRST SOURCE EMPLOYMENT AGREEMENT FOR  
CONSTRUCTION PROJECTS ONLY**



**GOVERNMENT-ASSISTED PROJECT/CONTRACT INFORMATION**

CONTRACT/SOLICITATION NUMBER: \_\_\_\_\_  
DISTRICT CONTRACTING AGENCY: \_\_\_\_\_  
CONTRACTING OFFICER: \_\_\_\_\_  
TELEPHONE NUMBER: \_\_\_\_\_  
TOTAL CONTRACT AMOUNT: \_\_\_\_\_  
EMPLOYER CONTRACT AMOUNT: \_\_\_\_\_  
PROJECT NAME: \_\_\_\_\_  
PROJECT ADDRESS: \_\_\_\_\_  
CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_  
PROJECT START DATE: \_\_\_\_\_ PROJECT END DATE: \_\_\_\_\_  
EMPLOYER START DATE: \_\_\_\_\_ EMPLOYER END DATE: \_\_\_\_\_

**EMPLOYER INFORMATION**

EMPLOYER NAME: \_\_\_\_\_  
EMPLOYER ADDRESS: \_\_\_\_\_  
CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_  
TELEPHONE NUMBER: \_\_\_\_\_ FEDERAL IDENTIFICATION NO.: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
E-MAIL: \_\_\_\_\_ TELEPHONE NUMBER: \_\_\_\_\_  
LOCAL, SMALL, DISADVANTAGED BUSINESS ENTERPRISE (LSDBE) CERTIFICATION  
NUMBER: \_\_\_\_\_  
D.C. APPRENTICESHIP COUNCIL REGISTRATION NUMBER: \_\_\_\_\_  
ARE YOU A SUBCONTRACTOR ☐ YES ☐ NO IF YES, NAME OF PRIME  
CONTRACTOR: \_\_\_\_\_

This First Source Employment Agreement (Agreement), in accordance with Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011 (D.C. Official Code §§ 2-219.01 – 2.219.05), and relevant provisions of the Apprenticeship Requirements Amendment Act of 2004 (D.C. Official Code § 2-219.03 and § 32-1431) for recruitment, referral, and placement of District of Columbia residents, is between the District of Columbia Department of Employment Services, (DOES) and EMPLOYER. Pursuant to this Agreement, the EMPLOYER shall use DOES as its first source for recruitment, referral, and placement of new hires or employees for all new jobs created by the Government Assisted Project or Contract (Project). The EMPLOYER shall meet the hiring or hours worked percentage requirements for all new jobs created by the Project as outlined below in Section VII. The EMPLOYER shall ensure that District of Columbia residents (DC residents) registered in programs approved by the District of Columbia Apprenticeship Council shall work 35% of all apprenticeship hours worked in connection with the Project.

**I. DEFINITIONS**

The following definitions shall govern the terms used in this Agreement.

- A. **Apprentice** means a worker who is employed to learn an apprentice able occupation under the terms and conditions of approved apprenticeship standards.
- B. **Beneficiary** means:

1. The signatory to a contract executed by the Mayor which involves any District of

Columbia government funds, or funds which, in accordance with a federal grant or otherwise, the District government administers and which details the number and description of all jobs created by a government-assisted project or contract for which the beneficiary is required to use the First Source Register;

2. A recipient of a District government economic development action including contracts, grants, loans, tax abatements, land transfers for redevelopment, or tax increment financing that results in a financial benefit of \$300,000 or more from an agency, commission, instrumentality, or other entity of the District government, including a financial or banking institution which serves as the repository for \$1 million or more of District of Columbia funds.
  3. A retail or commercial tenant that is a direct recipient of a District government economic development action, including contracts, grants, loans, tax abatements, land transfers for public redevelopment, or tax increment financing in excess of \$300,000.
- C. **Contracting Agency** means any District of Columbia agency that awarded a government assisted project or contract totaling \$300,000 or more.
- D. **Direct labor costs** means all costs, including wages and benefits, associated with the hiring and employment of personnel assigned to a process in which payroll expenses are traced to the units of output and are included in the cost of goods sold.
- E. **EMPLOYER** means any entity awarded a government assisted project or contract totaling \$300,000 or more.
- F. **First Source Employer Portal** means the website consisting of a connected group of static and dynamic (functional) pages and forms on the World Wide Web accessible by Uniform Resource Locator (URL) and maintained by DOES to provide information and reporting functionality to EMPLOYERS.
- G. **First Source Register** means the DOES Automated Applicant Files, which consists of the names of DC residents registered with DOES.
- H. **Good faith effort** means an EMPLOYER has exhausted all reasonable means to comply with any affirmative action, hiring, or contractual goal(s) pursuant to the First Source law and Agreement.
- I. **Government-assisted project or contract** (Project) means any construction or non-construction project or contract receiving funds or resources from the District of Columbia, or funds or resources which, in accordance with a federal grant or otherwise, the District of Columbia government administers, including contracts, grants, loans, tax abatements or exemptions, land transfers, land disposition and development agreements, tax increment financing, or any combination thereof, that is valued at \$300,000 or more.
- J. **Hard to employ** means a District of Columbia resident who is confirmed by DOES as:
1. An ex-offender who has been released from prison within the last 10 years;
  2. A participant of the Temporary Assistance for Needy Families program;
  3. A participant of the Supplemental Nutrition Assistance Program;
  4. Living with a permanent disability verified by the Social Security Administration or



District vocational rehabilitation program;

5. Unemployed for 6 months or more in the last 12-month period;
6. Homeless;
7. A participant or graduate of the Transitional Employment Program established by § 32-1331; or
8. An individual who qualified for inclusion in the Work Opportunity Tax Credit Program as certified by the Department of Employment Services.

K. **Indirect labor costs** means all costs, including wages and benefits, that are part of operating expenses and are associated with the hiring and employment of personnel assigned to tasks other than producing products.

L. **Jobs** means any union and non-union managerial, nonmanagerial, professional, nonprofessional, technical or nontechnical position including: clerical and sales occupations, service occupations, processing occupations, machine trade occupations, bench work occupations, structural work occupations, agricultural, fishery, forestry, and related occupations, and any other occupations as the Department of Employment Services may identify in the Dictionary of Occupational Titles, United States Department of Labor.

M. **Journeyman** means a worker who has attained a level of skill, abilities and competencies recognized within an industry as having mastered the skills and competencies required for the occupation.

N. **Revised Employment Plan** means a document prepared and submitted by the EMPLOYER that includes the following:

1. A projection of the total number of hours to be worked on the project or contract by trade;
2. A projection of the total number of journey worker hours, by trade, to be worked on the project or contract and the total number of journey worker hours, by trade, to be worked by DC residents;
3. A projection of the total number of apprentice hours, by trade, to be worked on the project or contract and the total number of apprentice hours, by trade, to be worked by DC residents;
4. A projection of the total number of skilled laborer hours, by trade, to be worked on the project or contract and the total number of skilled laborer hours, by trade, to be worked by DC residents;
5. A projection of the total number of common laborer hours to be worked on the project or contract and the total number of common laborer hours to be worked by DC residents;
6. A timetable outlining the total hours worked by trade over the life of the project or contract and an associated hiring schedule;
7. Descriptions of the skill requirements by job title or position, including industry-recognized certifications required for the different positions;

8. A strategy to fill the hours required to be worked by DC residents pursuant to this paragraph, 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, the District of Columbia Workforce Intermediary, or other government-approved, community-based job training providers;
  9. A remediation strategy to ameliorate any problems associated with meeting these hiring requirements, including any problems encountered with contractors and subcontractors;
  10. The designation of a senior official from the general contractor who will be responsible for implementing the hiring and reporting requirements;
  11. Descriptions of the health and retirement benefits that will be provided to DC residents working on the project or contract;
  12. A strategy to ensure that District residents who work on the project or contract 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 DC residents from one project or contract to the next;
  13. 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; and
  14. A disclosure of past compliance with the Workforce Act and the Davis-Bacon Act, where applicable, and the bidder or offeror's general DC resident hiring practices on projects or contracts completed within the last 2 years.
- O. **Tier Subcontractor** means any contractor selected by the primary subcontractor to perform portion(s) or all work related to the trade or occupation area(s) on a contract or project subject to this First Source Agreement.
- P. **Washington Metropolitan Statistical Area** means the District of Columbia; Virginia Cities of Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas, and Manassas Park; the Virginia Counties of Arlington, Clarke, Fairfax, Fauquier, Loudon, Prince William, Spotsylvania, Stafford, and Warren; the Maryland Counties of Calvert, Charles, Frederick, Montgomery and Prince Georges; and the West Virginia County of Jefferson.
- Q. **Workforce Intermediary Pilot Program** means the intermediary between employers and training providers to provide employers with qualified DC resident job applicants. See DC Official Code § 2-219.04b.

## II. GENERAL TERMS

- A. Subject to the terms and conditions set forth herein, DOES will receive the Agreement from the Contracting Agency no less than 7 calendar days in advance of the Project start date, whichever is later. No work associated with the relevant Project can begin until the Agreement has been accepted by DOES.
- B. The EMPLOYER will require all Project contractors and Project subcontractors with contracts or subcontracts totaling \$300,000 or more to enter into an Agreement with DOES.

- C. DOES will provide recruitment, referral, and placement services to the EMPLOYER, subject to the limitations in this Agreement.
- D. This Agreement will take effect when signed by the parties below and will be fully effective through the duration, any extension or modification of the Project and until such time as construction is complete and a certificate of occupancy is issued.
- E. DOES and the EMPLOYER agree that, for purposes of this Agreement, new hires and jobs created for the Project (both union and nonunion) include all of EMPLOYER'S job openings and vacancies in the Washington Metropolitan Statistical Area created for the Project as a result of internal promotions, terminations, and expansions of the EMPLOYER'S workforce, as a result of this Project, including loans, lease agreements, zoning applications, bonds, bids, and contracts.
- F. This Agreement includes apprentices as defined in D.C. Official Code §§ 32-1401- 1431.
- G. DOES will make every effort to work within the terms of all collective bargaining agreements to which the EMPLOYER is a party. The EMPLOYER will provide DOES with written documentation that the EMPLOYER has provided the representative of any collective bargaining unit involved with this Project a copy of this Agreement and has requested comments or objections. If the representative has any comments or objections, the EMPLOYER will promptly provide them to DOES.
- H. The EMPLOYER who contracts with the District of Columbia government to perform construction, renovation work, or information technology work with a single contract, or cumulative contracts, of at least \$500,000, let within a 12-month period will be required to register an apprenticeship program with the District of Columbia Apprenticeship Council as required by DC Code 32-1431.
- I. If, during the term of this Agreement, the EMPLOYER should transfer possession of all or a portion of its business concerns affected by this Agreement to any other party by lease, sale, assignment, merger, or otherwise this First Source Agreement shall remain in full force and effect and transferee shall remain subject to all provisions herein. In addition, the EMPLOYER as a condition of transfer shall:
  - 1. Notify the party taking possession of the existence of this EMPLOYER'S First Source Employment Agreement.
  - 2. Notify DOES within 7 business days of the transfer. This notice will include the name of the party taking possession and the name and telephone of that party's representative.
- J. The EMPLOYER and DOES may mutually agree to modify this Agreement. Any modification shall be in writing, signed by the EMPLOYER and DOES and attached to the original Agreement.
- K. To the extent that this Agreement is in conflict with any federal labor laws or governmental regulations, the federal laws or regulations shall prevail.

### **III. TRAINING**

- A. DOES and the EMPLOYER may agree to develop skills training and on-the-job training programs as approved by DOES; the training specifications and cost for such training will be mutually agreed upon by the EMPLOYER and DOES and will be set forth in a separate

#### **IV. RECRUITMENT**

- A. The EMPLOYER will complete the attached Revised Employment Plan that will include the information outlined in Section I.N., above.
- B. The EMPLOYER will post all job vacancies with the Job Bank Services of DOES at <http://does.dc.gov> within 7 days of executing the Agreement. Should you need assistance posting job vacancies, please contact Job Bank Services at (202) 698-6001.
- C. The EMPLOYER will notify DOES of all new jobs created for the Project within at least 7 business days (Monday - Friday) of the EMPLOYERS' identification/creation of the new jobs. The Notice of New Job Creation shall include the number of employees needed by job title, qualifications and specific skills required to perform the job, hiring date, rate of pay, hours of work, duration of employment, and a description of the work to be performed. This must be done before using any other referral source.
- D. Job openings to be filled by internal promotion from the EMPLOYER'S current workforce shall be reported to DOES for placement and referral, if the job is newly created. EMPLOYER shall provide DOES a Notice of New Job Creation that details such promotions in accordance with Section IV.C.
- E. The EMPLOYER will submit to DOES, prior to commencing work on the Project, a list of Current Employees that includes the name, social security number, and residency status of all current employees, including apprentices, trainees, and laid-off workers who will be employed on the Project. All EMPLOYER information reviewed or gathered, including social security numbers, as a result of DOES' monitoring and enforcement activities will be held confidential in accordance with all District and federal confidentiality and privacy laws and used only for the purposes that it was reviewed or gathered.

#### **V. REFERRAL**

- A. DOES will screen applicants through carefully planned recruitment and training events and provide the EMPLOYER with a list of qualified applicants according to the number of employees needed by job title, qualifications and specific skills required to perform the job, hiring date, rate of pay, hours of work, duration of employment, and a description of the work to be performed as supplied by the EMPLOYER in its Notice set forth above in Section IV.C.
- B. DOES will notify the EMPLOYER of the number of applicants DOES will refer, prior to the anticipated hiring dates.

#### **VI. PLACEMENT**

- A. EMPLOYER shall in good faith, use reasonable efforts to select its new hires or employees from among the qualified applicants referred by DOES. All hiring decisions are made by the EMPLOYER.
- B. In the event that DOES is unable to refer qualified applicants meeting the EMPLOYER'S established qualifications, within 7 business days (Monday - Friday) from the date of notification from the EMPLOYER, the EMPLOYER will be free to directly fill remaining positions for which no qualified applicants have been referred. The EMPLOYER will still be required to meet the hiring or hours worked percentages for all new jobs created by the Project.

- C. After the EMPLOYER has selected its employees, DOES is not responsible for the employees' actions and the EMPLOYER hereby releases DOES, and the Government of the District of Columbia, the District of Columbia Municipal Corporation, and the officers and employees of the District of Columbia from any liability for employees' actions.

## **VII. REPORTING REQUIREMENTS**

- A. EMPLOYER is given the choice to report hiring or hours worked percentages either by Prime Contractor for the entire Project or per each Sub-contractor.
- B. EMPLOYER with Projects valued at a minimum of \$300,000 shall hire DC residents for at least 51% of all new jobs created by the Project.
- C. EMPLOYER with Projects totaling \$5 million or more shall meet the following hours worked percentages for all new jobs created by the Project:
1. At least 20% of journey worker hours by trade shall be performed by DC residents;
  2. At least 60% of apprentice hours by trade shall be performed by DC residents;
  3. At least 51% of the skilled laborer hours by trade shall be performed by DC residents; and
  4. At least 70% of common laborer hours shall be performed by DC residents.
- D. EMPLOYER shall have a user name and password for the First Source Employer Portal for electronic submission of all monthly Contract Compliance Forms, weekly certified payrolls and any other documents required by DOES for reporting and monitoring.
- E. EMPLOYER with Projects valued at a minimum of \$300,000 shall provide the following monthly and cumulative statistics on the Contract Compliance Form:
1. Number of new job openings created/available;
  2. Number of new job openings listed with DOES, or any other District Agency;
  3. Number of DC residents hired for new jobs;
  4. Number of employees transferred to the Project;
  5. Number of DC residents transferred to the Project;
  6. Direct or indirect labor cost associated with the project;
  7. Each employee's name, job title, social security number, hire date, residence, and referral source; and
  8. Workforce statistics throughout the entire project tenure.
- F. In addition to the reporting requirements outlined in E, EMPLOYER with Projects totaling \$5 million or more shall provide the following monthly and cumulative statistics on the Contract Compliance Form:
1. Number of journey worker hours worked by DC residents by trade;
  2. Number of hours worked by all journey workers by trade;
  3. Number of apprentice hours worked by DC residents by trade;
  4. Number of hours worked by all apprentices by trade;
  5. Number of skilled laborer worker hours worked by DC residents by trade;
  6. Number of hours worked by all skilled laborers by trade;
  7. Number of common laborer hours worked by DC residents by trade; and
  8. Number of hours worked by all common laborers by trade.

- G. EMPLOYER can “double count” hours for the “hard to employ” up to 15% of total hours worked by DC Residents.
- H. For construction Projects that are not subject to Davis-Bacon law in which certified payroll records do not exist, EMPLOYER must submit monthly documents of workers employed on the Project to DOES, including DC residents and all employment classifications of hours worked.
- I. EMPLOYER may also be required to provide verification of hours worked or hiring percentages of DC residents, such as internal payroll records for construction Projects that are not subject to Davis-Bacon.
- J. Monthly, EMPLOYER must submit weekly certified payrolls from all subcontractors at any tier working on the Project to the Contracting Agency. EMPLOYER is also required to make payroll records available to DOES as a part of compliance monitoring, upon request at job sites.

### **VIII. FINAL REPORT AND GOOD FAITH EFFORTS**

- A. With the submission of the final request for payment from the Contracting Agency, the EMPLOYER shall:
  - 1. Document in a report to DOES its compliance with the hiring or hours worked percentage requirements for all new jobs created by the Project and the percentages of DC residents employed in all Trade Classifications, for each area of the Project; or
  - 2. Submit to DOES a request for a waiver of the hiring or hours worked percentage requirements for all new jobs created by the Project that will include the following documentation:
    - a. Documentation supporting EMPLOYER’S good faith effort to comply;
    - b. Referrals provided by DOES and other referral sources; and
    - c. Advertisement of job openings listed with DOES and other referral sources.
- B. DOES may waive the hiring or hours worked percentage requirements for all new jobs created by the Project, and/or the required percentages of DC residents in all Trade Classifications areas on the Project, if DOES finds that:
  - 1. EMPLOYER demonstrated a good faith effort to comply, as set forth in Section C, below; or
  - 2. EMPLOYER is located outside the Washington Metropolitan Statistical Area and none of the contract work is performed inside the Washington Metropolitan Statistical Area.
  - 3. EMPLOYER entered into a special workforce development training or placement arrangement with DOES or with the District of Columbia Workforce Intermediary; or
  - 4. DOES certified that there are insufficient numbers of DC residents in the labor market possessing the skills required by the EMPLOYER for the positions created as a result of the Project. No failure by Employer to request a waiver under any other provision hereunder shall be considered relevant to a requested waiver under this Subsection.
- C. DOES shall consider documentation of the following when making a determination of a

good-faith effort to comply:

1. Whether the EMPLOYER posted the jobs on the DOES job website for a minimum of 10 calendar days;
2. Whether the EMPLOYER advertised each job opening in a District newspaper with city-wide circulation for a minimum of 7 calendar days;
3. Whether the EMPLOYER advertised each job opening in special interest publications and on special interest media for a minimum of 7 calendar days;
4. Whether the EMPLOYER hosted informational/recruiting or hiring fairs;
5. Whether the EMPLOYER contacted churches, unions, and/or additional Workforce Development Organizations;
6. Whether the EMPLOYER interviewed employable candidates;
7. Whether the EMPLOYER created or participated in a workforce development program approved by DOES;
8. Whether the EMPLOYER created or participated in a workforce development program approved by the District of Columbia Workforce Intermediary;
9. Whether the EMPLOYER substantially complied with the relevant monthly reporting requirements set forth in this section;
10. Whether the EMPLOYER has submitted and substantially complied with its most recent employment plan that has been approved by DOES; and
11. Any additional documented efforts.

## **IX. MONITORING**

- A. DOES is the District agency authorized to monitor and enforce the requirements of the Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011 (D.C. Official Code §§ 2 219.01 – 2.219.05), and relevant provisions of the Apprenticeship Requirements Amendment Act of 2004 (D.C. Official Code § 2-219.03 and § 32-1431). As a part of monitoring and enforcement, DOES may require and EMPLOYER shall grant access to Project sites, employees, and documents.
- B. EMPLOYER’S noncompliance with the provisions of this Agreement may result in the imposition of penalties.
- C. All EMPLOYER information reviewed or gathered, including social security numbers, as a result of DOES’ monitoring and enforcement activities will be held confidential in accordance with all District and federal confidentiality and privacy laws and used only for the purposes that it was reviewed or gathered.
- D. DOES shall monitor all Projects as authorized by law. DOES will:
  1. Review all contract controls to determine if Prime Contractors and Subcontractors are subject to DC Law 14-24.

2. Notify stakeholders and company officials and establish meetings to provide technical assistance involving the First Source Process.
3. Make regular construction site visits to determine if the Prime or Subcontractors' workforce is in concurrence with the submitted Agreement and Monthly Compliance Reports.
4. Inspect and copy certified payroll, personnel records and any other records or information necessary to ensure the required workforce utilization is in compliance with the First Source Law.
5. Conduct desk reviews of *Monthly Compliance Reports*.
6. Educate EMPLOYERS about additional services offered by DOES, such as On-the-Job training programs and tax incentives for EMPLOYERS who hire from certain categories.
7. Monitor and complete statistical reports that identify the overall project, contractor, and sub contractors' hiring or hours worked percentages.
8. Provide formal notification of non-compliance with the required hiring or hours worked percentages, or any alleged breach of the First Source Law to all contracting agencies, and stakeholders. *(Please note: EMPLOYERS are granted 30 days to correct any alleged deficiencies stated in the notification.)*

## **X. PENALTIES**

- A. Willful breach of the Agreement by the EMPLOYER, failure to submit the Contract Compliance Reports, deliberate submission of falsified data or failure to reach specific hiring or hours worked requirements may result in DOES imposing a fine of 5% of the total amount of the direct and indirect labor costs of the contract for the positions created by EMPLOYER. Fines will also include additional prorated fines of 1/8 of 1% of total contract amount for not reaching specific hiring or hours worked requirements. Prime Contractors who choose to report all hiring or hours worked percentages cumulatively (overall construction project) will be penalized, if hiring or hours worked percentage requirements are not met.
- B. EMPLOYERS who have been found in violation 2 times or more over a 10 year period may be debarred and/or deemed ineligible for consideration for Projects for a period of 5 years.
- C. Appeals of violations or fines are to be filed with the Contract Appeals Board.



I hereby certify that I have the authority to bind the EMPLOYER to this Agreement.

By:

\_\_\_\_\_  
EMPLOYER Senior Official

\_\_\_\_\_  
Name of Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Email

\_\_\_\_\_  
Associate Director for First Source  
Department of Employment Services  
4058 Minnesota Avenue, NE  
Third Floor  
Washington, DC 20019  
202-698-6284  
firstsource@dc.gov

\_\_\_\_\_  
Date

## EMPLOYMENT PLAN

NAME OF EMPLOYER: \_\_\_\_\_

ADDRESS OF EMPLOYER: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_ FEDERAL IDENTIFICATION NO.: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_

E-MAIL: \_\_\_\_\_ TYPE OF BUSINESS: \_\_\_\_\_

DISTRICT CONTRACTING AGENCY: \_\_\_\_\_

CONTRACTING OFFICER: \_\_\_\_\_ TELEPHONE NUMBER: \_\_\_\_\_

TYPE OF PROJECT: \_\_\_\_\_ CONTRACT AMOUNT: \_\_\_\_\_

EMPLOYER CONTRACT AMOUNT: \_\_\_\_\_

PROJECT START DATE: \_\_\_\_\_ PROJECT END DATE: \_\_\_\_\_

EMPLOYER START DATE: \_\_\_\_\_ EMPLOYER END DATE: \_\_\_\_\_

**NEW JOB CREATION PROJECTIONS:** Please indicate ALL new position(s) your firm will create as a result of the Project. If the firm WILL NOT be creating any new employment opportunities, please complete the attached justification sheet with an explanation. Attach additional sheets as needed.

JOB TITLE		# OF JOBS F/T P/T	SALARY RANGE	UNION MEMBERSHIP REQUIRED NAME LOCAL#	PROJECTED HIRE DATE
A					
B					
C					
D					
E					
F					
G					
H					
I					
J					
K					

**CURRENT EMPLOYEES:** Please list the names, residency status and ward information of all current employees, including apprentices, trainees, and transfers from other projects, who will be employed on the Project. Attach additional sheets as needed.

[illegible]

[illegible]

**Attachment G**

**Davis Bacon Wage Determination**

**<http://www.wdol.gov/dba.aspx>**

**Attachment H**

**Bid Bond Form**

## Attachment 9

### GOVERNMENT OF THE DISTRICT OF COLUMBIA

<b>PROPOSAL BOND</b> (See Instructions on 2 <sup>nd</sup> page)	<b>Date Bond Executed:</b> (Must Not be Later Than Bid Opening Date)			
<b>PRINCIPAL (Legal Name and Address)</b>	<b>TYPE OF ORGANIZATION ("X")</b>			
	<input type="checkbox"/> INDIVIDUAL		<input type="checkbox"/> PARTNERSHIP	
	<input type="checkbox"/> JOINT VENTURE		<input type="checkbox"/> CORPORATION	
	<b>STATE OF INCORPORATION</b>			
<b>SURETY(IES) (Name(s) and Address(es))</b>	<b>PENAL SUM OF BOND</b>			<b>5% OF BID</b>
	<b>AMOUNT NOT TO EXCEED</b>			
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS
	<b>PROPOSAL IDENTIFICATION</b>			
	<b>PROPOSAL CLOSING DATE</b>		<b>REQUEST FOR PROPOSAL NO.</b>	
<p>KNOW ALL MEN BY THESE PRESENTS, that we, the Principal and Surety(ies) hereto are firmly bound to the District of Columbia Government, a municipal corporation, hereinafter called "the District", in the above penal sum for the payment of which we bind ourselves, our heirs, executors, and successors, jointly and severally; Provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly" and "severally" only for the purpose of allowing a joint action against any or all of us, and for all other purposes each Surety bonds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.</p> <p>THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the bid identified above. NOW THEREFORE, if the Principal shall not withdraw said bid within the period specified therein after the receipt of the same, or, no period be specified, within ninety (90) calendar days after said receipt, and shall within the period specified therefore, or, if no period be specified, within ten (10) calendar days after being called upon to do so, furnish Performance &amp; Payment Bonds with good and sufficient surety, as may be required, for the faithful performance and proper fulfillment of the Contract, and for the protection of all persons supplying labor and material in the prosecution of the work provided for in such Contract or, in the event of withdrawal of said bid, within the period specified, or the failure to furnish such bond within the time specified, if the Principal shall pay the District the difference between the amount specified in said bid and the amount for which the District may procure the required work and/or supplies, if the latter amount be in excess of the former, then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue. Each Surety executing this bond hereby agrees that its obligation shall not be impaired by extension(s) of time for acceptance of the bid that the Principal may grant to the District, notice of which extension(s) to Surety (ies) being hereby waived: Provided that such waiver of notice shall apply only with respect to extensions aggregating not more than sixty (60) calendar days in addition to the period originally allowed for acceptance of the bid.</p> <p>IN WITNESS WHEREOF, the Principal and Surety (ies) have executed this bid bond and have affixed their seals on the date set forth above.</p>				
<b>PRINCIPAL</b>				
1. SIGNATURE	1. ATTEST		<b>Corporate Seal</b>	
Seal				
Name & Title (typed)	Name & Title (typed)			
2. SIGNATURE	2. ATTEST		<b>Corporate Seal</b>	
Seal				
Name & Title (typed)	Name & Title (typed)			

## CERTIFICATE AS TO CORPORATION

I, \_\_\_\_\_, certify that I am \_\_\_\_\_, Secretary of the Corporation, named as Principal herein, that \_\_\_\_\_, who signed this bond, on behalf of the Principal, was then of said Corporation; that I know his signature, and his signature thereto is genuine; that said bond was duly signed and sealed for and in behalf of said Corporation by authority of its governing body, and is within the scope of its corporate powers.

\_\_\_\_\_  
Secretary of Corporation

### SURETY(IES)

1. Name & Address (typed)	State of Inc.	Liability Limit	Corporate Seal
Signature of Attorney-in-Fact	Attest (Signature)		
Name & Address (typed)	Name & Address (typed)		
1. Name & Address (typed)	State of Inc.	Liability Limit	Corporate Seal
Signature of Attorney-in-Fact	Attest (Signature)		
Name & Address (typed)	Name & Address (typed)		

### INSTRUCTIONS

1. This form shall be used whenever a bid guaranty is required in connection with construction, alteration and repair work.
2. Corporations name should appear exactly as it does on Corporate Seal and inserted in the space designated "Principal" on the face of this form. If practicable, bond should be signed by the President or Vice President; if signed by other official, evidence of authority must be furnished. Such evidence should be in the form of an Extract or Minutes of a Meeting of the Board of Directors, or Extract of Bylaws, certified by the Corporate Secretary, or Assistant Secretary and Corporate Seal affixed thereto. CERTIFICATE AS TO CORPORATION must be executed by Corporate Secretary or Assistant Secretary.
3. Corporations executing the bond as sureties must be among those appearing on the U. S. Treasury Department's List of approved sureties and must be acting within the limitations set forth therein, and shall be licensed by the Insurance Administration, Department of Consumer and Regulatory Affairs, to do business in the District of Columbia. The surety shall attach hereto an adequate Power-Of-Attorney for each representative signing the bond.
4. Corporations executing the bond shall affix their Corporate Seals. Individuals shall sign full first name, middle initial and last name opposite the word "seal", two witnesses must be supplied, and their addresses, under the word "attest". If executed in Maine or New Hampshire, an adhesive seal shall be affixed.
5. Names of all partners must be set out in body of bond form, with the recital that they are partners composing a firm, naming it, and all members of the firm shall execute the bond as individuals. Each signature must be witnessed by two persons and addresses supplied.



**Attachment I**

**Bid Guaranty Certification**

## **Certification Letter for Cashier's Check or Irrevocable Letter of Credit**

Offerors who submit a cashier's check or an irrevocable letter of credit ("Alternate Bid Security") in lieu of a bid bond must also submit this certification, properly notarized, with their proposal. By executing this document, Offeror acknowledges that, if awarded this contract, Offeror shall be required to post promptly a payment and performance bond equal to the full value of the contract. In the event Offeror fails to post such payment and performance bond, the Offeror understands and agrees that; (i) the Department shall draw upon the Alternate Bid Security as liquidated damages; (ii) the award and or contract shall be terminated; (iii) for a period of two (2) years thereafter, the Department will not accept from such Offeror Alternate Bid Security in lieu of a bid bond; and (iv) the Offeror hereby waives the right to protest the termination of any such award or contract. The Offeror further acknowledges and agrees that the damages the Department would experience in the event such award or contract are terminated due to the Offeror's failure to post a payment and performance bond are difficult to determine and that the value of the Alternate Bid Security represents a reasonable estimate of the damages the Department would incur.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

District of Columbia) ss:

On the \_\_\_\_ day of \_\_\_\_\_, 2015, before me, a notary public in and for the District of Columbia, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be \_\_\_\_\_ of \_\_\_\_\_, and that he/she as such, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_

Notary Public  
My Commission Expires: \_\_\_\_\_

**Attachment J**

**Standard Contract Provisions (Construction Contract)**

# **District of Columbia Department of General Services Standard Contract Provisions**

## **GENERAL PROVISIONS (Construction Contract)**

### **ARTICLE 1. DEFINITIONS**

- A. "Government" as used herein means the District of Columbia Department of General Services, (DGS) that is a party to a contract.
- B. "Executive" as used herein means the elected head of the Government as set forth in [Public Law 93-198 dated December 24, 1973, Title 4, Part B, Section 422(1)] (Or relevant local law).
- C. "Contracting Officer" as used herein means the Government official authorized to execute and administrate the Contract on behalf of the Government. Within DGS, the Director is the Chief Contracting Officer. The Director may make delegations of procurement authority to additional contracting officers within DGS.
- D. "Contract Documents" or "Contract" as used herein means Addenda, Contract Form, Standard Contract Provisions, Instructions to Bidders, General Provisions, Labor Provisions, Performance and Payment Bonds, Specifications, Special Provisions, Contract Drawings, approved written Change Orders and Agreements required to acceptably complete the Contract, including authorized extensions thereof.

**ARTICLE 2. SPECIFICATIONS AND DRAWINGS**—The Contractor shall keep on the work site a copy of Contract drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the Contract drawings, or shown on the Contract drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

There shall be no change orders or equitable adjustments for work related to items appearing in either the Contract drawing or specifications.

All Contract requirements are equally binding. Each Contract requirement, whether or not omitted elsewhere in the Contract, is binding as though occurring in any or all parts of the Contract. In case of discrepancy:

- 1. The Contracting Officer shall be promptly notified in writing of any error, discrepancy or omission, apparent or otherwise.
- 2. Applicable Federal, State, and Municipal Code requirements have priority over: the Contract form, General Provisions, Change Orders, Addenda, Contract drawings, Special Provisions and Specifications.
- 3. The Contract form, Standard Contract Provisions, General Provisions and Labor Provisions have priority over: Change Orders, Addenda, Contract drawings, Special Provisions and Specifications.
- 4. Change Orders have priority over: Addenda, Contract drawings and Specifications.
- 5. Addenda have priority over: Contract drawings, Special Provisions and Specifications. A later dated Addendum has priority over earlier dated Addenda.
- 6. Special Provisions have priority over: Contract drawings and other specifications.

7. Shown and indicated dimensions have priority over scaled dimensions.
8. Original scale drawings and details have priority over any other different scale drawings and details.
9. Large scale drawings and details have priority over small scale drawings and details.
10. Any adjustment by the Contractor without a prior determination by the Contracting Officer shall be at his own risk and expense. The Contracting Officer will furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.

### **ARTICLE 3. CHANGES**

**A. DESIGNATED CHANGE ORDERS**—The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract, including but not limited to changes

1. In the Contract drawings and specifications;
2. In the method or manner of performance of the work;
3. In the Government furnished facilities, equipment, materials or services; or
4. Directing acceleration in the performance of the work.

Nothing provided in this Article shall excuse the Contractor from proceeding with the prosecution of the work so changed.

**B. OTHER CHANGE ORDERS**—Any other written order or an oral order (which term as used in this Section (B) shall include direction, instruction, interpretation, or determination) from the Contracting Officer which causes any such change, shall be treated as a Change Order under this Article, provided that the Contractor gives the Contracting Officer written notice stating the date, circumstances and sources of the order and that the Contractor regards the order as a Change Order.

**C. GENERAL REQUIREMENTS**—Except as herein provided, no order, statement or conduct of the Contracting Officer shall be treated as a change under this Article or entitle the Contractor to an equitable adjustment hereunder. If any change under this Article causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this Contract whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any change under (B) above shall be allowed for any cost incurred more than 20 days before the Contractor gives written notice as therein required unless this 20 days is extended by the Contracting Officer and provided further, that in case of defective drawings and specifications, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective drawings and specifications.

If the Contractor intends to assert a claim for an equitable adjustment under this Article, he must, within 30 days after receipt of a written Change Order under (A) above or the furnishing of a written notice under (B) above, submit to the Contracting Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Contracting Officer. The statement of claim hereunder may be included in the notice under (B) above.

With respect to the notification requirements hereunder, time is of the essence. A failure to provide timely notice constitutes waiver of the claim. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under the Contract.

**D. CHANGE ORDER BREAKDOWN**—Contract prices shall be used for Change Order work where work is of similar nature; no other costs, overhead or profit will be allowed.

Where Contract prices are not appropriate and the nature of the change is known in advance of construction, the parties shall attempt to agree on a fully justifiable price adjustment and/or adjustment of completion time.

When Contract prices are not appropriate, or the parties fail to agree on equitable adjustment, or in processing claims, equitable adjustment for Change Order work shall be per this Article and Article 4 and shall be based upon the breakdown shown in following subsections 1. through 7. The Contractor shall assemble a complete cost breakdown that lists and substantiates each item of work and each item of cost.

1. **Labor**—Payment will be made for direct labor cost plus indirect labor cost such as insurance, taxes, fringe benefits and welfare provided such costs are considered reasonable. Indirect costs shall be itemized and verified by receipted invoices. If verification is not possible, up to 18 percent of direct labor costs may be allowed. In addition, up to 20 percent of direct plus indirect labor costs may be allowed for overhead and profit.
2. **Bond**—Payment for additional bond cost will be made per bond rate schedule submitted to the Office of Contracting and Procurement with the executed Contract.
3. **Materials**—Payment for cost of required materials will be F.O.B. destination (the job site) with an allowance for overhead and profit.
4. **Rented Equipment**—Payment for required equipment rented from an outside company that is neither an affiliate of, nor a subsidiary of, the Contractor will be based on receipted invoices which shall not exceed rates given in the current edition of the Rental Rate Blue Book for Construction Equipment published by Data Quest. If actual rental rates exceed manual rates, written justification shall be furnished to the Contracting Officer for consideration. No additional allowance will be made for overhead and profit. The Contractor shall submit written certification to the Contracting Officer that any required rented equipment is neither owned by nor rented from the Contractor or an affiliate of or subsidiary of the Contractor.
5. **Contractor's Equipment**— Payment for required equipment owned by the Contractor or an affiliate of the Contractor will be based solely on an hourly rate derived by dividing the current appropriate monthly rate by 176 hours. No payment will be made under any circumstances for repair costs, freight and transportation charges, fuel, lubricants, insurance, any other costs and expenses, or overhead and profit. Payment for such equipment made idle by delays attributable to the Government will be based on one-half the derived hourly rate under this subsection.
6. **Miscellaneous**—No additional allowance will be made for general superintendence, use of small tools and other costs for which no specific allowance is herein provided.

7. **Subcontract Work**—Payment for additional necessary subcontract work will be based on applicable procedures in 1. through 6., to which total additional subcontract work up to an additional 10 percent may be allowed for the Contractor's overhead and profit.

#### **ARTICLE 4. EQUITABLE ADJUSTMENT OF CONTRACT TERMS**

The Contractor is entitled to an equitable adjustment of the contract terms whenever the following situations develop:

##### **A. DIFFERING SITE CONDITIONS:**

1. During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the Contractor, upon discovering such conditions, shall promptly notify the Contracting Officer in writing of the specific differing conditions before they are disturbed and before the affected work is performed.
2. Upon written notification, the Contracting Officer will investigate the conditions, and if he/she determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding loss of anticipated profits, will be made and the contract modified in writing accordingly. The Contracting Officer will notify the Contractor of his/her determination whether or not an adjustment of the contract is warranted.
3. No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice; a failure to notify the Contracting Officer of the changed conditions prior to work being disturbed by said conditions shall constitute a permanent waiver of all right to compensation related to the changed conditions by the Contractor.
4. No contract adjustment will be allowed under this clause for any effects caused on unchanged work.

##### **B. SUSPENSION OF WORK ORDERED BY THE CONTRACTING OFFICER:**

1. If the performance of all or any portion of the work is suspended or delayed by the Contracting Officer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the Contractor shall submit to the Contracting Officer in writing a request for equitable adjustment within seven (7) calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.
2. Upon receipt, the Contracting Officer will evaluate the Contractor's request. If the Contracting Officer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control or and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Contracting Officer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Contracting Officer will notify the Contractor of his/her determination whether or not an adjustment of the contract is warranted.
3. No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed; a failure to submit a request for adjustment in the time

prescribed shall constitute waiver of all right to compensation related to the suspension of work by the Contractor.

4. No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term of condition of this contract.

#### **C. SIGNIFICANT CHANGES IN THE CHARACTER OF WORK:**

1. The Contracting Officer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the Contractor agrees to perform the work as altered.
2. If the alterations or changes in quantities significantly change the character of the work under the contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Contracting Officer may determine to be fair and reasonable.
3. If the alterations or changes in quantities significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.
4. The term "significant change" shall be construed to apply only to the following circumstances:
  - a. When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
  - b. When an item of work is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in the case of a decrease below 75 percent, to the actual amount of work performed.

#### **ARTICLE 5. TERMINATION**

**TERMINATION GENERALLY**-Termination, whether for default or convenience, is not a Government claim. The Contracting Officer may terminate a contract for default, in whole or in part, if the termination is in the best interests of the Government, and the Contractor does any of the following:

- (a) Fails to deliver the goods or complete the work or services within the time specified in the contract or any modification;
- (b) Fails to make sufficient progress on contract performance so as to endanger performance of the contract within the time specified or in the manner specified in the contract;
- (c) Fails or refuses to go forward with the work in accordance with the direction of the Contracting Officer;
- (d) Expresses through word or conduct an intention not to complete the work in accordance with the directions of the Contracting Officer;
- (e) Fails to perform any of the other provisions of the contract;
- (f) Materially deviates from the representations and capabilities set forth in the Contractor's response to the solicitation.

A termination for default is a final decision of a Contracting Officer. In order to contest a termination for default, the Contractor must submit a certified request to convert the termination for default to a termination for convenience with all documents supporting such conversion and comply with all contract



provisions and laws relating to terminations for convenience, including the submission of a certified termination for convenience settlement proposal. The submission of the certified request for conversion to a termination for convenience and certified termination settlement proposal to the Contracting Officer must occur prior to 90 days from the date of the Contracting Officer's final decision.

**DELAYS**—If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in the Contract, or any extension thereof, or fails to complete said work within specified time, the Government may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work involving the delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may have been paid for by the Government or may be on the site of the work and necessary therefore. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any liability to the Government resulting from his refusal or failure to complete the work within the specified time.

If fixed and agreed liquidated damages are provided in the Contract and if the Government does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed and accepted.

The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

1. The delay in the completion the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, climatic conditions beyond the normal which could be anticipated, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers (the term subcontractors or suppliers shall mean subcontractors or suppliers at any tier); and
2. The Contractor, within 72 hours from the beginning of any such delay, (unless the Contracting Officer grants a further period of time before the date of final payment under the Contract) notifies the Contracting Officer in writing of the causes of delay.

The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time far completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in Article 7 herein.

If, after notice of termination of the Contractor's right to proceed under the provisions of this Article, it is determined for any reason that the Contractor was not in default under the provisions of this Article, or that the delay was excusable under the provisions of this Article, the rights and obligations of the parties shall be in accordance with Article 6 herein. Failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of Article 7 herein.

The rights and remedies of the Government provided in this Article are in addition to any other rights and remedies provided by law or under the Contract.

The Government may, by written notice, terminate the Contract or a portion thereof as a result of an Executive Order of the President of the United States with respect to the prosecution of war or in the interest of national defense. When the Contract is so terminated, no claim for loss of anticipated profits will be permitted.

## **ARTICLE 6. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT**

- A.** The performance of work under the Contract may be terminated by the Government in accordance with this Article in whole, or in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.
- B.** After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:
1. Stop work under the Contract on the date and to the extent specified in the Notice of Termination.
  2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract as is not terminated.
  3. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.
  4. Assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
  5. Settle all outstanding liabilities and all claims arising out of such termination of orders or subcontracts, with the approval or ratification of the Contracting Officer to the extent he may require, which approval or ratification shall be final for all purposes of this Article.
  6. Transfer title to the Government and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer
    - a. The fabricated or unfabricated parts, work in progress, completed work, supplies, and other material procured as a part of, or acquired in connection with, the performance of the work terminated by the Notice of Termination, and
    - b. The completed, or partially completed plans, drawings information and other property which, if the Contract had been completed, would have been required to be furnished to the Government.
  7. Use his best efforts to sell, in the manner, at the terms, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in 6 above provided, however, that the Contractor:
    - a. Shall not be required to extend credit to any purchaser, and
    - b. May acquire any property under the conditions prescribed and at a price or prices approved by the Contracting Officer, and
    - c. Provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under the Contract or shall otherwise be credited to the price or cost of the work covered by the Contract or paid in such other manner as the Contracting Officer may direct.

8. Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.
9. Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.
10. The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the cost, or any item of reimbursable cost, under this Article.
11. "Plant clearance period" means, for each particular property classification (such as raw materials, purchased parts and work in progress) at any one plant or location, a period beginning with the effective date of the termination for convenience and ending 90 days after receipt by the Contracting Officer of acceptable inventory schedules covering all items of that particular property classification in the termination inventory at that plant or location, or ending on such later date as may be agreed to by the Contracting Officer and the Contractor. Final phase of a plant clearance period means that part of a plant clearance period which occurs after the receipt of acceptable inventory schedules covering all items of the particular property classification at the plant or location.

At any time after expiration of the plant clearance period, as defined above, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items or, if the items are stored, within 45 days from the date of submission of the list, and any necessary adjustments to correct the list as submitted, shall be made prior to final settlement.

- C. After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than 90 days from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such 90 day period or authorized extension thereof. In the event the Contractor was terminated for default and it asserts that it is entitled to a termination for convenience, its certified request for the conversion of the default termination to one for convenience and its certified termination settlement proposal must be submitted to the Contracting Officer prior to the expiration of 90 days from the date of the default termination. With respect to a termination for convenience, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 90 day period or extension thereof. Nothing herein shall be construed to extend the time for the submission of a claim hereunder for a defaulted Contractor beyond 90 days from the date of the default termination. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the Government's procedures in effect as of the date of execution of the Contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.
- D. Subject to the provisions of C above, and subject to any review required by the Government's procedures in effect as of the date of execution of the Contract, the Contractor and Contracting

Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this Article, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in E below prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Article, shall be deemed to limit, restrict or otherwise determine or effect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.

**E.** In the event of the failure of the Contractor and the Contracting Officer to agree as provided in D above upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Article, the Contracting Officer shall, subject to any review required by the Government's procedures in effect as of the date of execution of the Contract, determine, on the basis of information available to him, the amount, if any, due the Contractor by reason of the termination and shall pay to the Contractor the amounts determined by the Contracting Officer, as follows, but without duplication of any amounts agreed upon in accordance with D above:

**1.** With respect to all Contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:

- a.** The cost of such work;
- b.** The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in B 5. above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under the Contract, which amounts shall be included in the cost on account of which payment is made under E1.a. above; and
- c.** A sum, as profit on E.1.a. above, determined by the Contracting Officer to be fair and reasonable; provided however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subparagraph and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and provided further that profit shall be allowed only on preparations made and work done by the Contractor for the terminated portion of the Contract but may not be allowed on the Contractor's settlement expenses. Anticipatory profits and consequential damages will not be allowed. Any reasonable method may be used to arrive at a fair profit, separately or as part of the whole settlement.

**2.** The reasonable cost of the preservation and protection of property incurred pursuant to B.9; and any other reasonable cost incidental to termination of work under the Contract including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under the Contract.

**F.** The total sum to be paid to the Contractor under E.1. above shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further

reduced by the Contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under E.1. above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Government, or to a buyer pursuant to B.7 above.

- G.** The Contractor shall have the right of appeal, under Article 7 herein, from any determination made by the Contracting Officer under C. or E. above, except that, if the Contractor has failed to submit his claim within the time provided in C above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under C. or E. above, the Government shall pay to the Contractor the following:
1. If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or
  2. If an appeal had been taken, the amount finally determined on such appeal.
- H.** In arriving at the amount due the Contractor under this Article there shall be deducted:
1. all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of the Contract;
  2. any claim which the Government may have against the Contractor in connection with the Contract; and
  3. the agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by the Contractor or sold, pursuant to the provisions of this Article and not otherwise recovered by or credited to the Government.
- I.** If the termination hereunder be partial, prior to the settlement of the terminated portion of the Contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made at such price or prices; however, nothing contained herein shall limit the right of the Government and the Contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the continued portion of the Contract when said Contract does not contain an established Contract price for such continued portion.
- J.** The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of the Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Article, such excess Shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum for the period from the date such excess is received by the Contractor to the date on which such excess is repaid to the Government; provided however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

- K. Unless otherwise provided in the Contract or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under the Contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor, but without direct charge to the Government, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under the Contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs and other authentic reproductions thereof.

## ARTICLE 7. DISPUTES

A. All disputes arising under or relating to this contract shall be resolved as provided herein.

B. Claims by a Contractor against the Government.

(1) Claim, as used in Section B of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

- (a) All claims by a Contractor against the Government arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision.
- (b) Within 120 days after receipt of a claim, the Contracting Officer shall issue a decision, whenever possible taking into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.
- (c) Any failure by the Contracting Officer to issue a decision on a contract claim within the required time period shall be deemed to be a denial of the claim and shall authorize the commencement of an appeal on the claim as otherwise provided.
- (d) (1) If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the Government for an amount equal to the unsupported part of the claim in addition to all costs to the Government attributable to the cost of reviewing that part of the Contractor's claim.  
(2) Liability under this section shall be determined within 6 years of the commission of the misrepresentation of fact or fraud.
- (e) All cost data, pricing data, and task data of claims hereunder must be certified as accurate, complete, required, and necessary to the best of the Contractor's knowledge and belief. Further, all task or work data in the claim must be described therein to the smallest unit of work or task. The Contracting Officer may require any additional certifications, descriptions or explanations of the claim.
- (f) The parties agree that time is of the essence and all claims hereunder must be presented to the Contracting Officer for a final decision within thirty (30) days of the occurrence of the circumstances giving rise to such claim or within thirty (30) days of when the Contractor knew or should have known of the circumstances giving rise to such claim, otherwise compensation for that claim is waived.
- (g) The parties agree that there shall be no claims for unabsorbed home office overhead.

(2) The Contractor's claim shall contain at least the following:

- (a) A description of the claim and the amount in dispute;
- (b) Any data or other information in support of the claim;
- (c) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and
- (d) The Contractor's request for relief or other action by the Contracting Officer.
- (e) The certification of the accuracy, completeness, requirement, and necessity of all aspects of the claim.

(3) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor.

(4) Pending final decision of an appeal, action, or final settlement, a Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

C. Claims by the Government against a Contractor

(a) Claim as used in Section C of this clause, means a written demand or written assertion by the Government, including the Contracting Officer, seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. Nothing herein shall be construed to require the Government to notify the Contractor prior to the issuance of the Contracting Officer's final decision.

(b) (1) All claims by the Government against a Contractor arising under or relating to a contract shall be decided by the Contracting Officer, who shall issue a decision in writing and furnish a copy of the decision to the Contractor.

(2) The decision shall be supported by reasons and shall inform the Contractor of his or her rights. Specific findings of fact shall not be required.

(3) This clause shall not authorize the Contracting Officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(4) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor.

(5) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

**ARTICLE 8. PAYMENTS TO CONTRACTOR**—The Government will pay the contract price or prices as hereinafter provided in accordance with Government regulations.

The Government will make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer, at his discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration:

1. If such consideration is specifically authorized by the Contract;
2. If the Contractor furnishes satisfactory evidence that he has acquired title to such material, that it meets Contract requirements and that it will be utilized on the work covered by the Contract; and
3. If the Contractor furnishes to the Contracting Officer an itemized list.

The Contracting Officer at his/her discretion shall cause to be withheld retention in an amount sufficient to protect the interest of the Government. The amount shall not exceed ten percent (10%) of the partial payment. However, if the Contracting Officer, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, he may authorize any of the remaining progress payments to be made in full or may retain from such remaining partial payments less than 10 percent thereof. Also, whenever work is substantially complete, the Contracting Officer, if he considers the amount retained to be in excess of the amount adequate for the protection of the Government, at his discretion, may release to the Contractor all or a portion of such excess amount. Furthermore, on completion and acceptance of each separate building, public work, or other division of the Contract, on which the price is stated separately in the Contract, payment may be made therefore without retention of a percentage, less authorized deductions.

All material and work covered by progress payments made shall thereupon become the sole property of the Government, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the Government to require the fulfillment of all of the terms of the Contract.

Upon completion and acceptance of all work, the amount due the Contractor under the Contract shall be paid upon presentation at a properly executed voucher and after the Contractor shall have furnished the Government with a release, if required, of all claims against the Government arising by virtue of the Contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release.

**ARTICLE 9. TRANSFER OR ASSIGNMENT**—Unless otherwise provided by law, neither the Contract nor any interest therein may be transferred or assigned by the Contractor to any other party without the written consent of the Contracting Officer nor without the written acceptance by the surety on the performance and payment bond securing the Contract of the assignee as the Contractor and the principal on such bond; and any attempted transfer or assignment not authorized by this Article shall constitute a breach of the Contract and the Government may for such cause terminate the right of the Contractor to proceed in the same manner as provided in Article 5 herein, and the Contractor and his sureties shall be liable to the Government for any excess cost occasioned the Government thereby.

#### **ARTICLE 10. MATERIAL AND WORKMANSHIP**

- A. GENERAL**—Unless otherwise specifically provided in the Contract, all equipment, material and articles incorporated in the work covered by the Contract shall be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in the Contract, reference to any equipment, material, article or patented process, by trade name, make or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition., and the Contractor may use any equipment, material, article or process which, in the judgment of the Contracting Officer, is equivalent to that named unless otherwise specified. The Contractor shall furnish to the Contracting Officer for his approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature and rating of the mechanical and other equipment which the Contractor contemplates incorporating in the work. Machinery and equipment shall be in proper condition. When required by the Contract or when called for by the Contracting Officer, the Contractor shall furnish to the Contracting Officer for approval full information concerning the material or articles which he contemplates incorporating in the work. When so directed, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles installed or used without required approval shall be at the risk of subsequent rejection and subject to satisfactory replacement at Contractor's expense.
- B. SURPLUS MATERIALS USE**—Whenever specified in the Contract or authorized by the Contracting Officer that materials become the property of the Contractor, which by reference or otherwise shall include disposal of materials, it is understood that the Contractor accepts such materials "as is" with no further expense or liability to the Government. If such material specified in the Contract will have a potential or real interest of value, the Contractor shall make allowance in the Contract to show such value.
- C. GOVERNMENT MATERIAL**—No materials furnished by the Government shall be applied to any other use, public or private, than that for which they are issued to the Contractor. The full amount of the cost to the Government of all materials furnished by the Government to the Contractor and for which no charge is made, which are not accounted for by the Contractor to the satisfaction of the Contracting Officer, will be charged against the Contractor and his sureties and may be deducted from any monies due the Contractor, and this charge shall be in addition to and not in lieu of any other liabilities of the Contractor whether civil or criminal. Materials furnished by the Government for which a charge is made at a rate mentioned in the specifications will be delivered to the Contractor upon proper requisitions therefore and will be charged to his account.
- D. Plant** —The Contractor shall at all times employ sufficient tools and equipment for prosecuting the various classes of work to full completion in the manner and time required. The Contractor shall at all times perform work in sufficient light and shall provide proper illumination, including



lighting required for night work as directed, as a Contract requirement. All equipment, tools, formwork and staging used on the project shall be of sufficient size and in proper mechanical and safe condition to meet work requirements, to produce satisfactory work quality and to prevent injury to persons, the project or adjacent property. When methods and equipment are not prescribed in the Contract, the Contractor is free to use tools, methods and equipment that he satisfactorily demonstrates will accomplish the work in conformity with Contract requirements.

If the Contractor desires to use a method or type of tool or equipment other than specified in the Contract, he shall request approval to do so; the request shall be in writing and shall include a full description of proposed methods, tools and equipment and reason for the change or substitution. Approval of substitutions and changed methods will be on condition that the Contractor will be fully responsible for producing work meeting Contract requirements. If after trial use of the substituted methods, tools and equipment, the Contracting Officer determines that work produced does not meet Contract requirements, the Contractor shall complete remaining work with specified methods, tools and equipment.

- E. CAPABILITY OF WORKERS-** All work under the Contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require the Contractor to remove from the work any such employees as the Contracting Officer deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed by the Contracting Officer to be contrary to the public interest. Such request will be in writing:
- F. CONFORMITY OF WORK AND MATERIALS**—All work performed and materials and products furnished shall be in conformity, within indicated tolerances, with lines, grades, cross sections, details, dimensions, material and construction requirements shown or intended by the drawings and specifications.

When materials, products or work cannot be corrected, written notice of rejection will be issued. Rejected materials, products and work shall be eliminated from the project and acceptably replaced at Contractor's expense. The Contracting Officer's failure to reject any portion of the project shall not constitute implied acceptance nor in any way release the Contractor from Contract requirements.

- G. UNAUTHORIZED WORK AND MATERIALS**—Work performed or materials ordered or furnished for the project deviating from requirements and specifications without written authority, will be considered unauthorized and at Contractor's expense. The Government is not obligated to pay for unauthorized work. Unauthorized work and materials may be ordered removed and replaced at Contractor's expense.

**ARTICLE 11. INSPECTION AND ACCEPTANCE**—Except as otherwise provided in the Contract, inspection and test by the Government of material and workmanship required by the Contract shall be made at reasonable times and at the site of the work, unless the Contracting Officer determines that such inspection or test of material which is to be incorporated in the work shall be made at the place of production, manufacture or shipment of such material. To the extent specified by the Contracting Officer at the time of determining to make off-site inspection or test, such inspection or test shall be conclusive as to whether the material involved conforms to Contract requirements. Such off-site inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Government after acceptance of the completed work under the terms of the last paragraph of this Article, except as herein above provided.

The Contractor shall, without charge, replace any material and correct any workmanship found by the Government not to conform to Contract requirements and specifications, unless in the public interest the Government consents to accept such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises at Contractor's expense.

If the Contractor does not promptly replace rejected material or correct rejected workmanship, the Government:

1. May, by contract or otherwise, replace such material and correct such workmanship and charge the cost thereof to the Contractor, or
2. May terminate the Contractor's right to proceed in accordance with Article 5 herein.

The Contractor shall furnish promptly, without additional cost to the Government, all facilities, labor and material reasonably needed for performing such safe and convenient inspection and test as may be required by the Contracting Officer. All inspections and tests by the Government shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be performed as described in the Contract. The Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready for inspection at the time specified by the Contractor.

Should it be considered necessary or advisable by the Contracting Officer at any time before acceptance of the work, either in part or in its entirety, to make an examination of work completed, by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor and material to do same. If such work is found to be defective or nonconforming in any material respect, due to the fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, an equitable adjustment shall be made in the Contract price to compensate the Contractor for the additional services involved in such examination and reconstruction and, if completion of the work has been delayed thereby, he shall, in addition, be granted an equitable extension of time.

Unless otherwise provided in the Contract, acceptance by the Government will be made as promptly as practicable after completion and inspection of all work required by the Contract. Acceptance shall be final and conclusive except as regards to latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Government's rights under any warranty or guaranty, or as otherwise provided herein.

**ARTICLE 12. SUPERINTENDENCE BY CONTRACTOR**—The Contractor shall give his personal superintendence to the performance of the work or have a competent foreman or superintendent, satisfactory to the Contracting Officer, on the work site at all times during progress, with authority to act for him.

**ARTICLE 13. PERMITS AND RESPONSIBILITIES**—The Contractor shall, without expense to the Government, be responsible for obtaining any necessary licenses, certificates and permits, and for complying with any applicable Federal, State, and Municipal laws, codes and regulations, in connection with the prosecution of the work. He shall be similarly responsible for all damages to persons or property that occurs as a result of his fault or negligence. He shall take proper safety, health and environmental precautions to protect the work, the workers, the public, and the property of others. He shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction thereof which theretofore may have been accepted.

**ARTICLE 14. INDEMNIFICATION**—

- A. The Contractor shall indemnify and save harmless the Government and all of its officers, agents and servants against any and all claims or liability arising from or based on, or as a consequence or result of, any act, omission or default of the Contractor, his employees, or his subcontractors, in the performance of, or in connection with, any work required, contemplated or performed under the Contract.

- B.** Disputes between the Contractor and any subcontractors, material suppliers, or any other third parties over payments allegedly owed by the Contractor to a third party shall be resolved exclusively between the Contractor and the third party; the Contractor shall permit no pass-through suits to be brought against the Government by a third party in the Contractor's name. However, nothing herein shall be construed to prevent the Contractor from paying a subcontractor's claim and seeking a timely equitable adjustment hereunder.

**ARTICLE 15. PROTECTION AGAINST TRESPASS**—Except as otherwise expressly provided in the Contract, the 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 Contracting Officer.

**ARTICLE 16. CONDITIONS AFFECTING THE WORK**

- A. GENERAL**—The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work and the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the work as specified without additional expense to the Government. The Government assumes no responsibility for any understanding or representation concerning conditions made by any of its officers or agents prior to the execution of the Contract, unless such understanding or representation by the Government is expressly stated in the Contract.
- B. WORK AND STORAGE SPACE**—Available work and storage space designated by the Government shall be developed as required by the Contract or restored at completion of the project by the Contractor to a condition equivalent to that existing prior to construction. No payment will be made for furnishing or restoration of any work and storage space. If no area is designated or the area designated is not sufficient for the Contractor's operations, he shall obtain necessary space elsewhere at no expense or liability to the Government.
- C. WORK ON SUNDAYS, LEGAL HOLIDAYS AND AT NIGHT**—No work shall be done at any time on Sundays or legal holidays or on any other day before 7 a.m. or after 7 p.m., except with the written permission of the Contracting Officer and pursuant to the requirements of the Police Requirements of the Government.
- D. EXISTING FEATURES**—Subsurface and topographic information including borings data, utilities data and other physical data contained in the Contract or otherwise available, are not intended as representations or warranties but are furnished as available information. The Government assumes no expense or liability for the accuracy of, or interpretations made from, existing features. The Contractor shall be responsible for reasonable consideration of existing features above and below ground which may affect the project.
- E. UTILITIES AND VAULTS**—The Contractor shall take necessary measures to prevent interruption of service or damage to existing utilities within or adjacent to the project. It shall be the Contractor's responsibility to determine exact locations of all utilities in the field.

For any underground utility or vault encountered, the Contractor shall immediately notify the Contracting Officer and take necessary measures to protect the utility or vault and maintain the service until relocation by owner is accomplished. No additional payment will be made for the encountering of these obstructions.

In case of damage to utilities by the Contractor, either above or below ground, the Contractor shall restore such utilities to a condition equivalent to that which existed prior to the damage by repairing, rebuilding or otherwise restoring as may be directed, at the Contractor's sole expense.

Damaged utilities shall be repaired by the Contractor or, when directed by the Contracting Officer, the utility owner will make needed repairs at the Contractor's expense.

No compensation, other than authorized time extensions, will be allowed the Contractor for protective measures, work interruptions, changes in construction sequence, changes in methods of handling excavation and drainage or changes in types of equipment used, made necessary by existing utilities, imprecise utility or vault information or by others performing work within or adjacent to the project.

- F. SITE MAINTENANCE**—The Contractor shall maintain the project site in a neat and presentable manner throughout the course of all operations, and shall be responsible for such maintenance until final acceptance by the Government. Trash containers shall be furnished, maintained and emptied by the Contractor to the satisfaction of the Contracting Officer. Excavated earthwork, stripped forms and all other materials and debris not scheduled for reuse in the project shall be promptly removed from the site.

The Contracting Officer may order the Contractor to clean up the project site at any stage of work at no added expense to the Government. If the Contractor fails to comply with this order, the Contracting Officer may require the work to be done by others and the costs will be charged to the Contractor.

Upon completion of all work and prior to final inspection, the Contractor shall clean up and remove from the project area and adjacent areas all excess materials, equipment, temporary structures, and refuse, and restore said areas to an acceptable condition.

- G. PRIVATE WORK**—Except as specifically authorized by the Contracting Officer, the Contractor shall not perform any private work abutting Government projects with any labor, materials, tools, equipment, supplies or supervision scheduled for the Contract until all work under the Contract has been completed. Contract materials used for any unauthorized purpose shall be subtracted from Contract amount.

- H. GOVERNMENT NOISE CONTROL ACT OF 1977**—The contractor shall be in strict compliance with [D.C. Law 2-53, Government of Columbia Noise Control Act of 1977 and all provisions thereof. Effective March 16, 1978. 24 D.C.Register 5293.] (Or relevant local law)

**ARTICLE 17. OTHER CONTRACTS**—The Government may undertake or award other contracts for additional work and the Contractor shall fully cooperate with such other contractors and Government employees and carefully coordinate his own work with such additional work as may be directed by the Contracting Officer. It is the duty of the Contractor to coordinate its activities with all third parties, including, but not limited to utilities, who may affect the Contract work hereunder. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees. The Government assumes no liability, other than authorized time extensions, for Contract delays and damages resulting from delays and lack of progress by others. The Contractor shall make no claim against the Government for delay or damages resulting from the actions of third parties, including, but limited to utilities.

**ARTICLE 18. PATENT INDEMNITY**—Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any Letters Patent of the United States (except Letters Patent issued upon an application which is now or may hereafter be, for reasons of national security, ordered by the Federal Government to be kept classified or otherwise withheld from issue) arising out of the performance of the Contract or out of the use or disposal, by or for the account of the Government, of supplies furnished or construction work performed hereunder.

**ARTICLE 19. ADDITIONAL BOND SECURITY**—If any surety upon any bond furnished in connection with the Contract becomes unacceptable to the Government, or if any such surety fails to furnish reports

as to his financial condition from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by the Contract. Provided that upon the failure of the Contractor to furnish such additional security within ten (10) days after written notice so to do, all payments under the Contract will be withheld until such additional security is furnished.

**ARTICLE 20. COVENANT AGAINST CONTINGENT FEES**—The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to terminate the Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

**ARTICLE 21. APPOINTMENT OF ATTORNEY**—The Contractor does hereby irrevocably designate and appoint the Clerk of the Superior Court of the Government and his successors in office as the true and lawful attorney of the Contractor for the purpose of receiving service of all notices and processes issued by any court in the Government, as well as service of all pleadings and other papers, in relation to any action or legal proceeding arising out of or pertaining to the Contract or the work required or performed hereunder.

The Contractor expressly agrees that the validity of any service upon the said Clerk as herein authorized shall not be affected either by the fact that the Contractor was personally within the District of Columbia and otherwise subject to personal service at the time of such service upon the said Clerk or by the fact that the Contractor failed to receive a copy of such process, notice, pleading or other paper so served upon the said Clerk, provided that said Clerk shall have deposited in the United States mail, certified and postage prepaid, a copy of such process, notice, pleading or other papers addressed to the Contractor at the address stated in the Contract.

**ARTICLE 22. GOVERNMENT EMPLOYEES NOT TO BENEFIT** — Unless a determination is made as provided herein, no officer or employee of the Government will be admitted to any share or part of this contract or to any benefit that may arise therefrom, and any contract made by the Contracting Officer or any Government employee authorized to execute contracts in which they or an employee of the Government will be personally interested shall be void, and no payment shall be made thereon by the Government or any officer thereof, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. A Government employee shall not be a party to a contract with the Government and will not knowingly cause or allow a business concern or other organization owned or substantially owned or controlled by the employee to be a party to such a contract, unless a written determination has been made by the head of the procuring agency that there is a compelling reason for contracting with the employee, such as when the Government's needs cannot reasonably otherwise be met. [DC Procurement Practices Act of 1985, D.C. Law 6-85, D.C. Official Code, section 2-310.01, and Chapter 18 of the DC Personnel Regulations] (Or relevant local law). The Contractor represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants not to employ any person having such known interests in the performance of the contract.

**ARTICLE 23. WAIVER**—No Governmental waiver of any breach of any provision of the Contract shall operate as a waiver of such provision or of the Contract or as a waiver of subsequent or other breaches of the same or any other provision of the Contract; nor shall any action or non-action by the Contracting Officer or by the Government be construed as a waiver of any provision of the Contract or of any breach thereof unless the same has been expressly declared or recognized as a waiver by the Contracting Officer or the Government in writing.

## ARTICLE 24. BUY AMERICAN

- A. AGREEMENT**—In accordance with the Buy American Act (41 USC 10a-10d), and Executive Order 10582, December 17, 1954 (3 CFR, 1954-58 Comp., p. 230), as amended by Executive Order 11051, September 27, 1962 (3 CFR, 1059—63 Comp., p. 635), the Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, material men and suppliers in the performance of the Contract, except for non-domestic material listed in the Contract.
- B. DOMESTIC CONSTRUCTION MATERIAL**—"Construction material" means any article, material or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a "domestic construction material" if it has been mined or produced in the United States. A manufactured construction material is a "domestic construction material" if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. "Component" means any article, material, or supply directly incorporated in a construction material. -
- C. DOMESTIC COMPONENT**—A component shall be considered to have been "mined, produced, or manufactured in the United States" regardless of its source, in fact, if the article, material or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.
- D. FOREIGN MATERIAL** – When steel materials are used in a project a minimal use of foreign steel is permitted. The cost of such materials cannot exceed one-tenth of one percent of the total project cost, or \$2,500,000, whichever is greater.

## ARTICLE 25. TAXES

- A. FEDERAL EXCISE**—Materials, supplies and equipment are not subject to the Federal Manufacturer's Excise Tax, if they are furnished or used in connection with the Contract provided that title to such materials, supplies and equipment passes to the Government under the Contract. The Contractor shall in such cases furnish his subcontractors and suppliers with a purchaser's certificate in the form prescribed by the U.S. Internal Revenue Service.
- B. SALES AND USE TAXES**—Materials which are physically incorporated as a permanent part of real property are not subject to Government Sales and Use Tax. The Contractor shall, when purchasing such materials, furnish his suppliers with a Contractor's Exempt Purchase Certificate in the form prescribed in the Sales and Use Tax Regulations of the Government. Where the Contractor, subcontractor or material man has already paid the Sales and Use Tax on material, as prescribed above, the Sales and Use Tax Regulations of the Government permit the Contractor, subcontractor or material man to deduct the sales or use tax on the purchase price of the same on his next monthly return as an adjustment. However, the Contractor, subcontractor or material man must satisfy the Chief Financial Officer for the Government that no sum in reimbursement of such tax was included in the Contract or else that the Government has received a credit under the Contract in an amount equal to such tax.

Government Sales and Use Tax shall be paid on any material and supplies, including equipment rentals, which do not become a physical part of the finished project. [See Government of Columbia Sales and Use Tax Administration Ruling No. 6] (Or relevant local law).

The Contractor, subcontractor, or material supplier shall provide proof of compliance with the provisions of [D.C. Law 9-260] (Or relevant local law), as amended, codified in [D.C. Code 46-103] (Or relevant local law), Employer Contributions, prior to award.

The Contractor, subcontractor, or material supplier shall provide proof of compliance with the applicable tax filing and licensing requirements set forth in [D.C. Code, Title 47, Taxation and Fiscal Affairs] (Or relevant local law), prior to contract award.

**ARTICLE 26. SUSPENSION OF WORK**—The Contracting Officer may order the Contractor in writing to suspend, delay or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the Government.

If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed or interrupted by an act of the Contracting Officer in the administration of the Contract, or by his failure to act within the time specified in the Contract (or if no time is specified, within a reasonable time), an adjustment will be made for an increase in the cost of performance of the Contract (excluding profit) necessarily caused by such unreasonable suspension, delay or interruption and the Contract modified in writing accordingly. However, no adjustment will be made under this Article for any suspension, delay or interruption to the extent:

1. That performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the contractor, or
2. For which an equitable adjustment is provided or excluded under any other provision of the Contract.

No claim under this Article shall be allowed:

1. For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall no apply as to a claim resulting from a suspension order), and
2. Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the Contract.

## **ARTICLE 27. SAFETY PROGRAM**

- A. GENERAL**—In order to provide safety controls for the protection of the life and health of Government and Contract employees and the general public; prevention of damage to property, materials, supplies, and equipment; and for avoidance of work interruptions in the performance of the Contract, the Contractor shall comply with all applicable Federal and local laws governing safety, health and sanitation including the Safety Standards, Rules and Regulations issued by the American National Standards, U. S. Department of Labor, U. S. Department of Health and Human Services, [D.C. Minimum Wage and Industrial Safety Board] (Or relevant local law) and the latest edition of "Manual of Uniform Traffic Control Devices" issued by the Federal Highway Administration.

The Contractor shall also take or cause to be taken such additional safety measures as the Contracting Officer may determine to be reasonably necessary.

The Contractor shall designate one person to be responsible for carrying out the Contractor's obligation under this Article.

The Contractor shall maintain an accurate record of all accidents resulting in death, injury, occupational disease, and/or damage to property, materials, supplies, and equipment incident to work performed under the Contract. Copies of these reports shall be furnished to the Contracting Officer within two working days after occurrence.

The Contracting Officer will notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Contractor or his representative at the site of the work, shall be deemed sufficient for the purpose. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

This Article is applicable to all subcontractors used under the Contract and compliance with these provisions by the subcontractors will be the responsibility of the Contractor.

*(In Contracts involving work of short duration or of non-hazardous character, the following Section B. will be deleted by Special Provision)*

**B. CONTRACTOR'S PROGRAM SUBMISSION**—Prior to commencement of the work, the Contractor shall:

1. Submit in writing to the Contracting Officer for his approval his program for complying with this Article for accident prevention.
2. Meet with the Contracting Officer's Safety Representative after submission of the above program to develop a mutual understanding relative to the administration of the overall safety program.

**ARTICLE 28. RETENTION OF RECORDS**—Unless otherwise provided in the Contract, or by applicable statute, the Contractor, from the effective date of Contract completion and for a period of three years after final settlement under the Contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor but without direct charge to the Government, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under the Contract.

**ARTICLE 29. RECOVERY OF DEBTS OWED THE GOVERNMENT**---The Contractor hereby agrees that the Government may use all or any portion of any payment, consideration or refund due the Contractor under the Contract to satisfy, in whole or part, any debt due the Government.

**ARTICLE 30. ADMINISTRATIVE LIQUIDATED DAMAGES**---In addition to any other liquidated damages provided for in the Contract, the Contractor hereby agrees that the Government may assess administrative liquidated damages for the Contractor's failure to submit when due any deliverable required by the Contract. Unless otherwise prescribed by the Contracting Officer, the rate of the administrative liquidated damages shall be \$250 per day until the required deliverable is received and accepted by the Government. The Government's remedies for failure to comply with the Contract terms and conditions are cumulative and not exclusive. Nothing herein shall be construed to limit the Government's ability to terminate the Contractor for the failure to submit Contract deliverables when due.

**ARTICLE 31. FORCE MAJEURE**---If the Contractor, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Contract, the Contractor may be excused from whatever performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations under this Contract by reason of Force Majeure, within 72 hours of the occurrence or event, the Contractor must provide the Contracting Officer written notice of its

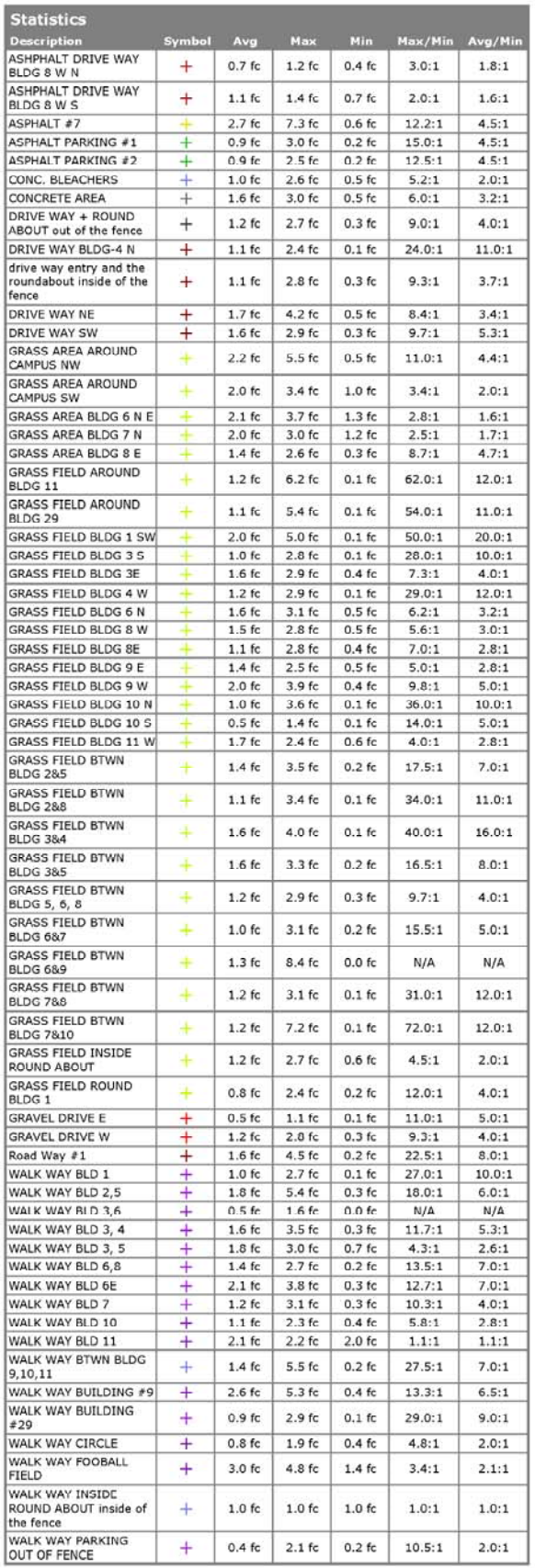



inability to perform as well as a description of the force majeure and its effect on Contract performance. The Contracting Officer will have the right to cause the inspection of the work site to determine the validity of the Contractor's assertion of its inability to perform. If the Contracting Officer agrees that the Contractor is wholly or partly unable to perform its obligations under the Contract a decision will be issued indicating the extent to which the Contractor is excused from its performance obligations. In no event will the Contractor be entitled to money damages from the Government due to force majeure.

**Attachment L**

**Drawings and Specifications**





APPROVED	DESIGNED: MSD								
	DRAWN: CSG		08/20/2015	FINAL SUBMISSION - VIE2					
	CHECKED: MSD		07/17/2015	FINAL SUBMISSION					
FACILITIES MANAGER OFFICE OF ADMINISTRATIVE SERVICES  DATE: _____	CERTIFICATION	REVISION	DATE	DESCRIPTION			BY	APP.	
		NEW LIGHTING PHOTOMETRICS PLAN  THE CAPITAL GUARDIAN YOUTH CHALLENGE ACADEMY (CGYCA) 3201 Oak Hill, Laurel, Maryland						DRAWING NO.  E101	
ADMINISTRATOR OFFICE OF ADMINISTRATIVE SERVICES  DATE: _____	REGISTRATION NO.			1526 16TH STREET NW, WASHINGTON, D.C. 20006 TEL: 202/797-2000 FAX: 202/797-2000		BUILDING ID NO.:			
	DATE: _____					PROJECT NO.:			
	ARCHITECT/ENGINEER	GOVERNMENT OF THE DISTRICT OF COLUMBIA						DATE: 07/17/2015	
	DATE: _____							SHEET: OF	



**Attachment M**

**Preliminary Engineering Report (PER) dated 26 August 2015**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**DEPARTMENT OF GENERAL SERVICES**



**CGYCA OAK HILL SITE LIGHTING STUDY  
3201 OAK HILL, LAUREL, MD**

**(FINAL SUBMISSION)**

**CONTRACT NO. DCAM-2010-D-0006-B01**

**ATTN: Ms. Nikki Washington, LEED AP BD+C  
Project Manager, Capital Construction Services  
Department of General Services  
1250 U Street, NW, 4th Floor  
Washington, DC 20009**



**WASHINGTON, D.C.**

**An ISO 9001 Certified Firm (#1368US)**

**AUGUST 20, 2015**

## **TABLE OF CONTENTS**

- I. EXECUTIVE SUMMARY**
- II. FINDINGS**
- III. ANALYSIS AND DETERMINATION**
- IV. RECOMMENDATIONS/CONSTRUCTION**
- V. PHASING CONSIDERATIONS**
- VI. APPENDIX**
  - A. SCOPE OF WORK**
  - B. CORRESPONDENCE**
  - C. EXISTING CONDITIONS PHOTOGRAPHS**
  - D. DEFICIENCY PLAN**
  - E. CIVIL/SURVEY DRAWINGS**
  - F. PHOTOMETRIC CALCULATIONS**
  - G. PRODUCT DATA**
  - H. COST ESTIMATE**
  - I. LIGHTING CONTROL ZONES**

## **I. EXECUTIVE SUMMARY**

## **I. EXECUTIVE SUMMARY (Amended September 2, 2015)**

### **A. BACKGROUND**

The Capital Guardian Youth Challenge Academy (CGYCA) located at 3201 Oak Hill, Laurel, Maryland. provides a youth program, for District of Columbia youth who are unemployed, drug-free and law-free high-school dropouts, providing instruction and preparation to take and pass the District of Columbia's General Education Development (GED) exam, as well as provide a military component of 'other training' at the academy offering a disciplined routine of daily life. The site lighting infrastructure at the CGYCA campus was installed approximately sixty (60) years ago and has exceeded its useful life. The previous site occupancy was as a detention facility, and site lighting levels are not suitably designed for the current academic campus type use. DGS requires to provide adequate site lighting by renovating the existing site lighting, with repaired/upgraded light fixtures, light posts, post bases, and concrete pads; and power via new direct underground buried conduit. The itemize tasks outlined are included in this Scope of Work (SOW). Reference Appendix A for SOW issued by DGS.

#### **1. Objectives:**

The objective of the this report is to visit the site, review existing drawings to the extent available, and conduct interviews so as to evaluate the condition of the existing site lighting and perform a study presenting a minimum of two options to be considered for providing adequate lighting levels suited for the existing campus utilization so as to ensure on-going operations of the facility.



## **2. Basis of Work**

- a. Codes: The work shall be in accordance with all codes recognized by the District of Columbia Zoning (DCMR), and the International Building Code (IBC), NFPA, Illuminating Engineering Society of North America (IESNA) as well as regulatory agency requirements, if applicable.
- b. Site Visits: Multiple site visits were conducted to establish existing conditions for areas where no drawings were available; and to verify existing conditions for drawings provided.
- c. Existing drawings: Existing drawings were NOT available for this project.
- d. Interviews: Interviews were conducted with DGS facility and project personnel, as well as the current CGYCA management and maintenance personnel. Alphatec gratefully acknowledges their assistance during the course of preparing the study.

## **B. FINDINGS**

### **1. Civil**

1. An aerial planimetric site survey of the entire campus was performed and completed on 20 April 2015 by A, Morton Thomas and Associates, to create a site plan showing buildings, roadways, parking lots, sidewalks, fencing, and light poles, with contours provided at 1'-0" intervals for the flat site. Reference Appendix E for planimetric/topographic survey drawings.
2. A magnetic utility scan of the site was performed and completed on 20 April 2015 by A, Morton Thomas and Associates to establish location of buried utilities (i.e. ferrous coverings or utilities identification such as magnetic strips on fiber optics). Reference Appendix E for magnetic utility scan survey drawings.

## 2. Electrical

The previous site occupancy was as a detention facility and site lighting was provided accordingly. Existing lighting fixtures and poles are approximately sixty (60) years old. A field survey was conducted on 24 April 2015 by Alphatec pc to establish and verify existing conditions at the site. Site lighting levels are provided by three types of light poles. Currently the foot-candles levels provided by the existing system are inadequate in serving the current campus use. Multiple lighting coverage deficiencies have been identified and areas with inadequate lighting levels are tabulated, Reference Appendix F Photometric Calculations for existing site lighting.

All of light poles are permanently affixed to the ground on a concrete sub-base with direct contact to the ground, resulting in deterioration (rust) of fifty-six percent (56%) of the existing lighting pole fixtures. Reference Appendix D Existing Condition Photographs. The deterioration not only compromises the structural integrity of the light pole, it also compromises the electrical system by exposure to the weather and vandalism, exposure presents potential harm to the occupants, and presents an unsightly appearance.

The existing lighting is powered via direct buried conduit, the perimeter lighting connects to electrical panels located in the Steam Plant Building to the north of the campus. The exterior lighting between the buildings is connected to electrical panels located in among several buildings. No destructive testing was performed to establish the condition of the buried conduit.

### **C. ANALYSIS AND DETERMINATION**

The current site lighting levels are required to be adjusted to provide compliant lighting levels for the current use. Additionally corrective action is required to remedy electrical deficiencies identified at the site. Three (3) options are presented for consideration:

1. Option 1 (Refurbish existing MH fixtures and supplement site lighting):

The current lighting pole layout shall remain as existing, however each lighting pole shall be removed, salvaged, and reinstalled upon providing a new concrete pad and a new metal housing/base for all locations. Provide new underground direct buried conduit, with routing established in consideration of the magnetic utility survey conducted. Any "dark" spots discovered shall be remedied by the installation of new lighting poles to supplement the existing.

The estimated construction cost for Option 1 is \$1,639,000.

2. Option 2 (Replace existing MH fixtures with new MH fixtures and supplement site lighting):

Demolish existing concrete foundations, light poles and fixtures, metal housing/base and underground distribution. Provide new lighting poles, with new housings and lighting fixtures, at new location to meet the new required lighting levels. Provide new underground direct buried conduit, with routing established in consideration of the magnetic utility survey conducted. The new electrical distribution system and any new circuits will originate in a new electrical and lighting control panel. The lighting poles will be provided with new metal halide (MH) fixtures and connected to the new lighting circuits.

The estimated construction cost for Option 2 is \$2,081,000.

3. Option 3 (Replace existing MH fixtures with new LED fixtures and supplement site lighting):

Demolish existing concrete foundations, light poles and fixtures, metal housing/base and underground distribution. Provide new lighting poles, with new housings and lighting fixtures, at new location to meet the new required lighting levels. Provide new underground direct buried conduit, with routing established in consideration of the magnetic utility survey conducted. The new electrical distribution system and any new circuits will originate in a new electrical and lighting control panel. The lighting fixtures will be provided with new LED fixtures and connected to the new lighting circuits.

The estimated construction cost for Option 3 is \$2,530,000.

**D. RECOMMENDATIONS**

It is recommended that Option 2 is implemented as the best value option due to potential compromises in repairing the older lighting fixtures and poles per Option 1. It is reasonable to assume that the efficiency of the existing fixtures is deteriorated and the lighting levels output from these fixtures is significantly reduced. Removal and salvage of existing light poles and fixtures for refurbishment may reveal further deterioration and damage to the light pole as a whole including both pole and fixture, making a case for replacement rather than refurbishment as the cost for implementing Option 1 (refurbishing fixtures) is potentially increased.

The difference between Options 2 and 3 is the fixture and lamp type, i.e., MH versus LED lamps. The LED lamps present a greater energy efficiency and lower maintenance costs, but is not recommended based on first cost/initial investment in consideration of funding availability.

**E. VALUE ENGINEERING**

1. Elimination of the lighting provided at the asphalt paved courts is presented as a value engineered item with an estimated construction cost of \$584,714 to be applied against the cost of the selected option.
2. Elimination of new light fixture and extra lighting head for the existing fixtures provided at the football field, and Elimination of the new light fixtures to the south of building-7 is presented as a value engineered item with an estimated construction cost of \$36,545 to be applied against the cost of the selected option.

**F. SELECTED OPTION**

It was advised by DGS and the end user that the selected option 1 is the most desirable option due to budget limitation and other considerations. In addition, both value engineering options are desired to be implemented. The final estimated construction cost for Option 1 inclusive of both VE options is as follows:

<b>Number</b>	<b>Item</b>	<b>Cost</b>
1	Construction cost for Option 1 minus the concrete pads	<b>\$ 1,558,417</b>
2	Construction cost for the concrete pads	<b>\$78,127</b>
3	Value engineering item #1	<b>(\$584,714)</b>
4	Value engineering item #2	<b>(\$36,545)</b>
<b>Total Value</b>		<b>\$1,015,285</b>



**G. ADDENDUM 1, September 2<sup>nd</sup> 2015**

A meeting held at Oak Hill between DCNG, DGS, and Alphatec revealed the project funding limitation of \$700,000. In order to meet this budget, additional value engineering items need to be instigated.

1. Value Engineering Item #3:

Delete all new light fixtures added to supplement the effectiveness of the existing lighting system coverage. DGS and DCNG concur with the ramifications of exercising this value engineering item, which are maintaining the currently poorly lit areas at their present condition.

Estimated savings: \$209,203.00

2. Value Engineering Item #4:

DCNG indicated of current ongoing maintenance work rewiring the existing light poles to restore them to operating condition. It was agreed to remove the rewiring of the light fixtures from this project and utilize the existing fixtures as "existing to remain" with the exception of removing the sub-base and installing a new base to safeguard the lighting pole structural integrity.

Estimated savings: \$108,383.00

The final estimated construction cost for Option 1, inclusive of all of the four value engineering options, is amended as follows to the total construction cost of \$697,699.00 for the project.

Detailed back up for the presented estimates is included in the Appendix.

Number	Item	Cost
1	Construction cost for Option 1 minus the concrete pads	\$ 1,558,417
2	Construction cost for the concrete pads	\$78,127
3	Value engineering item #1	(\$584,714)
4	Value engineering item #2	(\$36,545)
5	Value engineering item #3	(\$209,203)
6	Value engineering item #4	(\$108,383)
<b>Total Value</b>		<b>\$697,699</b>

## **II. FINDINGS**

## **II. FINDINGS**

### **A. GENERAL**

A field survey was conducted on 24 April 2015 by Alphatec pc to establish and verify existing conditions at the site.

The previous site occupancy was as a detention facility, but is now used as an academic campus called the Capital Guardian Youth Challenge Academy (CGYCA) and is located at 3201 Oak Hill, Laurel, Maryland. The site is relatively isolated and surrounded by wooded areas. The site is enclosed by a seven foot (7'-0") high chain link fence with asphalt paving located directly outside of the fence and site lighting poles at regular intervals provided on a grassy area immediately inside the fence. Around the south-southwest perimeter of the site, a few feet beyond the site lighting, within the fenced area, is a low continuous concrete wall. Adjacent to the concrete wall and encircling the site in its entirety is an asphalt roadway, mirroring as an interior concentric form to the chain link fence.

The approximately twenty-five (25) acre campus is comprised of twelve (12) buildings linked by a system of mostly rectilinear concrete paved walkways. There are grassy fields throughout the campus interspersed among the



buildings, including one grassy field equipped with sports fixtures and bleacher seating; seven (7) asphalt play areas; and two (2) concrete amphitheater-like assembly areas.

The primary entrance is located at the northwest corner of the site. Left and right of the entrance to the gated campus, there are two asphalt paved parking lots that wrap around the west corner of the facility. There are two asphalt traffic circles (round-about); one is located in front of Building 12 and one is located between Buildings 9 and 29. A secondary gate is provided at the southeast corner of the site with an asphalt road leading to utility building outside of the fence.

An aerial planimetric site survey of the entire campus was performed and completed on 20 April 2015 by A. Morton Thomas and Associates, to create a site plan showing buildings, roadways, parking lots, sidewalks, fencing, and light poles, with contours provided at 1'-0" intervals for the flat site. (Reference Appendix E for planimetric/topographic survey drawings).

The previous site occupancy was as a detention facility, but is now used as an academic campus.

#### **B. BUILDING MOUNTED (EXTERIOR) ELECTRICAL FIXTURES**

Wall mounted light fixtures are intermittently provided at multiple, but not all buildings. It can be assumed that a portion of these lights were used in establishing certain light levels for the previous campus use, however, these exterior building mounted fixtures are not included for consideration in the photometric calculations in the project Scope of Work.

It should be noted that wall mounted light fixtures located on the northeast, southeast, and southwest sides of Building 29 are in disrepair, although it cannot be determined whether or not each fixture is broken or a bulb needs to be replaced in the abandoned building. The lack of illumination from the wall mounted building fixtures result in "dark areas" on each of the respective

sides of Building 29. The presence or lack of light from exterior wall mounted fixtures have no effect on this study other than identifying "dark" spots and were not considered in the electrical photometric study to establish new, compliant lighting levels. (Reference Appendix F for Photometric Calculations).

### C. SITE LIGHT POLES AND FIXTURES

The existing lighting fixtures and poles and distribution system are approximately sixty (60) years old. There are two types of site lighting poles totaling one hundred four (104) light poles at the site:

- Type 1 Light Pole- Twenty eight feet (28'-0") and thirty feet (30'-0") high perimeter and within the site lighting poles with single "shoe box" fixtures, many of the perimeter fixtures have been provided with additional flood light fixture attached directly opposite to the original fixture for supplemental lighting. These improvised flood light fixtures are provided with power through disconnect switches mounted directly onto the light pole. The light poles are regularly spaced around the perimeter in approximately ninety foot (90'-0") intervals. The spacing of the fixtures within the site range up to hundred eighty feet (180'-0") between light poles.

There are one hundred and one (101) Type 1 fixtures. (See Photo Inventory Pages 18 and 36).

- Modified Type 1 Light Pole- To supplement lighting in areas where more light is required and existing light fixtures are available, existing Type 1 perimeter lighting and campus site lighting poles are provided with an additional "shoe box" fixtures to each pole.
- Type 2 Light Pole - Eighteen foot (18'-0") high poles with flood light fixtures providing lighting at asphalt play areas enclosed by a chain link

fence. There are five (5) Type 2 light poles, one for each of the asphalt play areas (See Photo Inventory Pages 1-3).

- Modified Type 2 Light Pole - Existing asphalt based basketball and tennis courts are improperly designed, i.e., insufficient lighting was provided, and to remedy this issue, new 18' double head lighting fixtures are provided.
- Type 3 Light Pole – Twelve foot (12'-0") high pole with globe light fixture (typical DPR lighting pole) providing light at a walkway and installed in a planter. There is one (1) Type 3 light pole, located in an elevated planter by a walkway. (See Photo Inventory Pages 10).

All light poles are observed to be permanently affixed to a twenty-four inch (24") to thirty inch (30") diameter circular concrete sub-base, level with the grade and assumed to be a minimum of thirty inches (30") deep with the metal housing/base directly anchored onto the concrete base. This configuration has resulted in many of the light fixture bases to be in direct contact with the ground and potentially in contact with standing water (See Photo Inventory Pages 19, 29, 30, 31, and 33). This deleterious weather condition combined with the heat generated by direct sunlight has resulted in the significant deterioration of the metal housing/base including the development of major cracks and/or holes. Many metal housings/bases are rusted to various levels, at a minimum with pitting over the base in its entirety, to rust so extensive that complete separation of the metal base from the concrete foundation has occurred. (See Photo Inventory Pages 11, 14, 27, 37, and 38). Metal fasteners also display various degrees of deterioration.

Many metal housing/base access panels either do not close properly, are damaged, or missing entirely (See Photo Inventory Pages 20, 21, and 23-34). The deterioration of the metal housing/base not only compromises the structural integrity of the light pole, it also compromises the electrical system by continuous exposure to the weather and vandalism, with potential harm to the occupants, as well as presenting an unsightly appearance. It was

observed that the physical condition of fifty six percent (56%) of the existing lighting pole fixtures, is showing rusting in the post metal housing/base and damage in the concrete pad. Concrete was observed to be in conditions ranging from good to poor, where major cracks and spalling concrete compromised the structural integrity of the attachment of the light pole to the concrete foundation, as evidence by several toppled light poles at the site (see Photo Inventory Pages 12-17, and 35). The remaining light fixtures, poles, and housing were in fair to marginal condition.

The existing lighting is powered via direct buried conduit. The perimeter lighting connects to the electrical panel located in the Steam Plant Building located in the northern part of the campus. The exterior lighting between the buildings connects to electrical panels located in several buildings around the campus. No destructive testing was performed to establish the condition of the conduit.

Currently the foot-candles levels provided by the existing system are as shown in the existing site plan photometric lighting calculation. Reference Appendix F for Existing Site Lighting Photometric Calculations.

Two types of deficiencies are observed and identified for this study.

- There are general physical condition deficiencies scattered throughout the site and documented through photography.
- There are existing engineering design deficiencies that are identified by electrical engineering photometric analysis.

#### **D. GENERAL PHYSICAL DEFICIENCIES**

General deficiencies are identified to include: (Reference Appendix C for Existing Conditions Photographs as indicated in previous Section C).

1. Typical eighteen foot (18'-0") high pole light fixtures with rusted bases at the asphalt areas.

2. Broken electrical concrete manhole cover located at the northern part of the site.
3. Typical light fixture displaying severe rusting at the lighting pole metal housing/base, rusted anchors, and broken and/or spalling concrete foundation pads. Many housings have broken or missing covers.
4. A majority of the existing perimeter site lighting poles with single "shoe box" fixtures have been provided with additional flood light fixture attached directly opposite to the original fixture for supplemental lighting. These improvised flood light fixtures are provided with power through disconnect switches mounted directly onto the light pole. This is not the intended original use.
5. A number of fixtures have improperly buried "underground" power conduits resulting in a tripping hazard and an unsightly appearance.
6. Multiple fixtures have loose wiring protruding from the pole housing/base, resulting in an electrification hazard.
7. Building mounted exterior light fixtures at various locations in disrepair, causing "dark" spots.

#### **E. ENGINEERING DESIGN DEFICIENCIES**

Sixteen areas (16) of specific deficiencies are identified, (Reference Appendix F for Photometric Calculations SKE-1).

1. No light poles are installed at the northwest parking lot located outside of the fenced area. Lighting is provided from additional flood light fixtures attached to 30' poles in the adjacent inside-of-the-fence areas, this configuration results in an uneven distribution of light and dark spots.



2. No light poles are provided at the main gate exterior circle, resulting in areas in complete darkness in the drive way and with a significant reduction of visibility to clearly identify oncoming traffic at night.
3. No light poles are provided at circular driveway just inside the main gate, resulting in areas in complete darkness in the driveway.
4. No light poles are provided at circular driveway island just inside the main gate, resulting in areas in complete darkness in front of the building, at the walkway, and the grass area inside of the circle.
5. No light poles are provided to the south of Building 2, resulting in areas in complete darkness in the grass field just to the south of the building.
6. No light poles are provided to the west of Building 6, resulting in areas in complete darkness at the entrance of the building.
7. No light poles are provided to the north of Building 6, resulting in areas in complete darkness in the grass field just to the north of the building.
8. No light poles are provided at the southern end of the Asphalt Areas 2 and 3, resulting in areas in non-uniform distribution of lighting, and low lighting levels at the southern end of the asphalt areas.
9. No light poles are provided at the western end of the Asphalt Area 1, resulting in non-uniform distribution of lighting throughout the area, and low lighting level at the western end of the asphalt areas.
10. An inadequate number of light poles are provided in the middle of the grassy field between Building 7 and Building 10, resulting in areas in complete darkness at the center of the field and non-uniform distribution of lighting.
11. No light poles are provided for the "stepped" concrete area northwest of Building 10, resulting in non-uniform distribution of lighting, and low lighting levels at the central part of the concrete area.

12. A toppled light fixture is observed southeast of Building 11. . It's lain on the grass outside of the chain link fence around the campus perimeter resulting in inadequate lighting at this location as well an unsightly appearance. Maintenance personnel have indicated during site visits that this light pole was knocked down by a gust of wind.
13. A toppled light fixture is observed northeast of Building 11. It's lain on the grass outside of the chain link fence around the campus perimeter resulting in inadequate lighting at this location as well an unsightly appearance. Maintenance personnel have indicated during site visits that this light pole was knocked down by a gust of wind.
14. A toppled light fixture is observed northeast of Building 29. It's lain on the grass outside of the chain link fence around the campus perimeter resulting in inadequate lighting at this location as well an unsightly appearance. Maintenance personnel have indicated during site visits that this light pole was knocked down by a gust of wind.
15. An inadequate number of light poles are provided at football field grass area, resulting in non-uniform distribution of lighting throughout the area, and dark areas at the central part of field.
16. An existing eighteen foot (18'-0") light pole at Asphalt Area 6 is bent with a partially damaged metal housing/base compromising the structural integrity of the pole; affecting the photometric array;, and resulting in an unsightly appearance.





### **III. ANALYSIS AND DETERMINATION**

### III. ANALYSIS AND DETERMINATION

#### A. GENERAL

The purpose of this analysis and determination is to provide DGS with a photometric study to establish acceptable new lighting levels suited to the current use. Photometry is the science of the measurement of light, in terms of its *perceived* brightness to the human eye, measured as the total amount of light incident on a point in foot-candles. A foot-candle (ft-c) is a unit of illuminance or light intensity in the lighting industry, construction-related engineering, and in building codes to convey the illuminance cast on a surface by a one-candela source one foot away. The ft-c unit is alternatively defined as the amount of illumination the inside surface of a one-foot-radius sphere would be receiving if there were a uniform point source of one candela in the exact center of the sphere or as the illuminance on a one-square foot surface of which there is a uniformly distributed flux of one lumen.

#### B. ILLUMINATION LEVELS

In order to complete the photometric analysis the existing field is compartmentalized into sixty-nine (69) lighting zones. Each zone is defined by use, i.e. field, playing area, driveway, walkway, etc. Reference Appendix F for Photometric Calculations Drawing E-001.

The findings of the calculations performed reveal that the highest average illuminance level of 3.5 foot-candles are at the Grassy Field adjacent to Building 3E, with a maximum illuminance level of 18.1. foot-candles; the lowest average illuminance level of 0.2 foot-candles are at the Asphalt 8 Field between Buildings 3 and 6, with a minimum illuminance level of 0.0 foot-candles. The existing lighting levels analysis is based on the recommended values for exterior lighting levels per the Illuminating Engineering Society of North America (IESNA):

**TABLE 1: Recommendation for Exterior Lighting Levels per the Illuminating Engineering Society of North America (IESNA) - 9<sup>th</sup> Edition**

<b>No</b>	<b>Area Name Designation on Alphatec Plan</b>	<b>IESNA Alternate Designation (<i>reference in italics</i>)</b>	<b>Lighting Level (ft-c)</b>
1	Asphalt/Gravel Drive Way	Intermediate Local Road <i>Figure 22-8 (b)</i>	0.7
2	Concrete Walk Way	Walkway distant from Roadway and Type B Bikeways <i>Figure 22-10</i>	0.5
3	Grass Field	Large Open Areas <i>Figure 29-17</i>	0.5 - 2.0
4	Asphalt Basketball Field	Basketball, Outdoor Class IV <i>Figure 20-2</i>	20
5	Concrete Bleachers	Entertainment <i>Outdoor-3</i>	5
6	Football Grass Field	Football, Outdoor Class IV <i>Figure 20-2</i>	20
7	Asphalt Parking Lot	Parking Lots <i>Figure 20-21</i>	0.2 - 0.5
8	Tennis Court	Tennis, Outdoor Class IV <i>Figure 20-2</i>	50

Based on the values presented in **Table 1**, and simulating the existing site lighting availability, the following areas at the site do not meet the recommended lighting levels and standards per IESNA. Reference Appendix F for Photometric Calculations.

- All asphalt areas intended as basketball courts
- The out-of-the-fence drive way and roundabout.
- The entry drive-way
- The grass field to the north and south of Building 10

- The grass field to the northeast of Building 6
- The grass field around Building 11
- The grass field around Building 29
- The grass field to the south of Building 3
- The grass field to the north of Building 6
- The grass field between Buildings 2 & 5
- The grass field between Buildings 2 & 8
- The grass field between Buildings 6 & 7
- The grass field between Buildings 6 & 9
- The grass field between Buildings 7 & 10
- The grass field between Buildings 3 & 4
- The grass field between Buildings 3 & 5
- The grass field inside the roundabout north of Building 2
- The eastern gravel drive.
- Building 29 walkway
- The walkway inside of the roundabout north of Building 2
- The parking lot walkway beyond the perimeter fence.

Based on the findings of the existing site lighting conditions, three options have been prepared for DGS' consideration for corrective action relative to the insufficient lighting levels for the current site occupancy. Each option is presented with proposed action items to be performed, an associated cost estimate, and advantages and disadvantages for each option.

Additionally, twenty-five (25) lighting control zones have been established for the site lighting analysis based on functionality and ease of control for

operations and maintenance personnel. Reference Appendix I for lighting control zones Sketch SKE-2. (It should be noted that these control zones are required to be verified by the User prior to performance of the actual design for construction.)

The following proposed improvements/actions are applicable to all three (3) options presented herein:

1. New electrical space in the existing electrical room of Building 1 is required.
2. New electrical equipment shall be provided somewhere in Building 1 Electrical Room. It was observed that the electrical room has a telephone pull box that is not utilized and we were informed by the building user that this pull box is not required; and it is proposed that the box is removed to create room for new electrical and lighting control panels. (See Photo Inventory Page 6).
3. New lighting and electrical infrastructure shall be provided per program requirements for each area, to include wiring, conduits, and termination, including new underground buried conduit to power the repaired light poles and supplemental light poles for Option 1; and to power the new light poles in Options 2 and 3.
4. A new lighting control system shall be provided for all options.
5. A new astronomic time clock and photo cell shall be provided to achieve time of the day control for all options

**C. OPTION 1:**

In addition to the five common improvements, Option 1 is summarized by the following:

- Provide new metal housing/base for existing light poles to remain.
- Replace existing concrete pads with new, including elevating the pad minimum 6" above grade.
- Salvage and reinstall light poles.
- Salvage and reinstall light fixtures (shoe boxes).
- Provide new lamping (metal halide) for existing light fixtures.
- New lighting and electrical infrastructure per program requirements for each "dark" area, to include wiring, conduits, and termination to supplement lighting from existing fixtures, to achieve the recommended lighting levels by Illuminating Engineering Society of North America (IESNA) listed in the table above. Provide new light units, including the shoe box, lamping, post, post base and concrete pad for areas with missing/damaged fixtures or insufficient lighting.

Currently there are one hundred four (104) light poles at the site. Option 1 is presented as follows:

- Reuse and refurbishment of ninety-nine (99) Type 1 light poles, plus twenty-one (21) new Type 1/Modified Type 1 light poles provided to supplement existing site lighting, totaling hundred twenty (120) refurbished and new Type 1/Modified Type 1 light poles.
- Removal of five (5) Type 2 light poles and replace with eight (8) new Type 2 light poles, plus twenty-nine (29) new modified Type 2 light poles provided to supplement existing site lighting totaling thirty seven (37) new Type 2/Modified Type 2 light poles.
- Removal but no replacement of one (1) Type 3 light pole.

A total of fifty-eight (58) new fixtures will be added to supplement the existing lighting for a grand total of one hundred fifty-seven (157) light poles at the site to provide adequate lighting per IESNA recommended lighting levels. It should be noted that some new light poles shall be equipped with dual lighting fixtures, placed at various dual angle configurations to meet recommended illumination levels.

The current lighting pole layout shall remain, however each existing light pole shall be removed, salvaged for reuse, and reinstalled upon completion of the installation of new wiring via underground buried conduit, new concrete foundation, and new metal housing/base for each light pole location. All "dark" spots discovered through the photometric analysis shall be corrected and remedied by the installation of new light poles to supplement the existing at the "dark" areas. New underground wiring and conduit utilizing the shortest route to the new light fixture location shall be provided. Reference Appendix F for Photometric Calculations Drawing E001.

A majority of the existing perimeter site lighting poles with single "shoe box" fixtures have been provided with additional flood light fixture attached directly opposite to the original fixture for supplemental lighting. The existing "shoe box" shall be salvaged for reuse. The improvised flood light fixtures are provided with power through disconnect switches mounted directly onto the light pole. These extra lighting heads are not required for the current application of the building and shall be removed, as will the disconnect switches mounted onto the light poles.

The existing electrical distribution system shall be replaced and new circuits will originate in the new panel to be located at Building 1. New wiring and conduits shall be extended to the new electrical panel and new lighting control panel located in the electrical room in Building 1.



1. Option 1 Site Lighting Levels:

The current site lighting levels are required to be adjusted to provide compliant lighting levels for the current use for the campus. Reference Appendix F Drawing E101 for new site lighting photometric calculations using existing poles with supplemental lighting.

2. Option 1 Lighting Controls:

New lighting control system shall be provided; a new electrical panel shall be provided in Building 1; power wiring and conduit shall be provided from Building 4 utilizing available spare breakers in the existing switch board.

The new panel board in Building 1 shall be installed in the electrical room, and new lighting relay control panel shall be provided to achieve central lighting control from Building 1. All new circuits shall be extended to the new electrical panel location via underground conduit and wiring. When underground conduit path intersects with existing concrete walkways, special means and methods of construction shall be undertaken to extend the conduit and wiring below the concrete way to avoid demolition of the existing concrete walkway. Existing circuits wiring shall be demolished and removed, and existing underground conduits shall be demolished and removed where possible; if not feasible to remove, abandoned in place.

A new astronomic time clock and photo cell shall be provided to achieve time of the day control.

3. Option 1 Lighting Control Zones:

The following (25) lighting zones shall be provided to facilitate easy control of the site lighting:

- a. (4) lighting control zones for the perimeter lighting
- b. (6) lighting zones for the large open grass fields lighting
- c. (2) lighting zones for the exterior parking lots lighting



- d. (10) lighting zones for the asphalt area lighting
- e. (3) lighting zones for the areas between the buildings lighting

4. Advantages:

- a. The most cost effective solution of the three options, only post base, the concrete pad, and the wiring inside the pole are to be replaced; the post, and the light fixture, are to be salvaged, refurbished, and reinstalled.
- b. Shorter construction time

5. Disadvantages:

- a. Option 1 is not considered the best engineering solution. The light fixtures and posts are old, and the efficiency of the existing light fixture is anticipated to have decreased significantly over the years, as the reflectance of the reflector has dropped due to aging and accumulation of dust.
- b. Option 1 might be considered a "short term" and ineffective solution requiring additional cost investment in the near future, including replacement of existing fixtures. Such a result would require re-mobilization of a lighting contractor, and therefore duplication of mobilization costs for replacement of shoe-box fixtures, as necessary.

**D. OPTION 2:**

In addition to the five common improvements, Option 2 is summarized by the following:

- Provide new lighting layout with new light poles entirely, including new poles, fixtures, metal halide lamps, metal housing/base.
- Provide new concrete pads with new, including elevating the pad minimum 6" above grade.

- New lighting and electrical infrastructure per program requirements for all areas, to include wiring, conduits, and termination to achieve the recommended lighting levels by Illuminating Engineering Society of North America (IESNA) listed in the table above.

Currently there are one hundred four (104) light poles at the site. Option 2 is presented as follows:

- Replacement of ninety-nine (99) Type 1/Modified Type 1 light poles with metal halide fixtures and lamps, plus twenty-one (21) new Type 1/Modified Type 1 light poles provided to supplement existing site lighting, totaling hundred twenty (120) new Type 1 / modified Type 1 light poles.
- Removal of five (5) Type 2 light poles and replace with eight (8) new Type 2/Modified Type 2 light poles, plus twenty-nine (29) new Type 2/Modified Type 2 light poles provided to supplement existing site lighting totaling thirty seven (37) new Type 2/Modified Type 1 light poles.
- Removal but no replacement of one (1) Type 3 light pole.

A total of one hundred fifty-seven (157) new fixtures with metal halide fixture and lamps will be provided at the site to provide adequate lighting per IESNA recommended lighting levels. It should be noted that some new light poles shall be equipped with dual lighting fixtures, placed at various dual angle configurations to meet recommended illumination levels.

The site lighting shall be revised per the photometric calculation as shown on in Appendix F, and all light poles shall be replaced with new. New wiring, light fixture, metal halide (MH) lamping, post, post base, and concrete bases shall be provided. New electrical distribution system shall be provided, and all new circuits will originate in the new panel to be located at Building 1. All existing lighting circuits shall be removed and wiring brought back to their sources. New wiring and conduits shall be extended to the new electrical panel location, new lighting control panel shall be provided in the electrical

room in Building 1. All "dark" spots discovered shall be remedied by the installation of new lighting poles to supplement the available lighting at the "dark" areas, new underground wiring and conduit shall be provided to the new light fixtures location: Reference Appendix F for Photometric Calculations Drawing E101.

1. Option 2 Site Lighting Levels:

The site lighting levels are required to be adjusted to provide compliant lighting levels for the current use for the campus. Reference Appendix F for new site lighting photometric calculations using new poles with supplemental lighting.

2. Option 2 Site Lighting Controls:

New lighting control system shall be provided, new electrical panel shall be provided in Building 1. Power wiring and conduit shall be provided from Building 4 utilizing available spare breakers in the existing switch board. In Building 1, the new panel board shall be installed in the electrical room, and new lighting relay control panel shall be provided to achieve central lighting control from Building 1, all circuits shall be extended to Building 1 new panel location via underground conduit and wiring, where intersecting with concrete walkways, special arrangement shall be taken to extend the conduit and wiring below the concrete way without the need to demolish the concrete walkway. Existing circuits wiring shall be removed, and existing underground conduits shall be abandoned in place and removed where possible. New astronomic time clock and photo cell shall be provided to achieve time of the day control.

3. Option 2 Site Lighting Zones:

The following (25) lighting zones shall be provided to facilitate easy control of the site lighting:

- a. (4) lighting zones for the perimeter lighting

- b. (6) lighting zones for the large open grass fields lighting
  - c. (2) lighting zones for the exterior parking lots lighting
  - d. (10) lighting zones for the asphalt area lighting
  - e. (3) lighting zones for the areas between the buildings lighting
4. Advantages:
- a. Long term solution with effective cost benefit over the next thirty years
  - b. More cost efficient than Option 3
5. Disadvantages:
- a. Costlier solution than Option 1
  - b. Longer construction period than Option 1

**E. OPTION 3:**

In addition to the five common improvements, Option 3 is summarized by the following:

- Provide new lighting layout with new light poles entirely, including new poles, fixtures, LED lamps, metal housing/base.
- Provide new concrete pads with new, including elevating the pad minimum 6" above grade.
- New lighting and electrical infrastructure per program requirements for all areas, to include wiring, conduits, and termination to achieve the recommended lighting levels by Illuminating Engineering Society of North America (IESNA) listed in the table

Currently there are one hundred four (104) light poles at the site. Option 3 is presented as follows:

- Replacement of ninety-nine (99) Type 1/Modified Type 1 light poles with LED fixtures and lamps, plus twenty-one (21) new Type 1/Modified Type 1

light poles provided to supplement existing site lighting, totaling hundred twenty (120) new Type 1/Modified Type 1 light poles.

- Removal of five (5) Type 2/Modified Type 2 light poles and replace with eight (8) new Type 2/Modified Type 2 light poles, plus twenty-nine (29) new Type 2 / modified Type 2 light poles provided to supplement existing site lighting totaling thirty seven (37) new Type 2/Modified Type 2 light poles.
- Removal but no replacement of one (1) Type 3 light pole.

A total of one hundred fifty-seven (157) new poles with LED fixtures and lamps will be provided at the site to provide adequate lighting per IESNA recommended lighting levels. It should be noted that some new light poles shall be equipped with dual lighting fixtures, placed at various dual angle configurations to meet recommended illumination levels.

The current lighting pole layout shall remain, however the entire light pole shall be replaced with new. New wiring, light fixture, LED lamping, post, post base, and concrete bases shall be provided. New electrical distribution system shall be provided, and all new circuits will originate in the new panel to be located at Building 1. All existing lighting circuits shall be removed and wiring brought back to their sources. New wiring and conduits shall be extended to the new electrical panel location, new lighting control panel shall be provided in the electrical room in Building 1. All "dark" spots discovered shall be remedied by the installation of new light poles to supplement the available lighting at the "dark" areas, new underground wiring and conduit shall be provided to the new light fixtures location:



1. Option 3 Site Lighting Levels:

The site lighting levels are required to be adjusted to provide compliant lighting levels for the current use for the campus. Reference Appendix F for new site lighting photometric calculations using new poles with supplemental lighting.

2. Option 3 Site Lighting Controls:

New lighting control system shall be provided, new electrical panel shall be provided in Building 1. Power wiring and conduit shall be provided from Building 4 utilizing available spare breakers in the existing switch board. In Building 1, the new panel board shall be installed in the electrical room, and new lighting relay control panel shall be provided to achieve central lighting control from Building 1, all circuits shall be extended to Building 1 new panel location via underground conduit and wiring, where intersecting with concrete walkways, special arrangement shall be taken to extend the conduit and wiring below the concrete way without the need to demolish the concrete walkway. Existing circuits wiring shall be removed, and existing underground conduits shall be abandoned in place and removed where possible. New astronomic time clock and photo cell shall be provided to achieve time of the day control.

3. Option 3 Site Lighting Zones:

The following (25) lighting zones shall be provided to facilitate easy control of the site lighting:

- a. (4) lighting zones for the perimeter lighting
- b. (6) lighting zones for the large open grass fields lighting
- c. (2) lighting zones for the exterior parking lots lighting
- d. (10) lighting zones for the asphalt area lighting
- e. (3) lighting zones for the areas between the buildings lighting

4. Advantages:

- a. 40% more energy efficient than Options 1 or 2.
- b. Less maintenance required due to long life span on LED fixtures. LED fixtures typical life span is 30,000 to 50,000 hours compared to 6,000 to 15,000 hours life span of metal halide lamps.
- c. Long term solution with most effective cost benefit over the next thirty years.
- d. More attractive looking fixtures

5. Disadvantages:

- a. Most expensive first cost solution among the three options.
- b. Longer construction period than Option 1.

#### **IV. RECOMMENDATIONS**



#### **IV. RECOMMENDATIONS**

The major difference between Options 1 and 2 is the reuse of the light poles and fixture for existing site lighting. This reuse may present an initial first cost savings however it is recommended that Option 2 is implemented for the following reasons:

1. The existing fixtures are old, and have long passed their useful life with over 50% of the fixtures are showing severe signs of rust. All options present the replacement of the metal housing/base which will require the dismantling of the existing pole. Removal and salvage of existing light poles and fixtures for refurbishment may reveal further deterioration and damage to the light pole as a whole, making a case for replacement rather than refurbishment, and affecting the cost impact for implementing Option 1 (keeping fixtures) versus Option 2 (replacement).
2. Demolition and/or removal of existing light poles and fixtures for replacement may reveal further deterioration and damage to the "shoe box" fixtures, making a case for replacement rather than refurbishment for a greater number of fixtures than originally anticipated, thereby increasing the cost impact of implementing Option 1 (keeping fixtures) and nearing the cost of Option 2 due to unforeseen conditions. This would result in Option 2 as the best value option.
3. As the existing fixtures are about sixty (60) years old, it is reasonable to assume that the efficiency of the existing fixtures is deteriorated and the lighting levels output from these fixtures significantly reduced. The result is that the amount of light output from these fixtures is much lower than what can be achieved from comparable new fixtures. Additionally, whether or not standard lamps are available for replacement when required or if special order lamps are required every time a lamp need to be replaced; and other maintenance considerations due to the age of the site lighting, which may

further increase the cost of keeping the existing fixtures, although not specifically included in this analysis.

4. Additional power equipment is mounted to many of the existing fixtures posts. All auxiliary equipment is recommended to be removed since it is no longer required based on the provision of the new supplemental lighting. Patching the holes and openings in the existing poles created by mounting the equipment onto the light poles presents a risk of water damage internal to the poles and wiring inside the poles, if the quality of the patch is not performed in a manner to ensure weather tightness. Patching of the existing light poles presents an additional cost of work that takes away from investing in new light poles.

The major difference between Options 2 and 3 is the fixture and lamp type, i.e. metal halide versus LED lamps. Although the LED lamps present a greater energy efficiency and lower maintenance costs, Option 3 is not recommended based on first cost and initial investment in consideration of funding availability for this project.

## **V. CONSTRUCTION PHASING CONSIDERATIONS**



**Attachment N**  
**Form of Contract**

## **CONSTRUCTION AGREEMENT**

### **DYRS Site Lighting Repair and Renovations DCAM-16-CS-0117**

**THIS AGREEMENT** ("Agreement") is made by and between the **DISTRICT OF COLUMBIA GOVERNMENT**, acting by and through its **DEPARTMENT OF GENERAL SERVICES** (the "Department" or "DGS") and \_\_\_\_\_ (the "Contractor"), duly organized under the laws of the **DISTRICT OF COLUMBIA**, and with a place of business at \_\_\_\_\_ (the "Contractor").

#### **WITNESSETH:**

**WHEREAS**, the Department issued a request for proposals dated June 24, 2016 (the "RFP") to engage a design-builder to provide site lighting repair and renovations to the Department of Your Rehabilitation Services (DYRS) Capital Guardian Youth Challenge Academy (CGYCA), located at 3201 Oak Hill Drive, Laurel, MD 20724 (the "Project");

**WHEREAS**, the Design-Builder submitted a proposal entitled Design-Build Services DYRS Site Lighting Repair and Renovations dated \_\_\_\_\_ to provide design-build services for the Project;

**WHEREAS**, the Department wishes to retain a Design Builder to provide the architectural, engineering, construction and related services necessary to complete the Project, subject to the terms and conditions set forth in this Agreement

**WHEREAS**, the Department requires substantial completion of the project within one hundred and fifty (150) calendar days. As such, the Contractor shall dedicate such personnel and other resources as necessary to ensure that the Project is completed on-time and in a diligent, skilled, and professional manner.

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

#### **ARTICLE 1 GENERAL PROVISIONS**

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

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

**Section 1.2 Project Description.** The Project consists of Design, Preconstruction and Construction Services necessary to provide site lighting repair and renovations to the Department of Your Rehabilitation Services (DYRS) Capital Guardian Youth Challenge Academy (CGYCA). At a minimum the Design- Builder shall provide the following:

**Section 1.2.1** The Design/Builder shall update the analysis and determination of the PER to consider electrification of the site lighting from the new source in Building 2 (Attachment L)

**Section 1.2.2** The Design/Builder shall revise the photometric analysis to reflect LED type fixtures rather than MH type fixtures

**Section 1.2.3** The Design/Builder shall create a phasing plan to include a base bid plus options. Prioritize work in phases so as to allow for an orderly expansion if current funding does not allow all options to be awarded.

**Section 1.2.4** The selected Design/Builder shall revise and select appropriate sections of the PER to be included with the RFP (due to the deviation from the PER recommendations to reuse the existing MH hats and poles we should not just include a copy of the PER, in addition to the change in power source).

**Section 1.2.5** The selected Design/Builder shall develop performance specifications for DGS to safeguard the quality of consultant design and construction

**Section 1.2.6** The Design/Builder shall install safety barricades and enclosures as necessary to ensure a safe workplace or as may be required by OSHA or other applicable law.

**Section 1.2.7** The Design/Builder shall provide such safety barricades, enclosures and overhead protection as may reasonably be required by DGS and as may be necessary to safely implement the Work and to remove such at the end of the Work and shall leave the site in broom clean condition.

**Section 1.2.8** The Design-/Builder will be required to verify that the plans and drawings are accurate and coordinate the Project work around the existing conditions. Design-/Builder should verify existing conditions as noted on the drawings.

**Section 1.2.9** All permit and design fees necessary to complete should be included in the Offeror's lump sum bid.

**Section 1.2.10** The Design/Builder will be required to coordinate with the Department's project manager.

**Section 1.3 Program Manager.** The Department has engaged a Program Manager (or "PM") to provide certain program management functions. Such Program Manager shall, at all times, be acting solely for the benefit of the Department, not the Design-Builder. **The Design-Builder hereby acknowledges and agrees that only a duly authorized contracting officer shall**

**have the authority to issue Change Orders or Change Directives on the Department's behalf. As of the date that this Agreement is signed, the Department's duly authorizing contracting officers are Christopher Weaver, Yinka T. Alao and James Marshall.**

**Section 1.4 General Description of Design-Builder's Duties.** The Design-Builder shall perform the services described in Articles 2 through 4. The Design-Builder shall supply and furnish at the location where the Work is to be performed all design service, labor, materials, equipment, tools, services, and supervision, and shall bear all items of expense, necessary to complete and satisfactorily perform this Contract, except such items that the Department, in this Contract, specifically agrees to supply or furnish to or for the use of Design-Builder. Any labor, materials, equipment, tools, services or supervision not specifically described in this Contract, but which may be fairly implied as required thereby or necessary to properly complete the Contract Work, shall be deemed within the scope of the Contract Work and shall be provided by Design-Builder at Design-Builder's sole expense. The services to be provided under Article 2 constitute the design and preconstruction phase services to be performed by the Design-Builder (the "Design & Preconstruction Phase Services"). Article 3 provides for the process by which the Design-Builder and the Department shall agree upon a Guaranteed Maximum Price ("Lump Sum Price") for the Project. Article 4 constitutes the construction phase during which the Design-Builder shall carry out the bulk of the construction and manage the completion of the design (the "Construction Phase Services").

#### **Section 1.5 Warranties and Representations**

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

**Section 1.5.2** If any disclosure, representation, warranty or certification the Design-Builder has made or makes pursuant to the RFP or the Contract, including, without limitation, representations concerning the Design-Builder's construction or design experience and qualifications, claims or litigation history or financial condition, is materially inaccurate, that shall constitute a material breach of the Contract, entitling the Department to all available remedies.

**Section 1.5.3** The terms and conditions of Section 1.6 shall apply during both the Preconstruction and Construction Phases.

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



**ARTICLE 2**  
**DESIGN-BUILDER'S DESIGN & PRECONSTRUCTION  
SERVICES**

**Section 2.1 Preconstruction Services.** During the Preconstruction Phase, the Design-Builder shall provide such preconstruction services as are necessary to properly advance the Project. Without limiting the generality of the foregoing, during the Preconstruction Phase, the Design-Builder shall: (i) work with the Architect to advance the design for the Project in consultation with the Department and its Program Manager; (ii) obtain bids from trade subcontractors to perform the work described in the Design Development Documents and provide bid tabulations to the Department; (iii) engage in any value engineering and scoping exercises necessary to return the cost of the work to the Project Budget; (iv) engage in preconstruction activities, including identifying any long-lead items; (v) develop a Lump Sum Price proposal for the Project; and (vi) enter into a Lump Sum Price for the Project. Throughout the Preconstruction Phase, the Design-Builder shall schedule and attend regular meetings with the Department, the Program Manager and the Architect/Engineer.

**Section 2.2 Preliminary Schedule.** The Design-Builder shall prepare a preliminary schedule for the Project, including the preconstruction phase activities and the construction phase activities. This schedule shall be prepared in a CPM method and be developed in a sufficient level of detail so as to permit the affected parties (i.e. the Department, the architect/engineer and the Design-Builder) to properly plan the Project, and shall show: (w) key design milestones and bid packages; (x) release dates for long lead items; (y) release dates for key subcontractors; and (z) Substantial and final completion dates. The preliminary schedule must also be submitted in Primavera 6 native format or the latest version of the software.

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

**Section 2.3 Design Services; Design Reviews.** Within five (5) days after award, the Design-Builder shall meet with representatives of the Department as well as other stakeholders to better develop the Department's requirements for the Project. During the Design and Preconstruction Phase, the Design-Builder will be required to develop design documents for the Project and to progress those design documents as contemplated in this Section 2.3. The Design-Builder shall ensure that these documents are progressed in a manner consistent with the Department's budget for the Project, *i.e.*, designed to budget. The Project must be designed so as to achieve a minimum of LEED for Schools – Gold, and the requirements of the International Green

Construction Code.

**Section 2.3.1** The Design-Builder shall meet with the representatives of the Department and DYRS throughout the Preconstruction Phase as the design progresses in order that these and other stakeholders can have input in and approve the design direction at appropriate times. The Design-Builder shall ensure that the design is developed in a manner consistent with the Department's budget for the Project, *i.e.*, designed-to-budget , as well as the programmatic requirements set forth in the Educational Specifications attached hereto as **Exhibit B** and the Department's other requirements for the Project. All design documents shall be prepared by the Design-Builder's duly licensed architects and engineers (hereinafter, "Architect/Engineer" ). The Lump Sum Price Basis Documents and all interim design submissions shall be subject to review and approval by the Department, and the Design-Builder shall be required to revise these documents to address concerns raised by the Department and/or other project stakeholders and such revisions shall not entitle the Design-Builder to an increase in the Design Fee.

**Section 2.3.2** At a minimum, during this Phase, the Design-Builder shall prepare and submit the following design deliverables in accordance with the schedule set forth in Section A.8 of the RFP:

- a. Architectural Concept Development, including:
  - i. Development of master site plan
  - ii. Building plan
  - iii. Survey of existing conditions
  - iv. Flow Test Results
  - v. Results of Hazardous Materials Survey
  - vi. EISF Submission
  - vii. Summary of Required Agency Review, Timetables, including but not limited to: Department of Youth Rehabilitation Services.
- b. Design Development Documents
  - viii. 100% design development documents
  - ix. Meetings and presentations to CFA and other regulatory agencies as required.
- c. Design document necessary to implement value engineering strategies.
- d. Lump Sum Price Basis Documents

All such deliverables shall be subject to review and approval by DYRS and Department and the Design Fee should assume that revisions may be required to these documents to address concerns raised by DYRS, the Department and/or other project stakeholders. The Concept Design documents for the Project no later than February 5, 2016, and design development documents for Phase 1 of the Project no later than March 4, 2017.

**Section 2.3.3** The Parties acknowledge that the Project schedule will require that the Lump Sum Price be based on a set of design documents that is less than a complete design development set (such documents, the "Lump Sum Price Basis Document").

Accordingly, within thirty (30) days of the Design-Builder's appointment, the Parties shall agree upon a narrative description of the documents upon which the Lump Sum Price will be based as well as the bidding procedures that will be used to develop the Lump Sum Price.

**Section 2.3.4** During the Design and Preconstruction Phase, the builder component of the Design-Builder shall work in an active and collaborative manner with the design component to advance the design in a manner consistent with the schedule, budget, programmatic and other requirements with the goal of developing an acceptable Guaranteed Maximum Price proposal. In furtherance of that effort, the Design-Builder shall prepare and submit the following with respect to the concept design, and the 100% design development documents (i.e. two sets of the below listed deliverables shall be submitted):

1. a cost estimate broken down by CSI division based on the design; and
2. a memorandum that addresses key constructability concerns based on the design.

Such memorandum shall be submitted to the Department concurrently with the concept design package. The Design-Builder shall update this memorandum every two weeks thereafter and until such time as a Lump Sum Price is agreed upon in order to identify cost and schedule exposures. In addition, the Design-Builder shall prepare and submit a memorandum that identifies any long-lead items that could adversely affect the project schedule. Such memorandum shall be submitted no later than two weeks from the issuance of the concept design package.

## **Section 2.4 Trade Bids.**

**Section 2.4.1 Subcontractors and Suppliers; Bidding Procedures.** During the Preconstruction Phase, the Design-Builder shall seek to develop subcontractor interest in the Project. The Design-Builder shall provide to the Department a written submission on the proposed bidding procedures for the Department's review and approval. Such procedures shall include: (i) a list of proposed trades packages; (ii) a list of trade subcontractors that will be invited to bid on each such package; and (iii) a narrative description of the process. At least three (3) potential subcontractors shall be identified for each trade package. Such bid procedures shall be submitted no later than \_\_\_\_\_. This deliverable must be submitted by the date provided to the Contracting Officer as well.

**Section 2.4.2 Bidding.** Following the Department's approval of the Lump Sum Price Basis Documents, the Design-Builder shall solicit bids from trade subcontractors and suppliers in accordance with the approved bidding procedures. Unless agreed to in the approved bidding procedures, the Design-Builder shall solicit a minimum of two (2) bids for each trade package unless such package has an expected value of less than One Hundred Thousand Dollars (\$100,000); provided, however, that the Design-Builder shall use its best efforts to obtain three

(3) bids for each trade package with an expected One Hundred Thousand Dollars (\$100,000) or more. Trade packages shall not be parceled, split or divided to avoid the \$100,000 threshold. In addition to the information normally required in such bids, the Design-Builder shall also require subcontractors to provide an estimate of the percentage of labor hours performed in completing the subcontracted work which will be performed by District residents.

**Section 2.4.3 Bid Tab.** As part of the negotiations leading up to the Lump Sum Price, the Design- Builder shall provide to the Department tabulations of the trade bids solicited and copies of all trade bids. The bid tabulation shall include scope assessments and identify required leveling of the trade submitted. Such bid tabulation shall include LSDBE utilization information in addition to price and other information. Such bid tabulations as well as copies of the bids shall be submitted to the Department's Program Manager. The Design-Builder represents and warrants that the bid tabs so submitted shall fairly represent the results of the subcontractor bidding process and that the Design-Builder shall not misrepresent any such data to the Department or its Program Manager.

**Section 2.4.4 [Intentionally Deleted].**

**Section 2.5 Value Engineering.** Based on the trade bids received, the Design-Builder shall prepared a written report of suggested value engineering strategies necessary to reconcile the costs of constructing the Project budget. The Design-Builder shall meet with the Department's representatives to discuss any value engineering and changes in scope necessary to ensure that the Department's schedule and programmatic requirements are met and that the budget is not exceeded. The Design-Builder shall cause the Architect/Engineer to implement and price any approved value engineering strategies.

**Section 2.6 Preconstruction Phase Deliverables.** The following deliverables are required during the Preconstruction Phase. In the event that the Design-Builder fails to provide any deliverable listed below, the Design-Builder shall pay to the Department Seven Thousand Five Hundred Dollars (\$7,500) as liquidated damages for each such deliverable that is not timely submitted.

- a. Preliminary Project Schedule (see Section 2.2)
- b. Architectural Concept Design Documents (see Section 2.3.2)
- c. Design Development Documents (see Section 2.3.2)
- d. Design Documents to effectuate value engineering (see Section 2.3.2)
- e. Lump Sum Price Basis Documents (see Section 2.3.2)
- f. Concept Cost Estimate (see Section 2.3.4)
- g. Constructability Review Memo based on Concept Design (see Section 2.3.4)
- h. Long Lead Item Memo (see Section 2.3.4)
- I. Updated Constructability Review Memo every other week (see Section 2.3.4)
- J. List of subcontractors from which the Design-Builder intends to solicit bids and bid procedures (see Section 2.4.1)
- k. Trade bid tabulations, including all subcontractor proposals, scope assessments and identifying required leveling (see Section 2.4.3)
- l. Report outlining value engineering strategies (see Section 2.5)
- M. Lump Sum Price proposal (see Article 3)

For the convenience of the Parties, a list of all required deliverables, preconstruction deliverables and otherwise, is attached hereto as **Exhibit J**.

**ARTICLE 3**  
**FORMATION OF LUMP SUM**  
**PRICE PROPOSAL**

**Section 3.1 General.** During the Preconstruction Phase, the Design-Builder shall cause the Architect/Engineer to prepare the Lump Sum Price Basis Documents. Based upon the Lump Sum Price Basis Documents, the Design-Builder shall propose a Guaranteed Maximum Price (referred to as the "Lump Sum Price Proposal") which shall be submitted in accordance with this Article. The Design-Builder acknowledges and understands that the Lump Sum Price will be based on documents that are less complete than a full set of design development documents together with certain performance criteria and other gap-filling information and standards. Although complete construction documents will not be available and many details will not be shown on Lump Sum Price Basis Documents or will otherwise need to be adjusted, the Guaranteed Maximum Price proposed in the Design-Builder's Lump Sum Price Proposal shall be intended to represent the Design-Builder's offer to Fully Complete the Project. As part of the Lump Sum Price Amendment, the Design-Builder shall certify that the Lump Sum Price established thereby (i) contains sufficient amounts to perform all Work necessary to Fully Complete the Project; and (ii) contains sufficient amounts to provide and construct any items or facilities that are not contained in the Lump Sum Price Basis Documents but which are necessary for a fully functioning facility that meets the programmatic requirements established for the Project. The Design-Builder will further covenant and agree in the Lump Sum Price Amendment that it will perform all of the construction work necessary to Fully Complete the Project, including, without limitation, aspects of the Work that are not shown on the Lump Sum Price Basis Documents but which are a logical development of the design intent reflected in the Lump Sum Price Basis Documents, for an amount not to exceed the Guaranteed Maximum Price.

**Section 3.2 Review of Lump Sum Price Basis Documents.** The Department has selected the Design-Builder because of its special expertise in constructing similar projects. Before submitting its Guaranteed Maximum Price, the Design-Builder shall review the Lump Sum Price Basis Documents for accuracy, constructability and completeness and shall bring such deficiencies to the attention of the Department and shall cause its Architect/Engineer to address any such deficiencies. To the extent that any such deficiencies in the Lump Sum Price Basis Documents could have been identified by such review by a competent Design-Builder, such deficiencies shall not be the basis for a change in the Lump Sum Price or delaying the Project Schedule.

**Section 3.3 Contingency.** The Cost of the Work shall include a Contingency, a sum established by the Department and the Design-Builder to cover, among other things costs necessary to address scope expansion that is a logical development of the design, issues arising under Section 3.2 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order, such as costs that were not reasonably foreseeable as of the effective date of this Agreement, including such items as emergencies, unforeseeable changes in market conditions for materials or labor, or subsurface, soils or site conditions that were neither known nor reasonably discoverable as of the effective date of the Contract. During the Construction Phase, the Design-Builder shall keep the Program Manager informed as to the status of the Contingency and shall, at a minimum, (i) advise the Program Manager or any

significant draws upon the Contingency in a timely manner; and (ii) provide the Program Manager with running status of the Contingency balance at least once every two (2) weeks.

**Section 3.4 Basis of Lump Sum Price.** The Design-Builder shall include with the Lump Sum Price Proposal a written statement of its basis, which shall include:

- .1 A list of the Drawings and Specifications, including all addenda thereto, which were used in preparation of the Lump Sum Price Proposal.
- .2 A list of allowances and a statement of their basis; provided, however, that only such allowances as are agreed to by the Department shall be included.
- .3 A list of the clarifications and assumptions made by the Design-Builder in the preparation of the Lump Sum Price Proposal to supplement the information contained in the Drawings and Specifications. These clarifications will include specific reference to any exclusions from the building components, systems, and furniture, fixtures & equipment ("FF&E") required by the Project Program. Any such clarification or assumption that materially alters the functionality or aesthetics of the Work reflected in the Lump Sum Price Basis Documents shall be brought to the attention of the Program Manager and the Department prior to submission of the proposal in sufficient time for any discrepancies to be reconciled.
- .4 The proposed Guaranteed Maximum Price, including a statement of the detailed cost estimate organized by trade categories, allowances, Contingency, and other items and the fee that comprise the Guaranteed Maximum Price.
- .5 An agreed upon design schedule that the Design-Builder has negotiated with its Architect/Engineer.
- .6 A proposed Construction Phase Schedule which shall include, but not be limited to, the Substantial and Final Completion Dates.
- .7 An LSDBE Utilization Plan setting for the estimated dollar volume of the work that will be performed by small, local and disadvantaged business enterprises, as certified by the Department of Small and Local Business Development, upon which the Lump Sum Price is based.

**Section 3.5 Department Review of Lump Sum Price Proposal.** The Design-Builder shall meet with the Department to review the Lump Sum Price Proposal and the written statement of its basis. In the event that the Department discovers any inconsistencies or inaccuracies in the information presented, the Department shall promptly notify the Design-Builder, who shall make appropriate adjustments to the Lump Sum Price Proposal, its basis or both.

**Section 3.6 Department Acceptance of Lump Sum Price Proposal.** The Department and the Design-Builder shall meet to negotiate over the terms of the Lump Sum Price Proposal. Unless the Department accepts the Lump Sum Price Proposal in writing on or before the date specified in the proposal. For such acceptance and so notifies the Design-Builder, the Lump Sum Price Proposal shall not be deemed accepted by the Department.

**Section 3.7 Lump Sum Price Amendment.** Upon acceptance by the Department of the Lump Sum Price Proposal, the Guaranteed Maximum Price and its basis shall be set forth in the Guaranteed Maximum Price Amendment ("Lump Sum Price Amendment"). The Lump Sum Price Amendment shall be in substantially the form of **Exhibit A** hereto. In the event an acceptable Guaranteed Maximum Price Proposal is not developed, the Contract will be terminated and the provision of Section 3.10 shall apply. In such event, the Design-Builder shall forfeit the Preconstruction Fee. In the event the Contract is terminated pursuant to this Section 3.7, the Department shall be free to use any of the information developed during the Preconstruction Phase to retain a new contractor to complete the Project.

**Section 3.8 Certification.** As part of the Guaranteed Maximum Price Proposal submitted in accordance with Article 4 of this Agreement, the Design-Builder agrees to specifically acknowledge and declare that the Contract Documents are sufficiently complete to have enabled the Design-Builder to determine the Cost of the Work therein in order to enter into the Lump Sum Price Amendment and to enable the Design-Builder to agree to construct the Work outlined therein in accordance with applicable laws, statutes, building codes and regulations to the best of Design-Builder's knowledge, and otherwise to fulfill all its obligations hereunder. The Design-Builder shall further acknowledge that it has visited the site, examined all conditions affecting the Work, is fully familiar with all of the conditions thereon and affecting the same, and, has carefully examined all drawings and specifications provided to it.

### **Section 3.9 Unsafe Materials and Hazardous Materials**

**Section 3.9.1** The Design-Builder shall not bring, spill or release onto the site asbestos, PCBs, or any other Hazardous Material that is not customarily used in a facility of the type and similar to the Project, and shall bring to the Department's attention any specification of such Hazardous Materials in the design documents. If the Design-Builder believes that anything in the Contract would require that it use or bring onto the site asbestos, PCBs, or any Hazardous Material that is not customarily used in a facility of the type and similar to the Project, it shall immediately inform the Department and seek direction before proceeding.

**Section 3.9.2** The Design-Builder shall abate Hazardous Materials on the site as necessary to complete the Work contemplated by this Agreement. The Design-Builder shall comply with all laws, including, without limitation, the requirements of the EPA and all jurisdictional agencies as well as all laws relating to safety, health welfare, and protection of the environment, in removing, treating, encapsulating, passivating, and/or disposing of Hazardous Materials, including, but not limited to, removal, treatment, encapsulation, passivation, and/or disposal of the Hazardous Materials. If any notices to governmental authorities are required, the Design-Builder shall also give those notices at the appropriate times.

**Section 3.9.3** The Design-Builder shall be entitled to submit a Change Request in accordance with Article 4 of the Standard Contract Provisions in the event the Design-Builder encounters Hazardous Materials beyond those contemplated in the Contract Documents.

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

## **ARTICLE 4 CONSTRUCTION PHASE**

**Section 4.1 General.** The Construction Phase shall commence when the Lump Sum Price Amendment is executed by the Department and the Design-Builder or the Department otherwise issues a Notice to Proceed for Construction Phase Services. The Design-Builder shall, through Subcontractors or, with the written consent of the Department, with its own forces, perform all of the Work necessary to construct the Project so that it is complete, safe, and properly built in strict accordance with the approved construction documents and the other requirements of this Contract. Without limitation, the Design-Builder shall provide all of the labor, materials, tools, equipment, temporary services, and facilities necessary to complete the construction and installation of the Project. The Work shall be carried out in a good and workmanlike, first-class manner, and in timely fashion. All materials and equipment to be incorporated into the Project shall be new and previously unused, unless otherwise specified, and shall be free of manufacturing or other defects.

**Section 4.1.1 Unremoved ted Portions of the Structure.** In constructing the Project, the Design-Builder shall ensure that the unused portions of the existing building are turned over as "warm/lit/shell space".

**Section 4.2 Design and Approval Process.** The Design-Builder is required to complete the design of the Project so that it reflects a logical progression of the design intent contained in the Lump Sum Price Basis Documents. The Design-Builder shall cause the Architect/Engineer to submit to the Program Manager Copies of all design and construction document packages that have been issued for construction for the Department's review and approval. All such sets shall clearly identify (through "bubbling" or otherwise) changes from the Lump Sum Price Basis Documents. The Department shall have seven (7) days to approve the design and construction document packages, and if the Department takes no action within seven (7) days, the design and construction document packages shall be deemed approved. The Department can disapprove the design and construction document packages or any change thereto for any reason. In the event the Department disapproves any such package, the Design-Builder shall not be entitled to a change in the Lump Sum Price



and/or the Substantial Completion Date unless the change being requested by the Department reflects a departure from the design intent fairly reflected in the Lump Sum Price Drawings and Specifications. To the extent that the change being requested by the Department is necessary in order to preserve the design intent or functionality contemplated in the Lump Sum Price Drawings and Specifications or is necessary in order to address concerns raised by the Code Official, Design- Builder shall cause the Architect/Engineer to further revise the drawings and shall not be entitled to an adjustment to the Lump Sum Price of the Substantial Completion Date by virtue of such redesign. For the avoidance of doubt, the seven (7) days review period shall apply to construction document packages and other major submittals, but not submittals such as shop drawings, color selections, and other similar submittals for which the Department shall have two (2) days to review and to approve the submittal. If the Department takes no action within two (2) days, the submittal shall be deemed approved.

**Section 4.2.1** The Department will hire third party contractors for plan review and for testing and material inspections. The Design-Builder shall coordinate and work with the Project Manager and third party plan reviewer during the building permit process.

### **Section 4.3 Subcontracting and Administration**

**Section 4.3.1** it is contemplated that all or substantially all of the construction of the Project will be carried out by trade Subcontractors and that those trade subcontracts will be awarded through the competitive bid process contemplated in Section 2.4. The trade subcontractors will be under written contract with the Design-Builder. All subcontracts and agreements for the supply of equipment or materials awarded for the Project shall be fixed-price contracts unless otherwise expressly authorized by the Department, in writing. It is understood and agreed, however, that certain trade packages (such as the mechanical and electrical packages) may be awarded on a design-assist or design-build basis and that such trade packages may be awarded on such other basis subject to the Department's consent as to the bidding procedures and economic structure with regard to those packages. The Design-Builder and its affiliates may not carry out trade work with its own forces without the Department's written permission, which permission may be withheld or conditioned by the Department in its sole and absolute judgment.

**Section 4.3.2** In addition to the open book reporting requirements set forth in Section 4.10, the Design-Builder shall provide to the Department a copy of all quotes or proposals submitted by potential Subcontractors.

**Section 4.3.3** The Design-Builder shall develop a purchasing strategy to address the expedited schedule and conditions of this Project and shall include appropriate provisions in the subcontracts to minimize the cost impact associated with such conditions. Such strategies may include, but are not limited to (i) obtaining from subcontractor's unit price quotes for typical coordination items; (ii) setting aside allowances for coordination work; and (iii) such other techniques as may be employed by the Design-Builder.

**Section 4.3.4** The Design-Builder shall carefully document its procedures for making available bid packages to potential bidders, the contents of each bid package, discussions with bidders at any pre-bid meetings, bidders' compliance with bid requirements, all bids received, the Design-Builder's evaluations of all bids, and the basis for the Design-Builder's recommendation as to which bidders should be chosen. The Department shall be afforded access to all such records at all reasonable times so that, among other things, it may independently confirm the Design-Builder's adherence to all Contract requirements including, without limitation, affirmative action requirements and subcontracting requirements.

**Section 4.3.5** The Department may, in its sole discretion, reject any or all bids and proposals received for any bid package, and may require the Design-Builder to obtain new or revised bids or proposals.

**Section 4.3.6** The Department may, in its sole discretion, direct the Design-Builder to accept a bid from a qualified bidder other than the bidder to whom the Design-Builder recommends award of a subcontract or supply agreement. If the Department chooses this option, it shall issue a Change Order to the Design-Builder for any difference between the cost of the subcontract or supply agreement awarded and the bid price of the Subcontractor or supplier recommended by the Design-Builder, but without any adjustment to the Design-Build Fee.

**Section 4.3.7** The Department must approve all Subcontractors and suppliers. The Department may elect to review the form of any subcontract or agreement with a material supplier to insure that such contract incorporates the contractual provisions required by this Agreement.

**Section 4.3.8** The Design-Builder must contract for provision of all services and materials for the Project (other than Self-Performed Work which must be authorized in advance and in writing by the Department) via written subcontracts or, for contracts requiring provision of materials or equipment only, and not labor, via written supply agreements. All subcontracts and supply agreements shall include the following provisions:

- .1 that, to the extent of the Work or supply within the agreement's scope, the Subcontractor or supplier is bound to the Design-Builder for the performance of all obligations which the Design-Builder owes the Department under the Contract;
- .2 that the Subcontractor or supplier is not in private with the Department and shall not seek compensation directly from the Department on any third-party beneficiary, quantum merit, or unjust enrichment claim, or otherwise,

except as may be permitted by any applicable mechanic's lien law;

- .3 that the Department is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit;
- .4 that the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Design-Builder is terminated for default;
- .5 that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Design-Builder to suspend or stop work;
- .6 that the Subcontractor or supplier shall maintain records of all Work it is requested or authorized to do on a time and material or cost-plus basis, or with respect to claims that it has asserted on a time and materials or cost-plus basis, during the Project and for a period of time specified in the General Conditions and requiring the Subcontractor or supplier to make those records available for review or audit by the Department during that time;
- .7 that the Subcontractor shall obtain and maintain, throughout the Project, workers' compensation insurance in accordance with the laws of the District of Columbia (This provision is not applicable to supply agreements.);
- .8 that, if the Department terminates the Contract for convenience, the Design-Builder may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) days written notice to the Subcontractor or supplier, and that the Subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in the Termination for Convenience provisions of this Agreement;
- .9 that the Department shall have the right to enter into a contract with the Subcontractor or supplier for the same price as its subcontract or supply agreement price less amounts already paid, if the Design-Builder files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;
- .10 [Intentionally omitted].
- .11 that the Subcontractor or supplier shall not be entitled to payment for defective or non-conforming work, materials or equipment, and shall be

obligated promptly to repair or replace non-conforming work, materials or equipment at its own cost;

- .12 a provision substantially similar to Section 4.3.9 of this Agreement, requiring that Subcontractors and suppliers promptly pay Subcontractors and suppliers at lower tiers, imposing upon the Subcontractors and suppliers a duty to pay interest on late payments, and barring reimbursement for interest paid to lower tier Subcontractors or suppliers due to a Subcontractor's or supplier's failure to pay them in timely fashion;
- .13 a provision requiring that all Subcontractors at all tiers comply with the provisions of Article 11 (Economic Inclusion Goals); provided, however, that the Design- Builder may, in its reasonable discretion impose a different LSDBE subcontracting goal on some or all of its Subcontractors; provided, further, however, that nothing in this provision shall be deemed to excuse the Design- Builder from using its best efforts to achieve the LSDBE subcontracting goal on an aggregate basis for the Project;
- .14 a provision which allows the Design-Builder to withhold payment from the Subcontractor if the Subcontractor does not meet the requirements of the Subcontract;
- .15 Lien and claim release and waiver provisions substantially identical to those in this Agreement.

**Section 4.3.9** Within seven (7) days of receiving any payment from the Department that includes amounts attributable to Work performed or materials or equipment supplied by a Subcontractor or supplier, the Design-Builder shall either pay the Subcontractor or supplier for its proportionate share of the amount paid to the Design-Builder for the Subcontractor's or supplier's Work or materials or equipment, or notify the Department and the Subcontractor or supplier, in writing, of the Design-Builder's intention to withhold all or part of the payment and state the reason for the withholding. All monies paid to the Design-Builder under the Agreement shall be used first to pay amounts due to Subcontractors or suppliers supplying labor or materials for the Project and only money remaining after such payments are made may be used for other items such as the Preconstruction Fee or the Design-Build Fee. Monies paid by joint check shall be deemed to have been paid fully to the Subcontractor or supplier named as a joint payee, unless the Department agrees otherwise in writing. Any interest paid to Subcontractors or suppliers because the Design-Builder has failed to pay them in timely fashion shall not be reimbursable as part of the Cost of the Work.

**Section 4.3.10** The Design-Builder shall not enter into any profit sharing, rebate, or similar arrangement with any Subcontractor or supplier at any tier with respect to the Project

or the Work to be carried out for the Project.

**Section 4.3.11** The Design-Builder shall not substitute or replace any Subcontractor or supplier approved by the Department without the Department's prior written consent.

**Section 4.3.12** The Department has the right to contact Subcontractors or suppliers at all tiers, or material or equipment suppliers directly to confirm amounts due and owing to them or amounts paid to them for Work on the Project, and to ascertain from the Subcontractors or suppliers at all tiers their projections of the cost to complete their Work or to supply their material or equipment, or the existence of any claims or disputes. In doing so the Department shall not issue any directions to Subcontractors or Suppliers at any tier.

**Section 4.3.13** If it comes to the Department's attention that a Subcontractor or supplier has not been paid in timely fashion (other than for disputed amounts), and if the Design-Builder fails to cure the problem within five (5) calendar days after the Department gives it written notice of the failure to pay, the Department may make payments to the Subcontractor or supplier and Design-Builder by joint check.

**Section 4.4 Bi-Weekly Progress Meetings & Schedule Updates.** The Design-Builder shall schedule and conduct, at a minimum, bi-weekly progress meetings at which the Department, the Architect/Engineer, the Program Manager, the Design-Builder and appropriate Subcontractors can discuss the status of the Work. The Design-Builder shall prepare and promptly distribute meeting minutes. In addition, the Design-Builder shall submit schedule updates every other week which shall reflect actual conditions of Project progress as of the date of the update. The update shall reflect the actual progress of construction, identify developing delays, regardless of their cause, and reflect the Design-Builder's best projection of the actual date by which Substantial Completion and Final Completion of the Project will be achieved. Via a narrative statement (not merely a critical path method schedule), the Design-Builder shall identify the causes of any potential delay and state what, in the Design-Builder's judgment, must be done to avoid or reduce that delay. The Design-Builder shall point out, in its narrative, changes that have occurred since the last update, including those related to major changes in the scope of work, activities modified since the last update, revised projections of durations, progress and completion, revisions to the schedule logic or assumptions, and other relevant changes. Any significant variance from the previous schedule or update shall also be identified in a narrative, together with the reasons for the variance and its impact on Project completion. All schedule updates shall be in Primavera 6 native format. The Department may make reasonable requests during the Project for changes to the format or for further explanation of information provided. Submission of updates showing that Substantial Completion or Final Completion of the Project will be achieved later than the applicable scheduled completion date shall not constitute requests for extension of time and shall not operate to change the scheduled completion date. The Department's receipt of, and lack of objection to, any

schedule update showing Substantial Completion or Final Completion later than the dates agreed upon in the Project Schedule shall not be regarded as the Department's agreement that the Design-Builder may have an extension of time, or as a waiver of any of the Department's rights, but merely as the Design-Builder's representation that, as a matter of fact, Substantial Completion or Final Completion of the Project may not be completed by the agreed upon date in the Project Schedule. Changes to the scheduled completion dates may be made only in the circumstances and only by the methods set forth in this Agreement.

**Section 4.5 Written Reports.** The Design-Builder shall provide written reports to the Program Manager, on the progress of the entire Work at least monthly from Notice to Proceed until Final Completion of the Project. Such written report shall including the following elements:

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

Design-Builder and its Subcontractors during the month and the percentage of those subcontracts and agreements with material suppliers awarded to LSDBEs; (iii) a listing of subcontracts let by the Design-Builder and its Subcontractors during the month and the estimated percentage of the labor hours to be worked by District of Columbia residents pursuant to those subcontracts; and (iv) a description of the major subcontracting and supply opportunities that will be solicited during the next three (3) months and the actions being undertaken to meet the subcontracting goals.

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

The Design-Builder shall also maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, major equipment on the site, Work accomplished, problems encountered and other similar relevant data as the Department may

Reasonably require. The log shall be available to the Department, the Architect/Engineer and the Program Manager, and on a monthly basis a copy of the log shall be submitted to the Department.

**Section 4.6 Cost Control System.** The Design-Builder shall use a system of cost control for the Work in a format consistent with the Lump Sum Price Drawings & Specifications and approved by the Department, which shall include, without limitation, regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. Design-Builder shall identify variances between actual and estimated costs and report the valances to the Department, the Architect/Engineer and the Program Manager at regular intervals.

#### **Section 4.7 Key Personnel.**

**Section 4.7.1** to carry out its duties, the Design-Builder shall provide at least the key personnel identified in **Exhibit C** to this Agreement, who shall carry out the functions

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

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

In each instance where the Design-Builder removes or reassigns one of the key personnel listed in **Exhibit C** as being subject to liquidated damages, other than (a) for reasons where such personnel become unavailable due to death, disability or separation from the employment of the Design-Builder or any affiliate of the Design-Builder or any affiliate of the Design-Builder, or with the prior written consent of the Department's Designated Representative, then the Design-Builder shall pay to the Department the sum of Fifty Thousand Dollars (\$50,000) as liquidated damages and not a penalty, to reimburse the Department for its administrative costs arising from the Design-Builder's failure to provide the Key Personnel. The foregoing liquidated damage amount shall not bar recovery of any other damages, costs or expenses other than the Department's internal administrative costs.

In addition, the Department shall have the right, to be exercised in its sole discretion, to remove, replace or to reduce the scope of services of the Design-Builder in the event that a member of the Key Personnel has been removed or replaced by the Design-Builder without the prior written consent of the Department. In the event the Department exercises the right to remove, replace or to reduce the scope of services of the Design-Builder, the Department shall have the right to enforce the terms of this Agreement and to keep-in-place those members of the Design-Builder's team not removed or replaced and the remaining members shall complete the services required under this Agreement in



conjunction with the new members of the Design- Builder' s team approved by the Department.

**Section 4.8 Qualified Personnel/Cooperation.** The Design-Builder shall employ on the Project only those employees and Subcontractors who will work together in harmony and who will cooperate with one another on the Project. The Design-Builder shall enforce strict discipline, good order and harmony among its employees and its Subcontractors and shall remove from the site any person who is unfit for the work or fails to conduct himself in a proper and cooperative manner. If the Department requests removal of any person as unfit or as having behaved inappropriately, the Design-Builder shall promptly comply.

**Section 4.9 Warranty.** The Design-Builder warrants to the Department that materials and equipment furnished under the Contract Documents will be of good quality and new unless otherwise required or permitted by the Contract Documents, that for the one (1) year period following the Substantial Completion Date the construction work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. The

Design-Build and a representative of the Department shall walk the Project together eleven (11) months after the Substantial Completion Date to identify any necessary warranty work.

**Section 4.10 Open Book Reporting.** The Design-Builder shall maintain an open book reporting system with the Department, allowing the Department or its consultants access to the Design-Builder's Subcontractors and material suppliers, invoices, purchase orders, Change Order estimates, records for Self-Performed Work, and other relevant documentation and sources of information concerning the Work or costs. The Department shall not use its access to the Subcontractors to give instructions or directions to them. All instructions or directions shall be given only to the Design-Builder.

#### **Section 4.11 Claims for Additional Time**

**Section 4.11.1** Time is of the essence of this Contract, the Project must be Substantially Complete within One Hundred and Fifty (150) calendar days.

**Section 4.11.2** The Design-Builder will perform the Work so that it shall achieve Substantial Completion by the Substantial Completion Date. Unless the failure to achieve Substantial Completion by the Substantial Completion Date is a result of an Excusable Delay, as defined in Section 4.11.3, the delay shall be deemed Non-Excusable and the

Design-Builder shall not be entitled to an extension of time. Without limiting the generality of the foregoing, delays for the following reasons shall be regarded as Non-Excusable and shall not entitle the Design- Builder to an extension of time:

- .1 Delays due to job site labor disputes, work stoppages, or suspensions of work;
- .2 Delays due to adverse weather, unless the Design-Builder establishes that the adverse weather was of a nature and duration in excess of averages established by data from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for the Project locale for the ten (10) years preceding the effective date of the Contract. For purposes of this clause, weather shall only be deemed "adverse" if the number of rain/snow days or the cumulative precipitation total for the month in question exceeds that which occurred in the worst year in the preceding ten years prior to the effective date of the Contract. Notwithstanding the foregoing, named storms shall conclusively be deemed "adverse";
- .3 Delays due to the failure of the Design-Builder or Subcontractors or material suppliers at any tier to perform in timely or proper fashion, without regard to concepts of negligence or fault; or
- .4 Delays due to Site conditions whether known or unknown as of the effective date of the Contract, foreseeable or unforeseeable at that time, naturally occurring or man-made; provided, however, that delays due to differing site conditions as permitted by Article 4, Section A of the Standard Contract Provisions or Hazardous Materials Remediation shall be deemed an Excusable Delay.

**Section 4.11.3** The Design-Builder shall be entitled to an adjustment in the Substantial Completion Date due to an Excusable Delay. The term "Excusable Delay" shall mean:

- .1 Delays due to adverse weather other than those that are classified as a Non-Excusable delay in accordance with Section 4.11.2.2 of this Agreement;
- .2 Delays due to acts of God, war, unavoidable casualties, civil unrest, and other similar causes of delay that are beyond the control of the Design-Builder; provided, however, that in no event shall a Non-Excusable delay or the action of the Design-Builder, or any of its employees, agents, Subcontractors or material suppliers be deemed an Excusable Delay;
- .3 Delays caused by Differing Site Conditions as permitted by Article 4, Section A of the Standard Contract Provisions or Hazardous Materials

Remediation as contemplated in Section 3.9.2 of this Agreement;

- .4 Delays due to suspensions of work; or
- .5 Delays caused by the Owner or separate contractors of the Owner to the extent such delays are not concurrent with delays caused by the Contractor.

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

**Section 4.11.4** If the Design-Builder wishes to make a claim for an increase in the Contract time, written notice as provided herein shall be given. The Design-Builder's claim shall include an estimate of the cost and of the probable effect of delay on the progress of the Work. In the case of continuing delay, only one claim is necessary.

**Section 4.11.5** In no event shall the Design-Builder be entitled to an increase in the Lump Sum Price, the Preconstruction Fee, or the Design-Build Fee as a result of either an Excusable or Non-- Excusable Delay; provided, however, that to the extent that a delay is (i) an Excusable Delay; (ii) of unreasonable duration; (iii) caused solely by the Department; and (iv) not concurrent with any other delay, then the Design-Builder shall be entitled to receive its actual costs, including all direct and indirect costs, bonds and insurances resulting from such extended duration. It is understood that the Design-Builder shall not be entitled to any profit or home office overhead, including, but not limited to, an increase in the Design-Builder's Design-Build Fee, on any amounts to which the Design-Builder may be entitled pursuant to the preceding sentence. The parties further acknowledge and agree that if Department desires to accelerate the completion of the Project as a result of an Excusable Delay, the Design-Builder shall be entitled to an equitable adjustment.

**Section 4.11.6 Administrative Term.** This Agreement shall have an administrative term that runs from the effective date of the Letter Contract through April 30, 2018.

#### **Section 4.12 Site Safety and Clean-Up.**

**Section 4.12.1** The Design-Builder will be required to provide a safe and efficient site, with controlled access. The Design-Builder shall submit to the Department for its review and approval prior to the start of the Construction Phase a safety plan for Construction Phase. In the event the Design-Builder fails to provide such a plan, the Design-Builder will not be permitted to commence the Construction Phase until such a plan is submitted and in

no event shall any resulting delay constitute an Excusable Delay.

**Section 4.12.2** The Design-Builder shall be required to provide wheel washing stations on site so as to prevent the accumulation of dirt and other refuse on the streets surrounding the Project site.

**Section 4.12.3** The Design-Builder shall be responsible for site security and shall be required to provide such watchman as are necessary to protect the site from unwanted intrusion.

**Section 4.12.4** The Design-Builder shall be responsible for the cost of temporary power used during the construction of the Project, including, but not limited to, the cost of installing such temporary wiring as may be required to bring power to the site. The Design-Builder shall also be responsible for the cost of all temporary construction necessary on the site.

#### **Section 4.13 Close-out & FF&E.**

**Section 4.13.1** The Design-Builder shall be responsible for purchasing and providing, or, at the Department's request, coordinating the delivery and installation of FF&E. unless otherwise approved by the Department, all loose FF&E shall be purchased from the Department's preferred vendor. A detailed list of FF&E requirements will be developed during the preconstruction phase.

**Section 4.13.2** The Design-Builder shall be required to prepare and submit at close-out a complete set of product manuals, warranties, etc. The Design-Builder shall also provide the Department with a complete set of its Project files, including, but not limited to, shop drawings, etc., at close out so as to assist the Department and/or DYRS in operating the building. In addition, at the beginning of the first heating and cooling season following turnover of the Project, the Design-Builder shall be available to assist with, and train the building engineers and staff in the start-up of the building systems for the new weather cycle.

**Section 4.13.3** An allowance for cleaning and other move-in services as directed by the Department shall be included in the Lump Sum Price. This allowance is in addition to cleaning services that would otherwise be required by the Design-Builder, including, but not limited to, the obligation to deliver a broom clean building at the end of construction.

**Section 4.14 Control of the Site.** The Design-Builder shall install the necessary construction fences and other devices to properly secure the site.

**Section 4.15 Salvaged and Stored Items.** The Design-Builder shall be responsible for salvaging and storing all items as identified by the Department in accordance with all

applicable District laws and regulations, after notifying the Department and receiving the Department's permission to proceed.

**Section 4.16 Sediment and Erosion Control.** The Design-Builder shall be responsible for installing sediment and erosion control measures, inclusive of, but not limited to: silt fencing, inlet protection, stabilized construction entrances, and other control measures.

**Section 4.17 Quality Control.** The Design-Builder shall be responsible for all activities necessary to manage, control, and document work to ensure compliance with Contract Documents. The Design-Builder's responsibility includes ensuring adequate quality control services are provided by the Design-Builder's employees and its subcontractors at all levels. The work activities shall include safety, submittal management, document reviews, reporting, and all other functions related to quality construction.

The Design-Builder shall implement a Quality Control Plan for the Project. A draft of such plan shall be submitted to the Department no later than three (3) weeks after Notice to Proceed, and a final plan shall be agreed upon and approved by the Department's Program Manager prior to commencing of the Work in the field. The Quality Control Plan shall be tailored to the specific products/type of construction activities contemplated by the Lump Sum Price Basis Documents, and in general, shall include a table of contents, quality control team organization, duties/responsibilities of quality control personnel, submittal procedures, inspection procedures, deficiency correction procedures, documentation process, and a list of any other specific actions or procedures that will be required for key elements of the Work.

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

**Section 4.18 Acceleration.** Subject to the terms of this Section 4.18, the Department shall have the right to direct the Design-Builder to accelerate the Work if, in the reasonable judgment of Department, the Design-Builder fails to: (i) supply a sufficiency of workers or to deliver the materials or equipment with such promptness as to prevent the delay in the progress of the Work; or (ii) the progress of the Work materially falls behind the projections contained in the then currently approved Project Schedule. In the event that the Department or its Program Manager determine that either of the events

specified in the preceding sentence have occurred, the Department shall provide the Design-Builder with written notice of such event and the Design-Builder shall be required to provide the Department with a corrective action plan that is reasonably designed to address the concerns raised in such notice within three (3) days after receipt of such notice. If the Department and the Design-Builder are unable to agree on the terms of such corrective action plan within five (5) days after the issuance of the notice (i.e. with forty eight (48) hours after the receipt of the proposed corrective action plan), the Department shall have the right to direct such acceleration as the Department, in its reasonable judgment, deems necessary. Provided the notice provisions of this Section are complied with, the cost of any acceleration directed under this Section shall not justify an adjustment to the Lump Sum Price on the Substantial Completion Date.

**Section 4.19 Corrective Action Plan.** Subject to the terms of this Section 4.19, the Department shall have the right direct the Design-Builder to revise the provisions of its Quality Control Plan if, in the reasonable judgment of the Department, the craftsmanship of the Work being installed fails to comply with generally applicable industry standards, requirements set forth in the Specifications that are reasonably related to the quality of craftsmanship quality, or any provisions set forth in this Agreement. In the event that the Department or its Program Manager determine that any of the events specified in the preceding sentence have occurred, the Department shall provide the Design-Builder with written notice of such event and the Design-Builder shall be required to provide the Department with a corrective action plan that is reasonably designed to address the concerns raised in such notice within three (3) days after receipt of such notice. If the Department and the Design-Builder are unable to agree on the terms of such corrective action plan within five (5) days after the issuance of the notice (i.e. within forty eight (48) hours after the receipt of the proposed corrective action plan), the Department shall have the right to direct such corrective action measures as the Department, in its reasonable judgment, deems necessary. Such directive may include adjustments to the procedural provisions set forth in the Quality Control Plan and/or impose additional requirements on the manner in which Work is being installed. Provided the notice provisions of this Section are complied with, the cost of any such corrective action directed under this Section shall not justify an adjustment to the Lump Sum Price on the Substantial Completion Date.

**Section 4.20 Prolog.** The Design-Builder shall utilize the Department's Prolog system to submit any and all documentation required to be provided by the Design-Builder for the Project, including, but not limited to: (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) invoices/applications for payment (full package including all forms required by DGS); (v) certified payrolls (in addition to upload via LCP Tracker); (vi) drawings and specifications; (vii) punch list; and (viii) other documents as may be designated by the Department. To the extent the Department provides access to do so, the Design-Builder shall also require all subcontractors and sub consultants to utilize prolog for the Project.

**ARTICLE 5**  
**DESIGNATED**  
**REPRESENTATIVES**

**Section 5.1 Department's Designated Representative.** The Department designates the individual(s) identified in **Exhibit D** as its representative with express authority to bind the Department with respect to all matters requiring the Department's approval or authorization. Subject to the limitations on their authority specified in **Exhibit U**, these representative(s) shall have the exclusive authority to make decisions on behalf of the Department concerning estimates and schedules, construction budgets, changes in the Work, and execution of Change Orders or Change Directives, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Design-Builder. In order for the Department to effectively manage the Project and assure that the Design-Builder does not receive conflicting instructions regarding the Work, the Design-Builder shall promptly notify the Department's representative upon receiving any instructions or other communication in connection with the Design-Builder's Work from any employee of the Department or other purported agent of the Department other than the Department's representative.

**Section 5.2 Design-Builder's Designated Representative.** The Design-Builder designates the individual(s) identified in **Exhibit E** as its representative with express authority to bind the Design-Builder with respect to all matters requiring the Design-Builder's approval or authorization. In addition, the Department retains the right to approve candidates for key on-site

personnel in accordance with their experience with similar projects and local marketplace conditions. Once approved, individuals cannot be changed without the Department's prior approval. During the entire term, it is agreed that the Design-Builder's designated representative will devote his time exclusively to the Project, unless the Department consents to a reduction in time. All services provided by the Design-Builder shall be performed in accordance with the highest professional standards recognized and adhered to by Design-Builders that build first- class state-of-the-art schools in large urban areas.

**ARTICLE 6**  
**DEPARTMENT'S RESPONSIBILITIES**

**Section 6.1 Information and Services**

**Section 6.1.1** The Department shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Department's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

## **Section 6.2 Department's Designated Representatives**

**Section 6.2.1 Chief Contracting Officer (CCO)** In accordance with 27 DCMR, Chapter 47, Section 4704 contracts may be entered into and signed on behalf of the District Government only by CCO. The address and telephone number of the CCO is:

Christopher E. Weaver  
Director  
Department of General Services  
2000 14<sup>th</sup> Street, N.W. – 8<sup>th</sup> Floor  
Washington, D.C. 20009  
Telephone: (202) 727-2800  
E-mail: [chris.weaver2@dc.gov](mailto:chris.weaver2@dc.gov)

## **Section 6.2.2 Authorized Changes by the CCO**

**Section 6.2.2.1** In accordance with Article 3 of the General Provisions of the Standard Contract Provisions For Use With Specifications for District of Columbia Construction Projects Revised March 2011, the CCO is the only person authorized to approve changes to any of the requirements of the contract.

**Section 6.2.2.2** The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the CCO.

**Section 6.2.2.3** In the event the Contractor effects any change at the instruction or request of any person other than the CCO, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

## **Section 6.2.3 Project Manager**

**Section 6.2.3.1** The Project Manager is responsible for general administration of the contract and advising the CCO as to the Contractor's compliance or noncompliance with the contract. The Project Manager has the responsibility for the day-to-day monitoring and supervision of the contract, of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in writing by the CCO and/or in the contract. These include:

**Section 6.2.3.1.1** Keeping the CCO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CCO of any potential problem areas under the contract;



**Section 6.2.3.1.2** Coordinating site entry for Contractor personnel, if applicable;

**Section 6.2.3.1.3** Reviewing invoices for completed work and recommending approval by the CCO if the Contractor's prices and costs are consistent with the contractual amounts and progress is satisfactory and commensurate with the rate of expenditure;

**Section 6.2.3.1.4** 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; and

**Section 6.2.3.1.5** Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

**Section 6.2.3.1.6** The address and telephone number of the Project Manager is:

Ralph Cyrus  
Project Manager  
Department of General Services  
Capital Construction Services Division  
1250 U Street, N.W. – 4rd Floor  
Washington, DC 20009  
Telephone: 202-345-6538  
E-mail: [ralph.cyrus@dc.gov](mailto:ralph.cyrus@dc.gov)

**Section 6.2.4** The Project Manager shall NOT have the authority to:

**Section 6.2.4.1** Award, agree to, or sign any contract, delivery order or task order. Only the CCO shall make contractual agreements, commitments or modifications;

**Section 6.2.4.2** Grant deviations from or waive any of the terms and conditions of the contract;

**Section 6.2.4.3** Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,

**Section 6.2.4.4** Authorize the expenditure of funds by the Contractor;

**Section 6.2.4.5** Change the period of performance; or

**Section 6.2.4.6** Authorize the use of District property, except as specified under the contract.

**Section 6.2.4.7** Contractor shall be held fully responsible for any changes not authorized in advance, in writing, by the CCO, and may be denied compensation or other relief for any

additional work performed that is not authorized by the CCO in writing. In addition, Contractor may also be required at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

## **ARTICLE 7**

### **CLAIMS FOR ADDITIONAL TIME**

**Section 7.1** Time is of the essence of this Contract.

**Section 7.2** The Contractor will perform the Work so that it shall achieve Substantial Completion by the Substantial Completion Date. Unless the failure to achieve Substantial Completion by the Substantial Completion Date is a result of an Excusable Delay, as defined in Section 6.3, the delay shall be deemed Non-Excusable and the Contractor shall not be entitled to an extension of time. Without limiting the generality of the foregoing, delays for the following reasons shall be regarded as Non-Excusable and shall not entitle the Contractor to an extension of time:

**Section 7.2.1** Delays due to job site labor disputes, work stoppages, or suspensions of work;

**Section 7.2.2** Delays due to adverse weather, unless the Contractor establishes that the adverse weather was of a nature and duration in excess of averages established by data from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for the Project locale for the ten (10) years preceding the effective date of the Contract. For purposes of this clause, weather shall only be deemed “Excusable” if the weather in question was more severe than that encountered at the Project site over the last ten (10) years for the month in question. Such determinations shall be made based on the number of rain/snow days or the cumulative precipitation total for the month in question. Notwithstanding the foregoing, named storms shall conclusively be deemed “Excusable”;

**Section 7.2.3** Delays due to the failure of the Contractor or Subcontractors or material suppliers at any tier to perform in timely or proper fashion, without regard to concepts of negligence or fault; or

**Section 7.2.4** Delays due to Site conditions whether known or unknown as of the effective date of the Contract, foreseeable or unforeseeable at that time, naturally occurring or man-made; provided, however, that delays due to Differing Soils Conditions or Hazardous Materials Remediation shall be deemed an Excusable Delay.

**Section 7.3** The Contractor shall be entitled to an adjustment in the Substantial Completion Date due to an Excusable Delay. The term “Excusable Delay” shall mean:

**Section 7.3.1** Delays due to adverse weather other than those that are classified as a Non-Excusable delay;

**Section 7.3.2** Delays due to acts of God, war, unavoidable casualties, civil unrest, and other similar causes of delay that are beyond the control of the Contractor; provided, however, that in no event shall a Non-Excusable delay or the action of the Contractor, or any of its employees, agents, Subcontractors or material suppliers be deemed an Excusable Delay; or

**Section 7.3.3** Delays caused by Differing Soils Conditions or Hazardous Materials Remediation.

**Section 7.4** In addition to the forgoing, a delay shall be deemed to be an Excusable Delay only to the extent that such delay (i) warrants an extension in the Substantial or Final Completion Date; (ii) has not been caused by the Contractor or any of its employees, agents, Subcontractors or material suppliers; (iii) is on Project's critical path; and (iv) is in addition to a time contingency of twenty-one (21) calendar days that is built into the critical path.

**Section 7.5** If the Contractor wishes to make a claim for an increase in the Contract time, written notice as provided herein shall be given. The Contractor's claim shall include an estimate of the cost and of the probable effect of delay on the progress of the Work. In the case of continuing delay, only one claim is necessary.

**Section 7.6** In no event shall the Contractor be entitled to an increase in the Lump Sum Price a result of either an Excusable or Non-Excusable Delay.

## **ARTICLE 8** **COMPENSATION**

**Section 8.1 Compensation.** The Contractor shall be paid its compensation in a series of progress payments and a final payment. Progress payments shall be based on a schedule of values that is agreed upon by the Parties as well as the Project Manager's good faith estimate of the level of completion for each component of the schedule of values.

**Section 8.2 Schedule of Values.** The Contractor shall prepare a Schedule of Values which breaks down the Lump Sum Price for the various parts of the Work. The Schedule of Values shall be maintained in such a manner to provide a breakdown of the Lump Sum Price in enough detail to facilitate continued evaluation of applications for payment and progress reports. Large subcontracts shall be broken into several line items where, in the opinion of the Project Manager, such detail is necessary to properly track the progress of the Work. The proposed schedule of values shall also include separate line items for labor and material for those elements of the Work where, in the opinion of the Project Manager, the cost and materials and labor are experienced are incurred at different points in time during the Project. Such elements of work typically include mechanical systems, vertical transport systems, windows, structural steel. The Contractor and the Project Manager shall meet as necessary to maintain the schedule of values for the Project in a manner acceptable to the Project Manager. No progress payments shall be made unless the then current Schedule of Values is acceptable to the Project Manager.

**Section 8.3    Retention.** The Department shall withhold from each progress payment an amount equal to ten percent (10%) of each progress payment until such time as fifty percent (35%) of the Work has been completed at which point the Department may cease retaining against such item. Once Substantial Completion has occurred, the Department will reduce the retention being withheld to an amount that is equal to Two Hundred percent (200%) of the Project Manager's good faith estimate of the remaining Work.

**Section 8.4    Documents Required with Application for Payment.** Each Application for Payment shall be accompanied by the Contractor's job cost ledgers in a form satisfactory to the Department, the Subcontractors' and Suppliers' Applications for Payment on AIA Documents G702 and G703 or other form acceptable to the Department, and such other supporting documentation as the Department may reasonably request. Each Application for Payment shall include detailed documentation of costs as a condition to approving progress payments, but the Contractor shall nevertheless maintain complete documentation of the costs.

**Section 8.5    Contractor's Certification.** Each Application for Payment shall be accompanied by the Contractor's signed certification that all amounts paid to the Contractor on the previous Application for Payment that were attributable to Subcontractor Work or to materials or equipment being supplied by any supplier has been paid over to the appropriate Subcontractors and suppliers; that all amounts currently sought for Subcontractor Work or supply of materials or equipment are currently due and owing to the Subcontractors and material or equipment suppliers; and that all Work, materials or equipment for which payment is sought is, to the best of the Contractor's knowledge, free from defect and meets all of the Contract requirements. The Contractor shall not include in an Application Payment amounts for Work for which the Contractor does not intend to pay.

**Section 8.6    Lien Waivers.** Each Application for Payment shall be accompanied by written waivers of the right to file a mechanic's lien and all other claims for the Contractor and all Subcontractors and material suppliers at all tiers who have supplied labor or material or both for which payment is requested, subject only to receipt of payment. If the Department so requests, the Contractor shall also submit unconditional waivers of liens for itself and all Subcontractors and material suppliers at all tiers with respect to Work or materials or equipment for which payment has been previously made, and additional forms of waiver acknowledging receipt of final payment under the Contract, and providing final release of such liens.

**Section 8.7    Warranty of Title.** By submitting an Application for Payment, the Contractor warrants to the Department that title to all Work for which payment is sought will pass to the Department, without liens, claims, or other encumbrances, upon the receipt of payment by the Contractor. The Department may require execution of appropriate documents to confirm passage of clear title. Passage of title shall not operate to pass the risk of loss with respect to the Work in question. Risk of loss remains with the Contractor until Substantial Completion, unless otherwise agreed by the Department, in writing.

**Section 8.8 Submission.** On the twenty-fifth (25<sup>th</sup>) day of each month the Contractor shall submit to the Department (with a copy to the Project Manager) an Application for Payment, which Application for Payment shall cover the entire month during which the Application for Payment is submitted. All amounts formally submitted via Application for Payment and not disputed by the Department shall be due and payable on the last day of the month following submission or, if that is not a business day, on the following business day.

**Section 8.9 Right to Withhold Payments.** The Department will notify the Contractor within fifteen (15) days after receiving any Application for Payment of any defect in the Application for Payment or the Contractor's performance which may result in the Department's declining to pay all or a part of the requested amount. The Department may withhold payment from the Contractor, in whole or part, as appropriate, if:

**Section 8.9.1** the Work is defective and such defects have not been remedied; or

**Section 8.9.2** the Department has determined that the Contractor's progress has fallen behind the Project Schedule, and the Contractor fails, within ten (10) calendar days of the Department's written demand, to provide the Department with a realistic and acceptable plan to recover the delays; or

**Section 8.9.3** the Contractor's monthly schedule update reflects that the Contractor has fallen behind the Project Schedule, and the Contractor fails to include, in the same monthly report, a realistic and acceptable plan to recover the delays; or

**Section 8.9.4** the Contractor has failed to provide the monthly report in full compliance with Article 8.9 of this Agreement; or

**Section 8.9.5** the Contractor has failed to pay Subcontractors or suppliers promptly or has made false or inaccurate certifications that payments to Subcontractors or suppliers are due or have been made; or

**Section 8.9.6** any mechanic's lien has been filed against the Department, the site or any portion thereof or interest therein, or any improvements on the site, even though the Department has paid all undisputed amounts due to the Contractor, and the Contractor, upon notice, has failed to remove the lien, by bonding it off or otherwise, within ten (10) calendar days; or

**Section 8.9.7** the Department has reasonable evidence that the Work will not be completed by the Substantial Completion Date, as required, that the unpaid balance of the Lump Sum Price would not be adequate to cover actual or liquidated damages arising from the anticipated delay; or

**Section 8.9.8** the Department has reasonable evidence that the Work cannot be completed for the unpaid balance of the Lump Sum Price; or

**Section 8.9.9** the Contractor is otherwise in substantial breach of this Contract (including, without limitation, failures to comply with CBE Utilization requirements in Article 12).

**Section 8.10 Payment Not Acceptance.** Payment of any progress payment or final payment shall not constitute acceptance of Work that is defective or otherwise fails to conform to the Contract, or a waiver of any rights or remedies the Department may have with respect to defective or nonconforming Work.

**Section 8.11 Department Not Obligated to Others.** The Department shall have no obligation to pay or be responsible in any way for payments to a consultant or subcontractor performing portions of the Work.

**Section 8.12 Final Payment.** Final payment shall be made by the Department to the Contractor when (i) Final Completion has been achieved; and (ii) certification by the Contractor that except for requested final payment, all subcontractors and suppliers have been paid in full and that appropriate partial lien releases have been obtained from such subcontractors and suppliers documenting such payments. The Department may, if it so elects, require that copies of all such lien releases be provided as a condition to making final payment.

**Section 7.13 No Diversion of Funds.** Contractor agrees that the funds it receives for the performance of this Agreement shall be held in trust by Contractor for the benefit of all its Subcontractors, Suppliers, laborers and materialmen, and Contractor shall not itself have any interest in such funds until all these obligations have been satisfied in full. Contractor further agrees that any funds received shall be used exclusively for the prosecution of the Work, and none will be diverted to satisfy other obligations of Contractor. The Department has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Department to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Department shall have the right to contact Subcontractors to ascertain whether they have been properly paid. The Department shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law. The Department reserves the right to issue joint-payee checks, payable to Contractor and its Subcontractors and materialmen of every tier.

**Section 8.14 Interest on Payments.** Payments are due and payable in accordance with Article 8 of this Agreement. Amounts unpaid after the date of which payments due shall bear interest in accordance with the Prompt Payment Act.

## **ARTICLE 9** **CHANGES IN THE WORK**

**Section 9.1 Changes Authorized.** The Department may, without invalidating the Contract, and without notice to or approval of any surety, order changes in the Work, including

additions, deletions or modifications. Any such change must be conveyed by the Department to the Contractor via written Change Directive or Change Order.

**Section 9.2 Executed Change Directive/Change Order Required.** Only a written Change Directive or Change Order, executed by the Department, may make changes to the Contract. In particular, but without limitation, a written Change Directive or Change Order executed by the Department is the only means by which changes may be made to the Substantial or Final Completion Date, or the Lump Sum Price.

### **Section 9.3 Department-Initiated Changes**

**Section 9.3.1** If the Department wishes to make a change in the Work or to accelerate the Work, it will execute and issue to the Contractor a written Change Directive, either directing the Contractor to proceed at once with the changed Work or directing it to not to proceed, but to inform the Department, in writing, of the amount, if any, by which the Contractor believes that Substantial or Final Completion Date and/or the Lump Sum Price should be adjusted to take the Change Order or Change Directive into account.

**Section 9.3.2** Within ten (10) days of receiving a Change Directive, the Contractor shall provide the Department with a written statement of all changes in the Contract, including, without limitation, any changes to the Substantial or Final Completion Date or the Lump Sum Price to which it believes it is entitled as a result of the Change Directive. If additional time is sought, a schedule analysis supporting the requested extension should be included. The schedule analysis should include a written narrative explanation. If a change in the Lump Sum Price is sought (or if the Department has requested a deduct change), the statement should include a breakdown, by line item, of the estimated cost changes attributable to the proposed change. The Department may request, and the Contractor shall provide, further cost breakdowns, clarifications, documentation or back-up if the Department reasonably believes such additional information is needed to understand and evaluate the request. The additional information required may include cost and pricing data in accordance with the Department's regulations. Any requested adjustment to the Lump Sum Price shall be limited to increased Cost of the Work due to the Change Directive. The Contractor is not entitled to any markup on any kind of change orders. All deductive Change Orders shall include a corresponding reduction in the overhead and profit shown on the Schedule of Values.

**Section 9.3.3** If the Department has not yet directed the Contractor to proceed with the Change described by a Change Directive, the Department may rescind it. If the Department wishes to proceed, or has already directed the Contractor to proceed, the Contractor shall immediately proceed with the changed Work and, the Department and the Contractor shall use their good faith best efforts to reach an agreement upon the modifications to the Substantial or Final Completion Date, and/or the Lump Sum Price that are justified by the Change Directive. If they reach agreement, the agreement shall be set forth in a Change Order and the Contractor shall also execute it, at which point it will become binding on both parties.

**Section 9.3.4** If the parties fail to reach an agreement within sixty (60) days after the Department receives the Contractor's detailed statement pursuant to Subparagraph 8.3.2, and such other documentation as the Department may request, the Contractor may assert a claim in accordance with this Agreement. In such a case, and subject to adjustment via the claims and disputes process, the Department shall unilaterally grant the Contractor such adjustments, if any, to the Substantial or Final Completion Date, and the Lump Sum Price as the Department has judged to be appropriate.

**Section 9.4 Notice of Change Event.** The Contractor must give the Department written notice of any Change Event within ten (10) calendar days of the date on which the Contractor knew, or reasonably should have known, of the Change Event. To the extent available, the notice must state the nature of the Change Event and describe, generally, all changes in the Contract to which the Contractor believes it is entitled. Such notice is an express condition precedent to any claim or request for adjustment to the Substantial or Final Completion Date, or the Lump Sum Price arising from the Change Event and, if the notice is not given within the required time, the Contractor will have waived the right to any adjustment to the Substantial or Final Completion Date or the Lump Sum Price arising from the Change Event.

**Section 9.5 Detailed Change Request.** Within twenty (20) days after giving notice of a change event, the Contractor shall submit a written change request describing, in reasonable detail, all adjustments it seeks to the Substantial or Final Completion Date or the Lump Sum Price as a result of the Change Event. The change request shall include the same information as described in Section 8.3 with respect to any Contract changes the Contractor seeks due to the Change Event, and the amount of any requested adjustment to the Lump Sum Price Sum shall be limited in accordance with that Subparagraph.

**Section 9.6 Changes to the Lump Sum Price.** Subject to the condition precedent that the Contractor have complied with the notice and documentation provisions of this Article, and subject to the limitations stated in this Agreement, the Contractor is entitled to an adjustment to the Lump Sum Price in the following cases:

**Section 9.6.1** If the Department issues a Change Directive or Change Order that directs the Contractor to proceed with work which is beyond the scope of Work included within the Lump Sum; or

**Section 9.6.2** The Contractor encounters Differing Soil Conditions or Hazardous Materials not identified in the Preconstruction Phase.

**Section 9.6.3** For Changes to the Lump Sum Price, the following conditions shall apply:

**Section 9.6.3.1** For increases in the Work which the Contractor is permitted to perform by Contractor's own forces, the Lump Sum Price shall be increased by the sum of: (i) the Direct Cost of the Work; and (ii) a fee (covering home office overhead, field supervision, general conditions and profit) of fifteen percent (15%) of the sum due under (i);



**Section 9.6.3.2** For increases in the Work performed by Subcontractors, the Lump Sum Price shall be increased by the sum of: (i) the Direct Cost of the Work incurred by the Subcontractor for the changed Work; (ii) a fee (covering home office overhead and profit) equal to fifteen percent (15%) of the sum due under (i) above for the Subcontractor performing such Work; and (iii) a fee (covering the Contractor's home office overhead, field supervision, general conditions and profit) of five percent (5%) of the sum of items (i) and (ii). Intervening tier Subcontractors shall be entitled to a mark-up of five percent (5%) (covering home office overhead, field supervision, general conditions and profit); provided, however, that in all situations and regardless of the number of tier Subcontractors involved, the maximum mark-up on the Direct Cost of the Work shall be twenty five percent (25%) and provided, further, that the Contractor shall not be entitled to the markup referred to in item (iii) on changes unless such changes exceed, either individually or in the aggregate, five percent (5%) of the Lump Sum Price.

**Section 9.6.3.3** When both additions and credits are involved in any one change in the Work, the Contractor's Change Order and markup shall be figured on the basis of the net increase, if any.

**Section 9.6.3.4** Fee will not be paid by Department for overtime or weekend work unless overtime is requested in writing and approved in writing by Department.

**Section 9.6.3.5** The amount of credit to be allowed by Contractor to Department for a deletion or change which results in a net decrease in the Lump Sum Price shall be the Cost avoided as confirmed by Department plus Five percent (5%) for profit on the deleted work.

**Section 9.6.4** If the cost to Department of changed Work is determined by the lump sum method, Contractor warrants that the charge to Department shall not exceed the sum of: (a) any Subcontractor's charge to Contractor for such work; and (b) Contractor's best estimate of the actual cost of Contractor's work plus the permitted markup. If the cost to Department of changed Work is determined on a time and materials basis, Contractor warrants that the cost of any addition represents the true and actual cost, including Contractor's permitted markup, of such addition to Contractor, Subcontractor or Sub-subcontractor or other entity involved in such addition. If the changed Work will result in a reduction in the cost to Department, Contractor warrants that the amount of any deduction shall represent the amount of deduction to Contractor by the appropriate Subcontractor or the amount of Contractor's best estimate where the deduction involves Work which Contractor will perform.

**Section 9.7 Deductive Change Orders.** The Department is likewise entitled to issue deduct Change Orders (reducing the Lump Sum Price) when changes are effected, by Change Directive or otherwise, which will decrease the cost of completing the Work or the time within which it can be completed.

**Section 9.8    Executed Change Orders Final.** The Contractor agrees that any Change Order executed by the Department and Contractor constitutes its full and final adjustment for all costs, delays, disruptions, inefficiencies, accelerations, schedule impacts, or other consequences arising from the change in question, whether a Change Directive, or a Change Event, or from any claimed cumulative effect of changes made to the date of the Change Order, and that no further adjustments in compensation or time shall be sought or made with respect to the Change Directive or the Change Event giving rise to the Change Order.

**Section 9.9    Failure to Agree.** If the Contractor claims entitlement to a change in the Contract, and the Department does not agree that any action or event has occurred to justify any change in time or compensation, or if the parties fail to agree upon the appropriate amount of the adjustment in time or compensation, the Department will unilaterally make such changes, if any, to the Contract, as it determines are appropriate pursuant to the Contract. The Contractor shall proceed with the Work and the Department's directives, without interruption or delay, and shall make a claim as provided in Article 12. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Contract and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

## **ARTICLE 10** **LIQUIDATED DAMAGES**

**Section 10** If the Contractor fails to achieve Substantial Completion by the Substantial Completion Date, the parties acknowledge and agree that the actual damage to the Department for the delay will be impossible to determine, and in lieu thereof, the Contractor shall pay to the Department, as fixed, agreed and liquidated delay damages in the amount of Seven Hundred and Fifty (\$750.00) per day for each calendar day of delay for failure to meet the Substantial Completion Date. The Contractor and the Department agree that the liquidated damages do not constitute, and shall not be deemed a penalty, but represent a reasonable approximation of the damages to the Department associated with a delay in the Project.

## **ARTICLE 11** **INSURANCE AND BONDS**

### **Section 11.1    Insurance Required by the Project**

**Section 11.1.1** The Contractor will be required to maintain the following types of insurance throughout the life of the contract.

**Section 11.1.1.1** Commercial General Liability Insurance (“Liability Insurance”) against liability for bodily injury, death, and property damage arising from any one occurrence within each policy year. The liability insurance, shall include, but not be limited to: premises-operations; broad form property damage; products and completed operations; person and advertising injury; contractual liability and independent contractors. Such Liability Insurance shall be in an amount not less than \$2,000,000.00 per occurrence limits; \$4,000,000.00 per

aggregate. The policy coverage shall include the District of Columbia as an additional insured, shall be primary and non-contributory with any other insurance maintained by the District of Columbia, and shall contain a waiver of subrogation. The Contractor shall maintain Completed Operations coverage for five (5) years following final acceptance of the work performed under this contract.

**Section 11.1.1.2** Workers' Compensation and Employers Liability coverage providing statutory benefits for all persons employed by the Contractor, or its contractors and subcontractors at or in connection with the Work.

**Section 11.1.3** Automobile Liability, including Hired and Non-Owned Auto Liability in the amount of at least One Million Dollars (\$1,000,000) for each occurrence for bodily injury and property damage.

**Section 11.1.1.4** Umbrella or Excess Liability coverage in the amount of at least \$5,000,000 per occurrence, with the District of Columbia as additional insured.

**Section 11.1.1.5** Builder's Risk insurance written on an "all risk" basis and covering the value of the improvements being constructed. This coverage does not need to be maintained until such time as construction operations begin.

**Section 11.1.2** Each insurance policy shall be issued in the name of the Contractor and shall name as additional insured parties the Department and the District of Columbia, and the officers, agents and employees of each. Such insurance shall not be cancelable or reduced without thirty (30) days prior written notice to the Department.

**Section 11.1.3** All such insurance shall contain a waiver of subrogation against the Department and the District of Columbia, and their respective agents.

**Section 11.1.4** All such insurance policies shall be written by a company that is rated at least A- by A.M. Best and having a surplus size rating of at least XV.

**Section 11.2 Performance Bond and Payment Bond.** The Contractor shall, before commencing the Construction Phase, provide to the Department a payment bond and performance bond, each with a penal sum equal to the full value of the Lump Sum Price. Such bond shall remain in full force and effect until Final Completion is achieved and the Department shall be able to draw upon such bond regardless of the amount paid by the Department to the Contractor, even if such amount exceeds the penal value of such bond. Unless otherwise directed by the Department, the Contractor shall require all Subcontractors whose Subcontract prices exceed One Hundred Thousand Dollars (\$100,000) to provide payment and performance bonds, with a penal sum equal to one hundred percent (100%) of the subcontract price. All bonds must be in a form acceptable to the Department, its lenders or bond trustee, and issued by a surety authorized to do business in the District of Columbia and bonding company listed on the United State Department of Treasury's Listing of Approved Sureties. All subcontractors' bonds

must include a dual obligee rider, naming the Contractor and the Department as dual obligees. If the Lump Sum Price is increased pursuant to the terms of the Contract, the Department may require that the amount of the bonds be increased in the amount of one hundred percent (100%) of the increase, and the Contractor shall promptly comply. The Contractor shall furnish a copy of its bonds to any potential beneficiary of the bonds, or permit that person or company to make a copy. If the bonds provided become unacceptable to the Department, the Contractor shall promptly provide substitute security acceptable to the Department. If the Contractor intends to exercise its rights as dual obligee under any trade Subcontractor's bond, it shall first give the Department twenty (20) days written notice, so that the Department may lodge any objection it may reasonably have to the proposed action.

## **ARTICLE 12**

### **ECONOMIC INCLUSION REQUIREMENTS**

#### **Section 12.1 LSDBE Utilization.**

**Section 12.1.1** The Department requires that business enterprises so certified by the Department of Small and Local Business Development Enterprises (DSLBD) participate in at least 35% of the project.

**Section 12.1.2** If there are insufficient qualified small business enterprises to completely fulfill the requirement of paragraph 12.1.1, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any certified business enterprises; provided, however, that all reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.

**Section 12.1.3** A prime contractor which is certified as a small, local, or disadvantaged business enterprise shall not be required to comply with the provisions of sections 12.1.1 and 12.1.2.

**Section 12.1.4** Neither the Contractor or a Subcontractor may remove a Subcontractor or tier-Subcontractor if such Subcontractor or tier-Subcontractor is certified as an LSDBE company unless the Department approves of such removal. The Department may condition its approval upon the Contractor developing a plan that is, in the Department's sole and absolute judgment, adequate to maintain the level of LSDBE participation on the Project.

#### **Section 12.2 Equal Employment Opportunity and Hiring of District Residents**

**Section 12.2.1** The Contractor shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

**Section 12.2.2** The Contractor shall ensure that at least fifty-one percent (51%) of the Contractor's Team and every subconsultant's and subcontractor's employees hired after the

effective date of the Contract, or after such subconsultant or subcontractor enters into a contract with the Contractor, to work on the Project shall be residents of the District of Columbia. This percentage shall be applied in the aggregate, and not trade by trade.

**Section 12.2.3** Thirty five percent (35%) of all apprentice hours worked on the Project shall be worked by District residents.

### **Section 12.3 Economic Inclusion Reporting Requirements**

**Section 12.3.1** Upon execution of the Contract, the Contractor and all its member firms, if any, and each of its Subcontractors shall submit to the Department a list of current employees and apprentices that will be assigned to the Contract, the date they were hired and whether or not they live in the District of Columbia.

**Section 12.3.2** The Contractor and its constituent entities shall comply with subchapter III of Chapter 11 Title 1, and subchapter II of Chapter 11 of Title 1 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The Contractor and all member firms and Subcontractors shall execute a First Source Agreement with the District of Columbia Department of Employment Services (“DOES”) prior to beginning Work at the Project site.

**Section 12.3.3** The Contractor shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

**Section 12.3.4** The Contractor shall be responsible for: (i) including the provisions of this Section 12.3 in all subcontracts; (ii) collecting the information required in this Section 12.3 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in the reports required to be submitted by the Contractor pursuant to Section 12.3.

**Section 12.4 Compliance with the Apprenticeship Act.** The Contractor agrees to comply with the requirements of the Apprenticeship Act of 1946, D.C. Code §§ 36-401, *et seq.* It is understood and agreed that thirty five percent (35%) of all apprentice hours the Project must be District residents. If the Builder or any of its subcontractors fail to use its best efforts to meet this goal, the Builder or the subcontractor shall be subject to a penalty of five percent (5%) of the labor costs associated with the Contract.

## **ARTICLE 13** **DISPUTE RESOLUTION**

**Section 13.1 Notice of Claim.** If the Contractor has complied with all provisions in Section 8 regarding changes, and the Department has denied the changes requested in a written Change Proposal, or has failed to respond to a written Change Proposal within thirty (30) days, and the Contractor wishes to pursue a claim over the disputed item, it shall inform the Department, in writing, of its claim. The notice must be delivered to the Department within

fifteen (15) days of the Department's decision, or within thirty (30) days of the written request for a Change Order, if the Department has failed to respond to the request. If the Contractor wishes to assert a claim, as such term is defined in the General Conditions, over a dispute not arising from matters related to a Change Event, Change Order or Change Directive, the written notice of claim must be delivered within fifteen (15) days of the date the Contractor knew or should reasonably have known of the events giving rise to the claim or dispute.

**Section 13.2 Contents of Notice.** The notice of claim shall state the nature of the claim, the events or circumstances giving rise to the claim, the type of relief requested, and the amount of time or additional compensation, or other damages sought. If the amount of time, compensation, or other damages sought is not reasonably ascertainable at the time, the Contractor shall so state, explain why, and provide whatever estimates it can reasonably provide. The notice shall state clearly that the Contractor intends to assert a claim with the Contracts Appeals Board with respect to the claimed items.

**Section 13.3 Procedures.** Unless the parties hereafter otherwise agree, all disputes arising under or in connection with the Contract or its breach, or relating to the Project, whether framed in contract, tort or otherwise, and which are not resolved by mediation, shall be resolved by the District of Columbia Board of Contract Appeals in accordance with Title X of the *Procurement Practices Reform Act of 2010* (PPRA). However, if a third party brings any claim against the Department, including, without limitation, claims of infringement of patents, copyrights or other intellectual property rights, the Department may bring an action for defense or indemnification against the Contractor in the court in which such claim is being litigated.

## **ARTICLE 14** **MISCELLANEOUS PROVISIONS**

**Section 14.1 Extent of Contract.** The Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Department and Contractor and supersedes all prior negotiations representations or agreements, either written or oral. The Contract may be amended only by written instrument signed by both the Department and Contractor. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

**Section 14.2 Conformance with Laws.** It shall be the responsibility of the Contractor to perform the Contract in conformance with the Department's Procurement Regulations (27 DCMR § 4700 *et seq.*) and all statutes, laws, codes, ordinances, regulations, rules, requirements and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Contractor to determine the Procurement Regulations, statutes, laws, codes, ordinances, regulations, rules, requirements and orders that apply and their effect on the Contractor's obligations thereunder.

**Section 14.3 Governing Law.** The Contract shall be governed by and construed in accordance with the laws of the District of Columbia, without regard to its conflict of laws principles.

**Section 14.4 Assignment.** The Department and Contractor respectively bind themselves, their partners, members, joint venturers, constituent entities, successors, assigns and legal representative to the other party hereto and to partners, members, joint venturers, constituent entities, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**Section 14.5 Retention of Records and Inspections and Audits**

**Section 14.5.1** The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under the Contract in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Contract.

**Section 14.5.2** The Contractor shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Department and the required cost submissions in effect on the date of execution of the Department.

**Section 14.5.3** The Department, the District of Columbia government, the District of Columbia Financial Responsibility and Management Assistance Office, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Contractor for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection.

**Section 14.5.4** The Contractor agrees to include the wording of this Section in all its subcontracts in excess of five thousand dollars (\$5,000) that directly relate to Project performance.

**Section 14.5.5** Audits conducted pursuant to this Section will be in accordance with generally acceptable auditing principles and established procedures and guidelines of the applicable reviewing or audit agency.

**Section 14.5.6** The Contractor agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft

audit report. The final audit report will include the written comments, if any, of the audited parties.

**Section 14.5.7** The Contractor shall preserve all records described herein from the effective date of the Contract completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

#### **Section 14.6 Inspection For Supplies And Services**

**Section 14.6.1** To the extent applicable or appropriate, the Department may, in its sole discretion, enter the place of business of the Contractor or the place of business of any Subcontractor in order to inspect or test supplies or services for acceptance by the Department. If inspections and tests are performed at the place of business of the Contractor or any Subcontractor, the inspections and tests shall be performed in a manner so as to not unduly delay the Work. Inspections and tests by the Department shall not relieve the Contractor or any Subcontractor of responsibility for defects or other failures to meet Contract requirements, and shall not constitute or imply acceptance.

**Section 14.6.2** Notwithstanding the Department's acceptance of or payment for any product or service delivered by Contractor, the Contractor shall remain liable for latent defects, fraud, gross mistakes amounting to fraud and the Department's rights under any warranty or guarantee.

**Section 14.6.3** The Department shall have the right to enter the place of business of the Contractor or the place of business of any Subcontractor in order to investigate any contractor or offeror with respect to a debarment or suspension of the Contractor or any such Subcontractor.

**Section 14.7 Laws And Regulations Incorporated by Reference.** All federal and District of Columbia laws and regulations, and all Department procedures now or hereafter in effect, whether or not expressly provided for or referred to in the Contract, are incorporated by reference herein and shall be binding upon the Contractor and the Department. It shall be the responsibility of the Contractor to perform the Contract in conformance with the Department's procurement regulations and all statutes, laws, codes, ordinances, regulations, rules, requirements, and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Contractor to determine the procurement regulations, statutes, laws, codes, ordinances, regulations, rules, requirements, and orders that apply and their effect on the Contractor's obligations thereunder. However, if the application of a future law or regulation requires the Contractor to undertake additional work that is materially different in scope than that presently contemplated or required, the Contractor shall be entitled to an equitable adjustment for such additional work.



**Section 14.8 Tax Exemption Provision.** Any tax exemptions applicable to the District of Columbia, including the gross receipts sales tax exemption for the sale of tangible personal property to the District, codified in D.C. Code § 47-2005, shall apply to the performance of the Contract.

**Section 14.9 Anti-Competitive Practices and Anti-kickback Provisions**

**Section 14.9.1** The Contractor recognizes the need for markets to operate competitively and shall observe and shall comply with all applicable law, rules, and regulations prohibiting anti-competitive practices. The Contractor shall not engage, directly or indirectly, in collusion or other anti-competitive practices that reduces or eliminates competition or restrains trade. The Department shall report to the appropriate authority any activity that evidences a violation of the antitrust laws, and take such other further action to which it is entitled or obligated under the law.

**Section 14.9.2** The Contractor shall observe and comply with all applicable law, rules, and regulations prohibiting kickbacks and, without limiting the foregoing, Contractor shall not (i) provide or attempt to provide or offer to provide any kickback; (ii) solicit, accept, or attempt to accept any kickback; or (iii) include, directly or indirectly, the amount of any kickback in the contract price charged by Contractor or a Subcontractor of the Contractor to the Department. The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in this subparagraph in its own operations and direct business relationships. The Department may take any recourse available to it under the law for violations of this anti-kickback provision.

**Section 14.9.3** The Contractor represents and warrants that it did not, directly or indirectly, engage in any collusive or other anti-competitive behavior in connection with the bid, negotiation or award of the Contract.

**Section 14.10 Responsibility for Agents and Contractors.** At all times and during both the Preconstruction and Construction Phases, the Contractor shall be responsible to the Department for any and all acts and omissions of the Contractor's agents, employees, Subcontractors, Sub-Subcontractors, material suppliers, and laborers, and the agents and employees of the Subcontractors, Sub-Subcontractors, material suppliers, and laborers performing or supplying Work in connection with the Project.

**Section 14.11 Ethical Standards For Department's Employees And Former Employees.** The Department expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed

under the Contract. The Contractor may not assign to any former Department or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Subcontractor or vendor.

#### **Section 14.12 Gratuities and Officers Not to Benefit Provisions**

**Section 14.12.1** If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any official, employee or agent of the Department or the District with a view toward securing the Contract or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract and may pursue such other rights and remedies provided by law and under the Contract.

**Section 14.12.2** In the event the Contract is terminated as provided in Section 14.12.1, the Department shall be entitled:

**Section 14.12.2.1** to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor; and

**Section 14.12.2.2** as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Department) which shall be not less than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

**Section 14.12.3** No member of, nor delegate to Congress, Mayor or City Council Member, nor officer nor employee of the District, nor officer nor employee of the Department shall be admitted to any share or part of the Contract or to any benefit that may arise therefrom, and all agreements entered into by the authorized representative of the Department in which he or any officer or employee of the Department shall be personally interested as well as all agreements made by the Department in which the Mayor or City Council Member or officer or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department or by any officer thereof; but this provision shall not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or officer or employee of the District is de minimus.

**Section 14.13 Covenant Against Contingent Fees Provisions.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a Commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Department shall have the right to terminate the Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the Commission, percentage, brokerage or contingent fee.

**Section 14.14 Non-Discrimination in Employment Provisions**

**Section 14.14.1** The Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. The affirmative action shall include, but not be limited to, the following:

**Section 14.14.1.1** Employment, upgrading, or transfer;

**Section 14.14.1.2** Recruitment or recruitment advertising;

**Section 14.14.1.3** Demotion, layoff, or termination;

**Section 14.14.1.4** Rates of pay, or other forms of compensation; and

**Section 14.14.1.5** Selection for training and apprenticeship.

**Section 14.14.2** Unless otherwise permitted by law and directed by the Department, the Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Department setting forth the provisions of this Section concerning non-discrimination and affirmative action.

**Section 14.14.3** The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in this Section.

**Section 14.14.4** The 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 Department, advising each labor union or workers' representative of the Contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**Section 14.14.5** The Contractor agrees to permit access by the Department to all books, records and accounts pertaining to its employment practices for purposes of investigation to ascertain compliance with this Section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

**Section 14.14.6** The Contractor shall include in every subcontract the equal opportunity clauses of this Section so that such provisions shall be binding upon each Subcontractor or vendor.

**Section 14.14.7** The Contractor shall take such action with respect to any Subcontractor as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for non-compliance.

**Section 14.15 Buy American Act Provision.** The Contractor shall comply with the provisions of the Buy American Act (41 U.S.C. § 10a), including, but not limited to, the purchase of steel.

**Section 14.16 Contract Work Hours And Safety Standards Act Provision.** The Contractor agrees that the construction work performed under this Contract shall be subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333).

**Section 14.17 Davis-Bacon Act Provision.** The Contractor agrees that the construction work performed under this Contract shall be subject to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-7). The wage rates applicable to this Project are attached as **Exhibit C**. The Contractor further agrees that it and all of its subcontractors shall comply with the regulations implementing the Davis-Bacon Act and such regulations are hereby incorporated by reference.

**Section 14.18 False Claims Act.** Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in District of Columbia Code § 22-2514.

**Section 14.19 Interpretation of Contract.** All of the documents comprising the Contract should be read as complementary, so that what is called for by one is called for by all. Ambiguities should be construed in favor of a broader scope of work for the Contractor, as the intent of the Contract is, with specific identified exceptions, to require the Contractor to assume entire responsibility for construction of the Project. If there is any inconsistency among the documents comprising the Contract, the order of precedence among them is as follows, with the first listed document having the highest priority: this Agreement and its Exhibits, the General Conditions, and the Construction Documents released by the Department. Any Change Order issued and executed by the Department shall supersede those portions of earlier dated contract documents to which it pertains.

**Section 14.20 Independent Contractor.** In carrying out all its obligations under the Contract, the Contractor shall be acting as an independent Contractor, and not as an employee or

agent of the Department, or joint venturer or partner with the Department. The Contractor shall have exclusive authority to manage, direct, and control the Work, and shall be responsible for all construction means, methods, techniques, sequences, and procedures, as well as for Project safety.

**Section 14.21 Confidential Information.** In the course of the Contractor's performance of the Work, the Department may make available to the Contractor information that the Department designates as trade secrets or other confidential engineering, technical and business information. As long as, and to the extent that, such information remains confidential and available to others only with the consent of the Department, or is not generally available to the public from other sources, the Contractor shall maintain such information in strict confidence and shall not disclose any such information to others (including its employees or Subcontractors), except to the extent necessary to enable the Contractor to carry out the Project. The Contractor shall similarly obligate any and all persons to whom such information is necessarily disclosed to maintain the information in strict confidence. The Contractor agrees that, in the event of any breach of this confidentiality obligation, the Department shall be entitled to equitable relief, including injunctive relief or specific performance, in addition to all other rights or remedies otherwise available.

**Section 14.22 No Third-Party Beneficiary Rights.** Nothing in this Agreement shall be construed as creating third-party beneficiary rights in any person or entity, except as otherwise expressly provided in this Agreement.

**Section 14.23 Media Releases.** Neither the Contractor, its employees, agents or Subcontractors or material suppliers shall make any press release or similar media release related to the Project unless such press release have been discussed with the Department prior to its issuance.

**Section 14.24 Construction.** This Agreement shall be construed fairly as to all parties and not in favor of or against any party, regardless of which party prepared the Agreement.

**Section 14.25 Notices.** All notices or communications required or permitted under the Contract shall be in writing and shall be hand delivered or sent by telecopier or by recognized overnight carrier to the intended recipient at the address stated below, or to such other address as the recipient may have designated in writing. Any such notice or communication shall be deemed delivered as follows: if hand delivered, on the day so delivered, if sent by telecopier, on confirmation of successful transmission, and if sent by recognized overnight carrier, the next business day.

If to the Department:

If to the Contractor:

Christopher E. Weaver  
Director  
Department of General Services  
2000 14th St, NW – 8<sup>th</sup> Floor

Washington, DC 20009

This Paragraph shall be read as imposing minimum requirements for distribution of required contractual notices, and not as displacing distribution requirements with respect to design documents, construction submittals, periodic reports, and other documents.

**Section 14.26 Limitations.** The Contractor agrees that any statute of limitations applicable to any claim or suit by the Department arising from this Contract or its breach shall not begin to run, or shall be deemed to be tolled, until Final Completion or, with respect to latent defects or nonconformities, such later time as the Department knew or should have known of the defect or nonconformity.

**Section 14.27 Binding Effect; Assignment.** The Contract shall inure to the benefit of, and be binding upon and enforceable by, the parties and their respective successors and permitted assigns. The Contractor acknowledges that, in entering into the Contract, the Department is relying on the particular qualifications of the Contractor, and the Contractor therefore shall not delegate or assign any of its duties or obligations under the Contract, except in accordance with the Contract's provisions relating to subcontracting, or pursuant to the Department's prior written consent. The Contractor shall not assign its rights under the Contract, including the right to all or a portion of its compensation, without the Department's prior written consent. Any delegation or assignment made contrary to the provisions of this Paragraph shall be null and void.

**Section 14.28 Survival.** All agreements warranties, and representations of the Contractor contained in the Contract or in any certificate or document furnished pursuant to the Contract shall survive termination or expiration of the Contract.

**Section 14.29 No Waiver.** If the Department waives any power, right, or remedy arising from the Contract or any applicable law, the waiver shall not be deemed to be a waiver of the power, right, or remedy on the later recurrence of any similar events. No act, delay, or course of conduct by the Department shall be deemed to constitute the Department's waiver, which may be effected only by an express written waiver signed by the Department.

**Section 14.30 Remedies Cumulative.** Unless specifically provided to the contrary in the Contract, all remedies set forth in the Contract are cumulative and not exclusive of any other remedy the Department may have, including, without limitation, at law or in equity. The Department's rights and remedies will be exercised at its sole discretion, and shall not be regarded as conferring any obligation on the Department's to exercise those rights or remedies for the benefit of the Contractor or any other person or entity.

**Section 14.31 Headings/Captions.** The headings or captions used in this Agreement or its table of contents are for convenience only and shall not be deemed to constitute a part of the Contract, nor shall they be used in interpreting the Contract.

**Section 14.32 Entire Agreement; Modification.** The Contract supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to the Contract shall be effective unless made in writing signed by both the Department and the Contractor, unless otherwise expressly provided to the contrary in the Contract.

**Section 14.33 Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable; each part of this Agreement is intended to be severable.

**Section 14.34 Anti-Deficiency Act.** The Department's obligations and responsibilities under the terms of the Contract and the Contract Documents are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) the D.C. Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act. Neither the Contract nor any of the Contract Documents shall constitute an indebtedness of the Department, nor shall it constitute an obligation for which the Department is obligated to levy or pledge any form of taxation, or for which the Department has levied or pledged any form of taxation. **IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE CONTRACT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.**

**Section 14.35 Licensing, Accreditation and Registration.** The Contractor and all of its subcontractors shall comply with all applicable District of Columbia, state and federal licensing, accreditation, and registration requirements and standards necessary for the performance of the contract.

**Section 14.36 Living Wage Act.** The Living Wage Act is applicable to this Contract. As such, the Contractor and its subcontractors shall comply with the wage and reporting requirements imposed by that Act

## **ARTICLE 15**

### **TERMINATION OR SUSPENSION**

**Section 15.1 Cancellation Before Notice to Proceed.** The Department may cancel the Contract at any time before issuance of a Notice to Proceed, in the Department's sole discretion.

Such a cancellation shall not be a breach of the Contract, and the Contractor shall not be entitled to any compensation or damages if cancellation occurs.

**Section 15.2 Termination for Default.** The Department may terminate the Contract for default if the Contractor fails materially to perform any of its duties or obligations under the Contract. In particular, but without limitation, the Department may terminate the Contract if:

**Section 15.2.1** the Contractor fails to prosecute the Work diligently, in accordance with the Project Schedule or to make such progress in the Work as the Department reasonably believes is necessary to complete the Project within the time required by the Contract; or

**Section 15.2.2** the Contractor fails to perform the Work in a good and workmanlike manner or to correct defects in the Work promptly upon notice by the Department; or

**Section 15.2.3** the Department reasonably determines that the Contractor has abandoned the Work, or has failed to pay laborers, mechanics, materialmen, Subcontractors or suppliers when payment is due; or

**Section 15.2.4** becomes insolvent, makes an assignment for the benefit of creditors, files a voluntary petition under any chapter of the Bankruptcy Code or has an involuntary petition filed against it under any chapter of the Bankruptcy Code, or has a receiver appointed, or files for dissolution or otherwise is dissolved; or

**Section 15.2.5** the Contractor fails to pay its debts in a timely manner or becomes insolvent, or the Department reasonably determines that the Contractor does not have the financial ability to carry out its obligations under the Contract and the Contractor fails to give the Department prompt and reasonable assurances of its ability to perform.

**Section 15.2.6** the Department must provide the Contractor with written notice of its intent to terminate the Contract under this provision seven (7) days before actually putting the termination into effect. If the Contractor has begun its curative action and has made progress satisfactory to the Department within the seven days, the Department may so notify the Contractor and the termination will not take effect. Otherwise, the termination shall take effect after seven days without further notice or opportunity to cure.

**Section 15.2.7** If the Department terminates the Contract for default, the Department will have the right to take over the Work, to accept assignment of some or all Subcontracts or agreements with material suppliers, to take possession of the Project, to take and use all tools, equipment and supplies then being used in connection with the Work, and to finish the Project by whatever method it deems expedient, including accepting assignment of all outstanding Subcontracts and Supply Agreements.

### **Section 15.3 Termination for Convenience**



**Section 15.3.1** The Department may, upon seven (7) days written notice to the Contractor, terminate the Contract in whole or specified part, for its convenience, whether the Contractor is in breach of Contract or not. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions.

**Section 15.3.2** After receiving notice of termination for convenience, the Contractor shall (1) stop work on the terminated portion of the Project as of the effective date of the termination and stop placing subcontracts or supply agreements thereunder; (2) consult with the Department regarding the disposition of existing orders and subcontracts, and use its best efforts to terminate them on terms favorable to the Department; (3) consult with the Department to decide what actions should be taken to protect work in place and equipment that has been delivered and not yet installed, and to render the site safe, and proceed to take such actions as may be agreed upon or, absent agreement, as may be reasonable; (4) take necessary or directed action to protect and preserve property in the Contractor's possession in which the Department has or may acquire an interest and, as directed by the termination notice or other order from the Department, deliver the property to the Department; and (5) promptly deliver to the Department all computer files it has prepared relating to the Project. The Contractor shall also promptly notify the Department, in writing, of any legal proceeding arising from any subcontract or supply agreement related to the terminated portion of the Project, and, in consultation with the Department, settle outstanding liabilities arising out of the terminated portion of the Project on the best terms reasonably possible.

**Section 15.3.3** The Contractor shall be entitled to receive only the following with respect to the terminated portion of the Project: (1) Cost of Work performed up to the date of termination; (2) reasonable costs of terminating outstanding subcontracts and supply agreements and other similar wind-up costs in a reasonable amount; (3) a fair and reasonable portion of the overhead and profit attributable to the Work performed on the terminated portion of the Project, up to the time of termination. The Contractor shall not be entitled to recover overhead or profits on unperformed portions of the Work. Further, if it appears to the Department that the cost of completing Work would have exceeded the Lump Sum Price, the Department shall have the right to adjust the settlement figure downward in an appropriate amount. In no case shall the Contractor be entitled to receive an amount in settlement for termination for convenience that would exceed the percentage value of the Work actually performed in accordance with the Contract, multiplied by the Lump Sum Price, and reduced by any damages, liquidated or otherwise, the Contractor may owe the Department.

**Section 15.3.4** Payment of such amounts shall be the Contractor's sole remedy for termination for convenience.

**Section 15.3.5** The Contractor shall, promptly after termination, submit a proposal for settlement of the amounts due to it as a result of the termination for convenience. The proposal shall be consistent with the requirements of Subparagraphs 15.4.2 through 15.4.4, and shall be accompanied by such documentation of costs as the Department may reasonably require. Such

documentation may include cost and price data in accordance with the Department's Regulations.

**Section 15.4 Effect of Wrongful Termination.** Any termination for cause which is later determined to have been improperly effected shall be deemed to have been a termination for convenience pursuant to Paragraph 14.4 and shall be governed by that Paragraph.

**Section 15.5 Continued Responsibility After Termination.** If the Contractor is terminated, either for default or otherwise, the Contractor shall remain responsible for defects or non-conformities in all Work performed to the date of the termination.

**Section 15.6 Suspension**

**Section 15.6.1 Suspension at the Convenience of the Department.** The Department may at any time, with or without cause, suspend, delay, reduce or interrupt performance of all or any portion of the Work for such period or periods as the Department elects by giving the Contractor written notice specifying which portion of the Work is to be suspended and the effective date of such suspension. Such suspension, delay or interruption shall continue until the Department terminates such suspension, delay or interruption by written notice to the Contractor. No such suspension, delay, interruption or reduction by the Department shall constitute a breach or default by the Department under the Contract Documents. The Contractor shall continue to diligently perform any remaining Work that is not suspended, delayed, reduced or interrupted and shall take all actions necessary to maintain and safeguard all materials, equipment, supplies and Work in progress affected by the suspension, delay, reduction or interruption.

**Section 15.6.2 Payment Upon Suspension For Convenience.** In the event of suspension, delay reduction or interruption for convenience by the Department, the Department shall pay the Contractor and the Lump Sum Price shall be increased by such amounts (subject to the payment and related requirements of the Contract Documents) as follows:

**Section 15.6.2.1** Additional Costs of the Work, if any, which are incurred by the Contractor, its Subcontractors and Vendors as a result of continuing to maintain dedicated personnel, materials and equipment at the Site at the Department's request during any suspension, delay or interruption period, including for the purpose of safeguarding all material, equipment, supplies and the Work in progress caused solely by such suspension, delay or interruption ordered by the Department for convenience, but the Lump Sum Price shall be increased only if and to the extent such delay, suspension or interruption exceeds a period of thirty (30) consecutive days following commencement of the Work; and

**Section 15.6.2.2** Other reasonable and unavoidable Costs of the Work, if any, which are directly related to any subsequent re-mobilization of the suspended, delayed or interrupted the work caused solely by such suspension, delay or interruption ordered by the Department for convenience, but the Lump Sum Price shall be increased only if and to the extent such delay,

suspension or interruption exceeds a period of thirty (30) consecutive days following commencement of the Work.

**Section 15.6.2.3** Provided, however, that no adjustment shall be made to the extent that performance was otherwise subject to suspension, delay or interruption by another cause for which the Contractor is responsible. Furthermore, the Contractor shall not be entitled to an increase in overhead or profit for a suspension ordered by the Department.

## **ARTICLE 16**

### **OTHER CONDITIONS AND SERVICES**

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

## **ARTICLE 17**

### **DEFINITIONS**

**Section 17.1 Agreement.** The term Agreement shall mean this Agreement consisting of 45 pages. It does not include exhibits attached hereto or any document incorporated by reference.

**Section 17.2 Change Directive.** A written direction signed and issued by the Department ordering the Contractor either to provide pricing and schedule impact information for a described change to the Work or to proceed with a described change and provide pricing and schedule impact information after beginning the changed Work.

**Section 17.3 Change Event.** Any condition, event, act, omission or breach, other than the issuance of a Change Directive, which the Contractor believes entitles it to a change in the Lump Sum Price, or the Substantial or Final Completion Date.

**Section 17.4 Change Order.** A written document, executed by the Department and the Contractor, setting forth the agreed terms upon which a change to the Contract has been made.

**Section 17.5 Construction Documents.** The final Drawings and Specifications, as prepared, sealed by the Architect/Engineer's design professional in accordance with the law, and issued by the Contractor for the purpose of obtaining bids from potential trade Subcontractors and material suppliers for use in constructing the Project.

**Section 17.6 Contract.** The entire, integrated agreement between the Department and the Contractor with respect to the Project, consisting of this Agreement and the Exhibits to the Agreement, the Construction Documents released for the Contractor's use and any Change Directives or Change Orders that have been executed by the Department.

**Section 17.7 Drawings.** The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and wherever issued, showing the design, locations and

dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

**Section 17.8 Final Completion.** The point at which Substantial Completion has been achieved, all punch list items noted at Substantial Completion have been completed and all documents the Contractor is required to deliver to the Department as a condition to receiving final payment.

**Section 17.9 Final Completion Date.** The date established herein by which the Contractor shall achieve Final Completion. The Final Completion Date may be modified only by Change Order or Change Directive in accordance with the Agreement.

**Section 17.10 Fully Complete.** To undertake all of the Work necessary to fully construct and complete the Project and execute all tasks necessary to obtain the final Certificate of Occupancy for the Project from the District of Columbia; submit final lien releases from the Contractor and Subcontractors and material suppliers; complete all punch list items to the Department's approval and sign-off; and cause all representations, warranties and guarantees to be honored and otherwise fulfill all of the requirements set forth in the Contract.

**Section 17.11 Hazardous Material.** Any toxic substance or hazardous chemical defined or regulated pursuant to federal, state or local laws relating to pollution, treatment, storage or disposal of waste, or protection of human health or the environment. Such laws include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act and laws relating to emission, spills, leaks, discharges, releases or threatened releases of toxic material. The term Hazardous Materials shall also include petroleum and petroleum bi-products

**Section 17.12 Notice to Proceed.** A written notice to proceed, signed by the Department, directing the Contractor to proceed with the Project or any portion of the Project.

**Section 17.13 Project Schedule.** The schedule for the project agreed to by the Department and the Contractor herein. Such schedule shall not be changed except by a Change Order or Change Directive issued by the Department. The schedule shall be in a form and contain such detail as may be agreed upon by the parties.

**Section 17.14 Specifications.** The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

**Section 17.15 Subcontractor.** Any person, natural or legal, to whom the Contractor delegates performance of any portion of the Work required by the Contract. The term "Subcontractor," used without a qualifier, shall mean a subcontractor in direct privity with the Contractor. "Subcontractors at all tiers" shall mean not only those Subcontractors in direct privity with the Contractor, but also those performing Work pursuant to sub-subcontracts,

subsubsubcontracts, and so on. "Subcontractors" shall include both those who are retained to perform labor only and those who are retained both to perform labor and to supply material or equipment. "Subcontractors" shall also include design professionals who are not the Contractor's employees and to whom the Contractor delegates any part of its responsibilities under the Contract, except that references to "trade Subcontractors" shall exclude design professionals.

**Section 17.16 Substantial Completion.** Substantial Completion shall mean that all of the following have occurred: (1) the construction and installation work have been completed with only minor punch list items remaining to be completed; (2) a permanent certificate of occupancy and all other required permits or approvals have been obtained; (3) all operating and maintenance manuals, training videotapes and warranties required by the Contract have been delivered to the Department; (4) any supplemental training session required by the Contract for operating or maintenance personnel have been completed; (5) all clean-up required by the Contract has been completed; and (6) the Project is ready for the Department to use it for its intended purpose. "Minor punch list items" are defined for this purpose as items that, in the aggregate, can be completed within ninety (90) days without interfering with the Department's normal use of the Project.

**Section 17.17 Substantial Completion Date.** The date established herein by which the Contractor shall achieve Substantial Completion. The Substantial Completion Date may be modified only by Change Order or Change Directive in accordance with the Agreement.

## **ARTICLE 18**

### **GENERAL CONDITIONS**

**Section 18 General Conditions.** To the extent that this Agreement is silent on an action or requirement of the Contractor, and current as of the date of this Agreement the Standard Contract Provisions For Use With Specifications for District of Columbia Construction Projects Revised March 2011 shall govern the Contractor's obligations with respect to such action or requirement under this Agreement.

## **ARTICLE 19**

### **INDEMNIFICATION**

**Section 18 Indemnification.** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Department and Department's consultants, agents, and employees from and against claims, damages, losses and expenses, including, but not limited to, attorneys' fees arising out of or resulting from performance of work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first written above.

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**{CONTRACTOR}**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_