

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



DESIGN-BUILD SERVICES OFFICE OF CABLE TELEVISION FILM,
MUSIC AND ENTERTAINMENT RENOVATION PROJECT

Solicitation No: DCAM-17-CS-0059

Addendum No. 7

Issued: May 3, 2017

This Addendum No. 7 is issued and hereby published on the DGS website on May 3, 2017. Except as modified hereby, the Request for Proposals ("RFP") remains unmodified.

Item #1 A.6 Procurement Schedule

Delete: Proposals Due - May 4, 2017 at 2:00 pm

Insert: Proposals Due - May 8, 2017 at 2:00 pm

Item #2 B.2.2.1 Schematic Deliverables

Delete: 6. Prepare necessary presentation materials (renderings and models) to communicate design and obtain approval of design direction.

Item #3 B.2.3 Design Development, Phasing & Early Release Packages

Delete: 8. Register the project with USGBC to obtain LEED certification and pay all registration fees.

Item #4 E.4.1.4 Project Management Plan

Delete: The Project Management Plan should contain the information requested in Section **D.4.5** of the RFP.

Insert: The Project Management Plan should contain the information requested in Section **D.4.4** of the RFP.

Item #5 G.1. Insurance Requirements

Delete: G.1.6 With respect to the design team, errors and omissions coverage written on a claims made basis and having an aggregate policy limit of at least Five Million Dollars (\$5,000,000).

Insert: G.1.6 With respect to the design team, errors and omissions coverage written on a claims made basis and having an aggregate policy limit of at least Two Million Dollars (\$2,000,000).

Item #6 Responses to Questions About the Solicitation (Exhibit 1)

Item #7 Form of Contract (Exhibit 2)

Item #8 E.4.1.8 Preliminary Design

Delete in its entirety

By: 
Brenda Allen
Chief Contracting Officer

Date: 5/3/12

- End of Addendum No. 7 -

Exhibit 1
DCAM-17-CS-0059
Design-Build Services OCTFME Renovation Project
Questions

No.	RFP Section Reference	Question	Response
1		In reviewing the RFP and scope, it appears that the designers will need to acquire for this project are MEP, FP, and Structural engineers. We were wondering if the District expects other design trades such as architects, civil engineers, or landscape architects to be involved as well.	The District does expect other trades to fulfill the scope of the RFP
2	B.2.2.1	Section B.2.2.1 Schematic Deliverables, Paragraph 5 indicates to conduct community meetings, solicit input and keep constituents informed. Please confirm this is a requirement for this MEP infrastructure upgrade? If this is required, what are the expectations for the number of meetings required for this project, within the schedule given?	The contractor will be required to coordination and communication with the neighboring businesses who utilize the road surrounding the facility.
3	B.2.2.1	Section B.2.2.1 Schematic Deliverables, Paragraph 6 indicates to prepare renderings and models to receive approval on design direction. Is this requirement expected for this MEP infrastructure upgrade project? If so, what is expected to be modeled or rendered?	See Addendum 7, Item #2. Models and renderings will not be required
4	B.2.2.2	Section B.2.2.2 Schematic Design Submission, Paragraph 3 indicates to provide Traffic and Parking survey and zoning analysis. Confirm if this is expected to be required for this MEP infrastructure upgrade project?	Traffic and parking survey and zoning analysis is required
5	B.2.3	Section B.2.3 Design Development, Phasing & Early	See Addendum 7, Item #3. LEED is not required.

		Release Packages, Paragraph 8 indicates LEED Certification is required. Confirm this is a requirement for this MEP infrastructure upgrade project. It is not likely to be possible for the scope as it is written.	Contractor is required to release early packages to maintain schedule
6	G.1.6	Section G.1.6, Confirm the Design PL insurance for E&O coverage should be \$5MM for a 1.4 to 1.6MM project?	See Addendum 7, Item #5
7		Page 27 and 28 of 36 references Section D.4.5 and D.4.3. However, Section D.4.3 on page 24 of 36 refers to Price (20) Points and not the Proposal Format? Section D.4.5 is missing and was not shown on solicitation document (page 24 or 25 of 36).	See Addendum 7, Item #4
8		At the pre-proposal conference on March 24, 2017, we were notified that the facility is mission critical and that the OCTFME was trying to create a 24/7 operation with redundancies. Please define what you mean by mission critical, as it relates to the chiller and emergency generator. Is DGS looking to run the facility non-stop 24/7 and have two pieces of equipment running in parallel?	Mission critical as it relates to the Chiller and emergency generator means these pieces of equipment should be capable of operating at full capacity in the case of an emergency or power outage?
9		Please provide details of future plans for additional equipment and electrical loads and service.	Currently there are no plans to increase the current electrical load
10		At the pre-proposal conference on March 24, 2017, we were notified that we are to provide additional electrical design services for a new PEPCO service into the building – please provide details.	See Addendum 2, Item #1. OCTFME wants to understand the physical plant and cost impact of having two points of service, one above grade and one below grade, the design builder is to design the system to support such a configuration and provide a cost estimate for the implementation of the design.
11		At the pre-proposal conference on March 24, 2017, we were requested to add to our bid a fee for the relocation of the existing chiller. Please provide details such as the intended new location and delivery instructions.	The location is not known at this time and will be determined at a later date.
12		What is supposed to happen to the existing emergency	DGS will utilize the generator at another location.

		generator once the new one is installed – please provide direction and clarification on what to do with the existing emergency generator.	
13		At the preconstruction conference on March 24, 2017, we were notified that the new substantial completion date is now September 30, 2017, and not October 31, 2017 as noted in the solicitation? Will DGS issue an addendum to bidders to reflect this change?	The Substantial Completion date remains the same.
14	H.1	Section H.1 requires a bid bond; however, the total cost of the project cannot be determined until the issuance of the NTP letter and the receipt of bids from the subcontractors. How should the bonding issue be addressed when the total cost of the project will not be known by the time the NTP letter is issued?	The Bid Bond shall be 5% of the required fees.
15		What is it meant by “the implementation of electrical power redundancy”	If this is related to the two points of service from Pepco this means the installation requirements for the second service.
16		What is the architectural scope for this project?	The Architectural scope will be minimal and address some architectural aspects of the existing facility that need to be modernized. Additionally, any architectural elements that are affected by the MEP and Generator scope.
17	B.2.2.2	Section B.2.2.2 Schematic Design Submission. Please verify if items 1 thru 5 are required.	#1 is required thought this will be Mechanical, Electrical and Plumbing in nature. # 2 may not be required and should be further investigated during the programing and schematic design process. #3 is required should be further investigated during the programing and schematic design process. #4 is required should be further investigated during the programing and schematic design process. #5 is required should be further investigated during the programing and schematic design process.

18	B.2.2.3	B.2.3 Design Development: Please verify if item #8 “Register the project with USGBC...” is required.	See response to question 5.
19	E.4.1.8	Section E.4.1.8 of the solicitation requires offerors to submit a Preliminary Design containing the information requested in Section D.4.3. However, Section D.4.3 does not contain any information pertaining to design requirements. Please clarify what – if any – information is required to be submitted in our proposal for the Preliminary Design.	See Addendum 7, Item #8
20		On Page 2 of the RFP, in the executive summary, it indicates electrical power redundancy, however, in Attachment A Performance Specification, there is no indication of redundant electrical services. Are the Generator and UPS considered as redundant services, or is there a second redundant building electrical service required?	See addendum #2, Item #1.
21		It does not appear that the complete set of As-Builts and for Mechanical are provided, but only Mechanical sketches. Will additional Mechanical As-Builts be provided?	The As-Built drawings are complete.
22		What is the relocation scope of the chiller if it is replaced? Does it include installation, controls, electrical etc.	The relocation scope is only for transportation and delivery to the assigned location.
23		During the walk-thru, it was mentioned that fully redundant mechanical systems are required. Does this apply only to the Tech Core area as indicated in Attachment A? Does it apply to other areas?	This only applies to the tech core as indicated in Attachment A.
24		Provide a more precise meaning for “additional flexibility and control of the HVAC systems”? Does this mean that you want additional zoning of the systems for better control? If so, describe which zones are required.	This will be determined by the successful Offeror during the design phase of the system.
25		What level of HVAC redundancy is required in the Tech core area, N+1, N+2 or N+N?	This will be determined by the successful Offeror during the design phase of the system

26		The RFP indicates that the UPS system shall support the entire facility. Does this include air conditioning and non-emergency lighting?	No, it does not include the air conditioning and non-emergency lighting.
27		How much battery runtime is required for the UPS?	The UPS should be coordinated with the generator and should support the systems long enough for the generator to come online, which is the current setup.
28		Does the project budget include a dedicated life safety generator in addition to the whole building natural gas generator specified? Note: that larger capacity natural gas generators typically do not comply with the life safety code for start-up time.	No the budget does not include a dedicated life safety generator.
29		Will mechanical and electrical design criteria, (current Code and ASHRAE guidelines?) for the spaces be provided to develop building load calculations?	The successful Offeror will develop the criteria, which must meet current Code and ASHRAE guideline
30		The scope of work, as described by the Bid Documents, implies that the entire building should be backed up by full mechanical and electrical redundancy, meaning, redundant chillers and air handling units, redundant electrical service, redundant generators and redundant UPS. Is it the intent to create a 2N distribution throughout the facility?	This requirement will be designed during programming and schematics
31		Referring to Question 29, we would request clarification to the following: a. ELECTRICAL: Are two full capacity electrical service entrances required? Are two full capacity generators required? b. MECHANICAL: Are two full capacity chillers required? Are redundant air handling units required for each zone? c. UPS Systems: Are two full capacity UPS systems required? Will the UPS system(s) be required to support the entire building load? Will the UPS system(s) be	The successful Offeror will develop the criteria, which must meet current Code and ASHRAE guideline

		<p>required to support all mechanical systems? Will the UPS system(s) be required to support critical loads only? What is the anticipated UPS load (kW)?</p> <p>d. Are the mechanical systems dual corded? Are the critical loads in the IT racks dual corded?</p> <p>e. IT Racks: How much power is anticipated for the IT racks? What is the average kW/Rack?</p> <p>f. CRITICAL LOADS: Are there critical loads other than the IT racks? If so, what are they? How much power would the other critical loads consume?</p>	
32		I was wondering if there is an existing hazardous materials survey of the building? Will the design build team be responsible for providing a hazardous materials survey or abatement (if any)?	The facility was abated during the renovation project and documentation can be provided upon award.
33		How can I get access to the site to walkthrough with subcontractors	See Addendum 3, Item #1.
34		RFP calls to remove the existing roof top HVAC unit and relocate to another DGS location. Is this location known? Is there a central storage facility somewhere within the city?	DGS will utilize the Chiller at another location Provide an allowance to transport the Chiller within a 10 mile radius of the facility.
35		The HVAC portion of the Performance Specification in the RFP calls out modifications to the existing chiller and HVAC system serving the Tech Core. However, the "Reports" and "HVAC Modifications" folders on the website reference modifications to AHU-1 or AHU-2 serving the studios or AHU-3 serving the remainder of the office space. Based on conversations with the staff during the site visit on 4/7/17, the AHU modifications may have already been performed as part of a recent renovation. Please confirm that the AHU modifications are not included in the scope of the project?	The AHU have been modified as seen in the HVAC Modifications folder of the supporting document.
36		Preliminary Load calculations are included at the end of the HVAC Systems Survey located in the "Report"	This RFP is for the design builder to provide design services, upon award and during the programming and

		<p>folder. The AHU selections included with the load calcs and used as the basis for determining the new load parameters in the report use a leaving air temperature of 58 F which is significantly higher than the leaving air temperature of 52 F indicated in the Sequence of Operations in the “HVAC Modifications” folder. The higher temperatures will not provide air dry enough to dehumidify the space. Using the lower temperature air will result in increased cooling load on the chiller. Are the loads in the “Report” meant to be used as the basis for pricing, or are we to calculate new loads as part of the D-B proposal? If new load calculations are required, additional time will be required for the response, which would include additional site surveys to get accurate information.</p>	<p>schematic design service period the client agencies requirements will be defined after which all load calculations will need to meet the needs of the clients requirements/program.</p>
37		<p>Is there any metered electrical load data for the Tech Core server room or other spaces within the facility that can be used to verify the cooling loads?</p>	<p>This information will be made available upon award</p>
38		<p>The budget in the RFP does not support backing up the entire facility via generator. Can we anticipate a budget change or scope change? Some statements imply the generator and UPS are to be modified to support the entire facility under this scope (first paragraph under “Generator & UPS”), where other paragraphs imply these solutions are just to be assessed and recommendations provided. Please clarify.</p>	<p>The project budget is an all-in budget. The design of the emergency generator and UPS systems shall be further defined during the programming and schematic design phase with stakeholder input.</p>
39		<p>Please identify the “new loads as determined by OCTFME program requirements”.</p>	<p>The design builder is to provide design services upon award and during the programming and schematic design service period define all programmatic requirements with all the stakeholders.</p>
40		<p>Is there metered electrical data for the building to help determine the full facility load?</p>	<p>Yes, this information will be provided upon award to inform the programmatic and schematic design.</p>
41		<p>The generator enclosure will not support the generators</p>	<p>The Successful Offeror will be required to provide</p>

		required to meet the entire facility load. It may not be large enough for the generator required for the “new loads” (see question above). Can the rear parking lot be used for new generator(s) and distribution equipment?	design services during the programing and schematic design service period define all programmatic requirements with all the stakeholders.
42		It is unusual to require a UPS system to carry full building load. A UPS is not appropriate to back-up medium to large motor loads, such as chillers, air handlers, elevators, etc. Typically a UPS backs up critical electronic and PC based loads, that are not tolerant of brief outages. Please identify loads the UPS is to serve so that it can be assessed and sized properly.	The design of the UPS systems shall be further defined during the programming and schematic design phase with stakeholder input.
43		<ul style="list-style-type: none"> a. For the electrical room scope: In providing replacement options, are you asking for us to propose several options or to design and install an option? b. For the electrical room scope: In assessing the capacity/capability of the ATS 2 &3, are you looking for us to provide recommendations or to design and install an option? c. For the emergency room scope: In assessing the capacity of the GDP panel, are you looking for us to provide recommendations or to design and install an option? d. For the emergency room scope: In assessing the capacity of the ATS 1, are you looking for us to provide recommendations or to design and install an option? e. For the UPS room scope: Regarding assessing the capacity of the UPS and batteries, an uninterruptible power supply is used for situations where data loss is to be avoided. It is normally used for computer rooms to supply power until the generator achieves full power 	The design builder is to provide design services upon award and during the programing and schematic design service period define all programmatic requirements with all the stakeholders

		(typically 60 seconds). Having a UPS for the entire facility would be very costly and the spacing to be allocated may not be available. It seems that the UPS should only be sized for the computer room. The rest of the facility can be in emergency power only since the AC may be down for 1 minute without any detriment to the HVAC operation. Please confirm if this should be for the computer room only or the entire facility.	
44		Will CAD backgrounds be provided to us?	No
45		Is a civil engineer anticipated as being necessary for this project? (we have asked several times about what consultants would be necessary)	This may be required if utility work and exterior work is an OCTFME requirement
46		Are structural modifications to the chiller supports anticipated?	Yes
47		If the systems are modified, will the ducts remain as existing or should we anticipate a redesign of the ducts and possibly ceilings?	The intent is for the infrastructure to remain as is, but all avenues shall be reviewed during the design phase with the client agency.

**DESIGN-BUILD SERVICES OFFICE OF CABLE TELEVISION FILM, MUSIC AND
ENTERTAINMENT RENOVATION PROJECT
DCAM-17-CS-0059**

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

A. PROJECT INFORMATION

Project Name: Design-Build Services Office of Cable Television Film, Music and Entertainment Renovation Project (the “Project”)

Lump Sum Amount: \$[INSERT]

Construction Documents: Attached hereto as **Exhibit A**.

Substantial Completion Date: October 31, 2017

Project Manager: Agyei Hargrove, (202) 698-4151, agyei.hargrove@dc.gov

Liquidated Damages: One Thousand Three Hundred Dollars (\$1,300) per calendar day

B. ATTACHMENTS

<u>Exhibit A:</u>	Project Specifications
<u>Exhibit B:</u>	Schedule of Values
<u>Exhibit C:</u>	Subcontracting Plan
<u>Exhibit D:</u>	List of Allowances
<u>Exhibit E:</u>	Key Personnel
<u>Exhibit F:</u>	Davis Bacon Act Wage Determination
<u>Exhibit G:</u>	Workforce Utilization Plan
<u>Exhibit H:</u>	Contractor’s Designated Representative
<u>Exhibit I:</u>	Standard Contract Provisions

C. TERMS & CONDITIONS

SECTION 1 GENERAL PROVISIONS

Section 1.1 Relationship of Parties. The Contractor accepts the relationship of trust and confidence established with the Department by this Agreement, and covenants with the Department to furnish the Contractor’s reasonable skill and judgment and to cooperate with the Architect/Engineer and the Program Manager in furthering the interests of the Department. The Contractor shall use its best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Department. The Department shall endeavor to promote harmony and cooperation among the Department, Architect/Engineer, Contractor, Program Manager, and other persons or entities employed by the Department for the Project. In

performing its duties under this Contract, the Contractor shall at all times use the standard of care used by Contractors that construct similar facilities in urban areas. Whenever the term “competent” is used herein to describe the Contractor’s actions or duties that term shall refer to the level of competence customarily possessed by those Contractors that construct similar facilities in large, urban areas.

Section 1.2 Project Description. In general, the Project includes design and construction services for the renovation and modification to the Office of Cable Television Film Music and Entertainment (the “OCTFME”) headquarters facility located at 1899 9th Street, NE, Washington, DC 20004 (the “Project”). The facility is two story masonry and steel structure. It is approximately 30,000 square feet. In 2013-2014, the facility underwent major renovation and modernization. Housed at this facility are two studios supported by a control room and an audio room respectively, a Master control room, 8 edit suites, two green rooms, a UPS room, a backup generator and office space. The project includes: modifying the existing HVAC system to be more flexible and allow more control to meet the new Mission critical status of the agency as described in the Project Specifications (**Exhibit A**). The Project must be substantially complete no later than October 31, 2017.

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

Section 1.4 Program Manager. The Department has engaged a Program Manager (or “PM”) to provide certain program management functions. Such Program Manager shall, at all times, be acting solely for the benefit of the Department, not the Contractor. **The Contractor 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 George Lewis,, Brenda Allen, James Marshall, and Kimberly Gray.** Unless

otherwise provided herein, all deliverables hereunder shall be submitted to the PM.

Section 1.5 Prolog. The Contractor shall utilize the Department's Prolog system to submit any and all documentation required to be provided by the Contractor for the Project, including, but not limited to, (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) proposed Changes; and (v) applications for payment.

SECTION 2 DESIGN & PRECONSTRUCTION PHASE

Section 2.1 During the Design & Preconstruction Phase, the Contractor shall develop a design for the Project and obtain the necessary building permits and other approvals to construct the Project. The final design for the Project must be consistent with and a logical development of the schematic design prepared by the Design-Builder and, unless otherwise approved by the Department in advance and as part of the resulting contract, meet the programmatic needs outlined in the Performance Specifications. During the course of the Design & Preconstruction Phase, the Design-Builder shall meet regularly with DGS and OCTFME in order obtain input on aspects of the design and phasing plan. The Design-Builder shall make interim submissions of the design, as outlined below, in order for the Department to review.

Section 2.2 Baseline Schedule. Within fourteen (14) days of the issuance of a Notice to Proceed for Preconstruction Phase, the Contractor shall prepare and submit a baseline schedule for the Project. The Baseline Schedule shall be subject to review and approval by the Department and OCTFME and the Contractor shall incorporate such adjustments to the Baseline Schedule as may be reasonably requested. **2.1.1**The Baseline 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 Design-Builder, and the Design-Builder's design subconsultants) to properly plan the Project, and shall show: (i) Phasing Plan; (ii) key design milestones; (iii) release dates for long lead items; (iv) release dates for key subcontractors; and (v) substantial and final completion dates. The Baseline Schedule shall include the durations for DGS and OCTFME review of the interim design submissions. The preliminary schedule must also be submitted in Primavera 6 native format and shall be updated by the Contractor, at a minimum, on a bi-weekly basis.

Section 2.3 Schematic Design Following approval of the program, the Design-Builder shall develop the programmatic information into a schematic design.

Section 2.3.1 Schematic Deliverables. The Design-Builder shall be required to undertake the following tasks during this phase:

- .1 Conduct meetings with DGS representatives to confirm program requirements on a space-by-space basis.
- .2 Conduct life safety/building code analysis to verify compliance of design with most current version of the international building code in effect at the time the NTP is issued.
- .3 Confer with the Department's IT representatives/consultants to verify technological requirements for the Project.
- .4 Further develop conceptual plans and incorporate design changes.

- .5 Conduct community meetings to solicit input and keep constituents informed

Section 2.3.2 Schematic Design Submission. The Design-Builder shall prepare the schematic design submission for review and comment by the Department. Such schematic design submission shall include the elements and information listed below.

- .1 Architectural Concept Development
 - i. Development of final master site plan
 - ii. Building plan including building rise plans
 - iii. Preliminary cost estimate
 - iv. Project schedule
- .2 Updated property survey, including notations of utilities and all other easements
- .3 Traffic and parking survey and zoning analysis
- .4 Performance specifications update
- .5 Summary of Required Agency Review & Timetables, which may include but are not limited to: Office of Planning (“OP”), Commission of Fine Arts (“CFA”)
- .6 Digital floor plans and site plan
- .7 Preliminary building elevations and sections as required
- .8 Plan-to-Program Comparison
- .9 Design Narrative
- .10 Updated schedule

Section 2.3.3 Review and Revisions to Schematic Design Submission. The Design-Builder shall submit the schematic design submission to DGS for review and approval. DGS shall have the right to reject the schematic design for any reason; provided, however, the Contractor shall be entitled to an equitable adjustment to the Contract if the basis for DGS’ rejection is something other than the design fails to meet the requirements of the Performance Specifications. the Design/Builder shall be required to incorporate at no additional cost to DGS minor adjustments that may be requested by DGS.

Section 2.4 Design Development, Phasing & Early Release Packages

Following the approval of the schematic design, the Design-Builder shall progress the schematic design into a set of design development documents. The design development documents shall represent the logical development of the approved schematic design. The Design-Builder shall undertake the following as the design development documents are being advanced.

- .1 Select and draft specifications for materials, systems, and equipment.
- .2 Develop detailed and dimensioned plans, wall sections, building section, and schedules.
- .3 Complete code compliance analysis and drawing.
- .4 Confirm space-by-space equipment layouts with representatives from DGS.
- .5 Coordinate furniture, fixtures, and equipment requirements (“FF&E”).
- .6 Conduct follow up meetings with review agencies as required.
- .7 Present the design to CFA, Office of Planning, and other regulatory agencies as required.

Section 2.5 Permits & Construction Document.

Section 2.5.1 Permit. The Design-Builder shall prepare a set of permit documents and shall submit them to the necessary permitting authorities for review and approval. Concurrent with submission of such set to the Code Official, the Design-Builder shall provide DGS with a copy of the permit set for its review and approval. The Design-Builder shall develop a list of the required permits, shall track the progress of all such permits through the review process, and shall keep DGS and its Program Manager aware of the status and any significant delays in the permit process. The Design-Builder shall engage such permit expeditors as the Design-Builder deems necessary or appropriate in light of the project's schedule.

Section 2.5.2 Design Completion. Subsequent to obtaining the necessary building permits, the Design-Builder shall prepare a set of "issued for construction documents" (the "IFC Set(s)"). The Design-Builder shall provide DGS and its Program Manager a copy of all such IFC Sets. In these submittals, the Design-Builder shall highlight (or bubble) any aspect of the design that represents a material deviation from the permit set documents and shall address in a narrative format the impact, if any, such departure shall have on the Project's aesthetics, functionality or performance.

Section 2.6 Potential Subcontractors and Suppliers. The Contractor shall furnish to the Department and its Program Manager a list of the subcontractors and suppliers that will work on this Project as well as a general description of each such subcontractor's scope of work. Within five (5) business days after such list is submitted, the Program Manager shall advise the Contractor if it has any objection to any of the listed subcontractors or suppliers. In the event the Program Manager has a reasonable objection to any such subcontractor or supplier, the Parties shall discuss such objection and agree on an appropriate course of action.

Section 2.7 Other Services. Prior to providing its bid for the Project, the Contractor had an opportunity to review the Construction Documents for the Project and to ascertain what additional services, if any, were necessary for the delivery of a fully functioning Project and has included in the Lump Sum Price the costs of any necessary services, and the Contractor shall be required to provide, at no additional cost to the Department, such services as are necessary to implement the Project. Within seven (7) days after this Agreement is signed, the Contractor and the Project Manager shall agree upon the exact services to be required.

Section 2.8 Design Reviews/Submittals. On or before the dates specified in the approved detailed schedule (see Section 2.2), the Contractor shall submit the necessary information (i.e. shop drawings, submittals, sketches, etc.) to the Program Manager for his review and approval. Unless a different timeframe is established in the approved detailed schedule, the Program Manager shall have five (5) business days to review such documents. In the event the Program Manager finds such documents to be unacceptable, the Contractor shall be required to revise and resubmit such documents. The Contractor shall not commence construction activities unless and until such documents have been approved by the Program Manager. Any delays that result from design resubmissions shall be considered Non-Excusable.

Section 2.9 Permits. It is understood that the Contractor shall be responsible for any and all required permits necessary to complete the Project, with the exception of the building permit which the Department has already obtained. It is further understood that the Contractor shall be required to secure and pay for any other permits, governmental fees, licenses and inspections necessary for the execution and completion of the Work, including the raze permit; provided, however, that concrete testing and inspection will be provided by and paid for by the Department. The Department shall cooperate with the Contractor in securing such permits, licenses and inspections; provided however, the Department shall not be required to pay the fees for such permits, licenses and inspections unless otherwise noted herein. The costs of any such fees or inspections are included in the Lump Sum Price.

Section 2.10 Notices. The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the Department in writing of any known inconsistencies in the Drawings and Specifications with such governmental laws, rules and regulations.

Section 2.11 Letter Contract. The Department and the Contractor entered into a letter contract dated [DATE] (the "Letter Contract"). It is understood and agreed that certain of the preconstruction activities described above were performed while the Letter Contract was in place, and the terms of the Letter Contract shall merge into and be superseded by this Agreement upon the execution of this Agreement.

SECTION 3 CONTRACT SUM

Section 3.1 Lump Sum Price. The Contractor shall be paid a Lump Sum Price in the amount set forth in the Project Information Section of this Agreement to Fully Complete the Project. Fully Complete shall mean to undertake all of the Work necessary to fully construct and complete the Project and execute all tasks necessary to obtain the final Certificate of Occupancy for the Project from the District of Columbia; submit final lien releases from the 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 3.1.1 Development of Lump Sum Price. The Design-Builder shall be required to solicit bids from trade subcontractors based on the approved design documents (i.e. IFC Set(s)). During the preconstruction phase, the selected Design-Builder shall work with representatives of the Department to determine the manner in which trade subcontractors will be selected and the manner in which self-performed work will be authorized. Once bidding is completed, the contract for this work will be converted into a lump sum price ("**Lump Sum Price**") based on the following components: (i) the Preconstruction Fee; (ii) the Design Fee; (iii) the Design-Build Fee; (iv) the sum of all approved trade subcontractor costs; (v) the approved cost for any work that is authorized to be self-performed; (vi) an amount equal to the

Contingency Percentage bid by the selected contractor multiplied by items (iv) and (v); and (vii) the cost of insurance and bonds.

Section 3.2 Nature of the Lump Sum Price. The Contractor acknowledges and understands that the Lump Sum Price is based on the Drawings & Specifications included as **Exhibit A**. It is understood and agreed that the Lump Sum Price represents the Contractor's offer to Fully Complete the Project. The Parties acknowledge and agree that it is their intent to have the Contractor to construct and deliver a fully functional Project site as contemplated in the Construction Documents for the Lump Sum Price and consistent with the Project Schedule. In furtherance of such intent, the Contractor hereby assumes the risks associated with and shall be responsible for (i) any changes in market conditions that affect the cost of labor or materials; (ii) coordination issues between the Construction Documents; (iii) elements of work not shown on the Construction Documents, but which are reasonably inferable from the Construction Documents; (iv) cost associated with acceleration of the work and expediting of materials necessary to meet the Project Schedule which are the result of anything other than an Excusable Delay; and (v) the risk of subcontractor default.

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

Section 3.4 Allowances. The Lump Sum Price includes the allowances identified on **Exhibit D**. In the event that the cost of any Scope of Work to be covered by any allowance will exceed the amount of the allowance, the Contractor shall submit a Change Request in accordance with Article 8 of this Agreement for the difference. In the event that the cost of any Scope of Work to be covered by any allowance is less than the allowance, the savings in the allowance shall revert to the Department.

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

SECTION 4 CONSTRUCTION PHASE

Section 4.1 General. The Construction Phase shall commence when the Department issues a written Notice to Proceed for Construction. The Contractor shall construct the work described on the Construction Documents including any work that is that is that is not specifically shown thereon but is reasonably inferable therefrom or necessary for a fully functioning Project. The Work shall be carried out in a good and workmanlike, first-class manner, and in timely fashion. All materials and equipment to be incorporated into the Project shall be new and previously unused, unless otherwise specified, and shall be free of manufacturing or other defects.

Section 4.1.1 Supervision & Coordination.

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

- .1** Participate and assist in Project/Planning meetings;
- .2** Maintain full-time on-site construction supervision and provide daily inspections, quality control, monitoring, coordination of various trades, record drawings, and daily work log;
- .3** Coordinate works with any on-site personnel so as to ensure that their activities are not adversely affected;
- .4** Conduct periodic progress meetings following a Contractor generated agenda with the Program Manager;
- .5** Provide general safety and signage and posting for the project and see that each subcontractor prepares and submits adequate safety program and monitoring throughout the project;
- .6** Obtain all job permits and approvals from the Department of Consumer and Regulatory Affairs that are required to perform and complete the Work, unless otherwise noted herein;
- .7** Prepare payment requests, verify accuracy and forward to Department for approval and payment;
- .8** Assemble close-out documents required;
- .9** Provide assistance to the Department through all applicable warranty or guarantee periods.
- .10** Coordinate its work with all third parties so as not to delay the critical path of the Project; and
- .11** Prepare and submit to the Department construction meeting minutes, progress meeting minutes, daily logs, inspection reports, preliminary and baseline schedules, (Primavera format) and schedule updates demonstrating the critical path of the Project (Primavera format).

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

- .1 that, to the extent of the Work or supply within the Contract's scope, the Subcontractor or supplier is bound to the Contractor for the performance of all obligations which the Contractor owes the Department under the Contract;
- .2 that the Subcontractor or supplier is not in privity with the Department and shall not seek compensation directly from the Department on any third-party beneficiary, quantum meruit, or unjust enrichment claim, or otherwise, except as may be permitted by any applicable mechanic's lien law;
- .3 that the Department is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit;
- .4 that the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Contractor is terminated for default;
- .5 that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Contractor to suspend or stop work;
- .6 that the Subcontractor or supplier shall maintain records of all Work it is requested or authorized to do on a time and material or cost-plus basis, or with respect to claims that it has asserted on a time and materials or cost-plus basis, during the Project and for at least three (3) years after the Project is Substantially Complete and requiring the Subcontractor or supplier to make those records available for review or audit by the Department during that time;
- .7 that the Subcontractor and Sub-subcontractors, at all tiers, have reviewed the Construction Documents including, but not limited to, all Drawings and Specifications provided by the Architect/Engineer, for accuracy, constructability and completeness and will bring any deficiency to the attention of the Department before the Subcontractor enters into a subcontract with the Contractor;
- .8 that the Subcontractor shall obtain and maintain, throughout the Project, workers' compensation insurance in accordance with the laws of the District of Columbia. It is understood that this provision is not applicable to supply agreements;
- .9 that, if the Department terminates the Contract for convenience, the Contractor may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) days' written notice to the Subcontractor or supplier, and that the Subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in the Termination for Convenience provisions of this Agreement;

- .10 that the Department shall have the right to enter into a contract with the Subcontractor or supplier for the same price as its subcontract or supply agreement price less amounts already paid, if the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;
- .11 that the Subcontractor or supplier shall not be entitled to payment for defective or non-conforming work, materials or equipment, and shall be obligated promptly to repair or replace non-conforming work, materials or equipment at its own cost;
- .12 a provision requiring that Subcontractors and suppliers promptly pay Subcontractors and suppliers at lower tiers, imposing upon the Subcontractors and suppliers a duty to pay interest on late payments, and barring reimbursement for interest paid to lower tier Subcontractors or suppliers due to a Subcontractor's or supplier's failure to pay them in timely fashion;
- .13 a provision requiring that all Subcontractors at all tiers comply with the provisions of Section 10 (Economic Inclusion Requirements); provided, however, that the Contractor 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 Contractor from using its best efforts to achieve the LSDBE subcontracting goal on an aggregate basis for the Project;
- .14 a provision which allows the Contractor to withhold payment from the Subcontractor if the Subcontractor does not meet the requirements of the Subcontract;
- .15 lien and claim release and waiver provisions substantially identical to those in this Agreement.

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

Section 4.4 Payment by Joint Check in Certain Instances. 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 Contractor 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 Contractor by joint check.

Section 4.5 Site Observations. The Contractor will be required to visit the site, become familiar with local conditions under which the work is to be performed and correlate personal observations with requirements of the Construction Documents. The Contractor shall carefully study and compare the Construction Documents with each other and with information

furnished by the Department. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Construction Documents; and (3) promptly report errors, inconsistencies or omissions discovered to the Department. Once work is started, the Contractor assumes the responsibility and costs for the work and the cost of correcting work previously installed.

Section 4.6 Warranty of the Construction Work. The Contractor warrants to the Department that materials and equipment furnished under this Agreement will be of good quality and new unless otherwise expressly permitted in writing, that for the one (1) year period following the Substantial Completion Date the construction work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the Construction Documents and/or any approved design documents. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. The Contractor and a representative of the Department shall walk the Project together eleven (11) months after the Substantial Completion Date to identify any necessary warranty work. In the event the Contractor fails to schedule such a walk, the Warranty period shall be extended until such time as the Contractor schedules such a walk.

Section 4.7 Extent of Responsibility and Site Conditions. The Contractor shall be entitled to submit a Change Request for differing site conditions only to the extent that such conditions could not have been discovered by a competent visual inspection of the site and are of unusual nature and differ materially from those ordinarily encountered and generally recognized as inhering to work of the character provided for in this Agreement (such circumstances, "Differing Site Conditions"). Any such Change Request shall be made pursuant to Article 8 of this Agreement.

Section 4.8 Unsafe Materials and Hazardous Materials

Section 4.8.1 The Contractor 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 Contractor believes that anything in this Agreement would require that it use or bring onto the site asbestos, PCBs, or any Hazardous Material that is not customarily used in a facility of the type and similar to the Project, it shall immediately inform the Department and seek direction before proceeding.

Section 4.8.2 If Hazardous Materials are discovered on the site, the Contractor shall immediately inform the Program Manager and the Department of such discovery. The Contractor shall be entitled to submit a Change Request in accordance with Article 8 of this Agreement for any Hazardous Materials abatement and disposal work. The Contractor 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 Contractor shall also give those notices at the appropriate times. **The Contractor shall ensure abatement subcontractors and disposal sites are appropriately licensed and qualified. In addition, the Contractor shall ensure that any subcontractors involved in the abatement of hazardous materials maintain a contractor's pollution legal liability insurance policy of at least Two Million Dollars (\$2,000,000) for the duration of the Project and a period of three (3) years after Substantial Completion of the Project, and that any disposal site to which hazardous materials are taken carries environmental impairment liability insurance for the duration of the Project and a period of three (3) years after Substantial Completion of the Project.**

Section 4.8.3 The Contractor shall keep detailed records documenting Work done so that the Department may independently verify compliance with all laws, the number of units actually removed, treated, and/or disposed of, and the appropriate unit price(s) applicable to the Work.

Section 4.9 Progress Meetings. The Contractor shall schedule and conduct at a minimum bi-weekly progress meetings at which the Department, the Architect/Engineer, the Program Manager, the Contractor and appropriate Subcontractors can discuss the status of the Work. The Contractor shall prepare and promptly distribute meeting minutes.

Section 4.10 Written Reports. The Contractor shall provide written reports to the Program Manager on the progress of the entire Work in accordance at least every other week. The Contractor shall also maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, major equipment on the site, Work accomplished, problems encountered and other similar relevant data as the Department may reasonably require. The log shall be available to the Department, the Architect/Engineer and the Program Manager.

Section 4.11 Key Personnel. To carry out its duties, the Contractor shall provide at least the key personnel identified in **Exhibit E** to this Agreement, who shall carry out the functions identified in **Exhibit E**. The Contractor shall not replace any of the key personnel without the Department's prior written approval, which shall not be unreasonably withheld.

Section 4.12 Work by Separate Contractors. The Department reserves the right to perform construction or operations related to the Project with the Department's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site.

Section 4.13 Site Safety and Clean-Up. The Contractor will be required to: (i) provide a safe and efficient site, with controlled access, including the installation and provision of such safety barricades, enclosures and overhead protection as may reasonably be required by the Department and as may be necessary to ensure a safe workplace or as may be required by OSHA or other applicable law, and to remove such at the end of the Work and leave the site in broom clean condition; (ii) provide wheel washing stations on site so as to prevent the accumulation of dirt and other refuse on the streets surrounding the Project site; (iii) be responsible for site

security; and (iv) be responsible for the cost of temporary power used during the construction of the Project, including, but not limited to, the cost of installing such temporary wiring as may be required.

Section 4.14 Close-out. The Contractor shall be required to prepare and submit at close-out a complete set of product manuals, warranties, etc. The Contractor shall also provide the Department with a complete set of its Project files, including, but not limited to, shop drawings.

Section 4.15 Salvaged and Stored Items. The Contractor 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 [Intentionally Omitted].

Section 4.17 Cutting and Patching. The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Department or separate contractors by cutting, patching or otherwise altering such construction, or by excavation.

Section 4.18 Correction of Work.

Section 4.18.1 The Department shall be at liberty to object and to require the Contractor to remove forthwith from the Project site and the Work and to promptly replace the Superintendent, any foreman, technical assistant, laborer, agent, representative, or other person used by the Contractor in or about the execution or maintenance of the Work, who in the sole opinion of the Department is misconducting himself or herself, or is incompetent or negligent in the proper performance of his or her duties, or whose performance in the Work is otherwise considered by the Department to be undesirable or unsatisfactory, and such person shall not be again employed upon the Project without the written permission of the Department.

Section 4.18.2 The Contractor shall promptly correct Work rejected by Department for failing to conform to the requirements of the Construction Documents or any approved design document or applicable law or regulations whether observed before or after the Project's completion and whether or not fabricated, installed or completed, and shall correct any Work found to be not in accordance with the requirements within a period of one (1) year from the date of completion or by terms of an applicable special warranty required by this Agreement.

Section 4.18.3 If during the guarantee or warranty period, any material, equipment or system requires corrective Work because of defects in materials or workmanship, the Contractor shall commence corrective Work within forty-eight (48) hours after receiving the notice and work diligently until corrective Work is completed; provided, however, if such notice is received

on the day before a weekend or a holiday, the Contractor will commence corrective Work on the next business day. If the Contractor does not, in accordance with the terms and provisions of the Contract Documents, commence all corrective Work within forty-eight (48) hours or if the Contractor commences such Work but does not pursue it in an expeditious manner, Department may either notify the bonding company (if any) to have such Work and/or obligations performed at no additional cost to Department or may perform such Work and/or obligations and charge the costs thereof to Contractor.

Section 4.19 Warranties.

Section 4.19.1 The Contractor warrants that all manufacturers' or other warranties on all labor, materials and equipment furnished by the Contractor or a Subcontractor or supplier shall run directly to or will be specifically assigned to Department on demand or upon Project completion without demand. In the event any issue or defect which would be covered by any warranty arises but is not addressed by the grantor of the warranty, the Contractor shall be required to act as the guarantor of the obligations under the warranty and to perform under the terms of the warranty.

Section 4.19.2 The Contractor warrants that the installation of all materials and equipment shall be in strict accordance with the manufacturers' requirements or specifications.

Section 4.20 Schedule Update. The Contractor shall submit bi-weekly schedule updates which shall reflect actual conditions of Project progress as of the date of the update. The update shall reflect the actual progress of construction, identify developing delays, regardless of their cause, and reflect the Contractor'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 Contractor shall identify the causes of any potential delay and state what, in the Contractor's judgment, must be done to avoid or reduce that delay. The Contractor shall point out, in its narrative, changes that have occurred since the last update, including those related to major changes in the scope of work, activities modified since the last update, revised projections of durations, progress and completion, revisions to the schedule logic or assumptions, and other relevant changes. Any significant variance from the previous schedule or update shall also be identified in a narrative, together with the reasons for the variance and its impact on Project completion. All schedule updates shall be in a native format reasonably acceptable to the Department (e.g., Primavera). The Department may make reasonable requests during the Project for changes to the format or for further explanation of information provided. Submission of updates showing that Substantial Completion or Final Completion of the Project will be achieved later than the applicable scheduled completion date shall not constitute requests for extension of time and shall not operate to change the scheduled completion date. The Department's receipt of, and lack of objection to, any schedule update showing Substantial Completion or Final Completion later than the dates agreed upon in the Project Schedule shall not be regarded as the Department's agreement that the Contractor may have an extension of time, or as a waiver of any of the Department's rights, but merely as the Contractor'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 5 CLAIMS FOR ADDITIONAL TIME

Section 5.1 Time is of the essence for this Contract.

Section 5.2 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 5.3, 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:

- .1** Delays due to job site labor disputes, work stoppages, or suspensions of work;
- .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;
- .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
- .4** Delays due to Site conditions whether known or unknown as of the effective date of the Contract, foreseeable or unforeseeable at that time, naturally occurring or man-made; provided, however, that delays due to Differing Site Conditions or remediation of Hazardous Materials shall be deemed an Excusable Delay.

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

- .1** Delays due to adverse weather other than those that are classified as a Non-Excusable delay;
- .2** Delays due to acts of God, war, unavoidable casualties, civil unrest, and other similar causes of delay that are beyond the control of the 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
- .3** Delays caused by Differing Site Conditions or remediation of Hazardous Materials remediation.

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

Section 5.4 If the Contractor wishes to make a claim for an increase in the time to complete the Work required under this Agreement, 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 5.5 Acceleration. Subject to the terms of this Section 5.5, the Department shall have the right to direct the Contractor to accelerate the Work if, in the reasonable judgment of Department, the Contractor 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 Contractor with written notice of such event and the Contractor 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 Contractor are unable to agree on the terms of such corrective action plan within five (5) days after the issuance of the notice (i.e. with forty eight (48) hours after the receipt of the proposed corrective action plan), the Department shall have the right to direct such acceleration as the Department, in its reasonable judgment, deems necessary. Provided the notice provisions of this Section are complied with, the cost of any acceleration directed under this Section shall not justify an adjustment to the Lump Sum Price or the Substantial Completion Date. The Contractor hereby acknowledges that this provision is a material inducement upon which the Department has relied in entering into this Agreement; and represents and warrants that it has included sufficient funding in its Lump Sum Price in order to comply with the requirements of this Section.

Section 5.6 Differing Site Conditions. The term Differing Site Conditions shall mean subsurface conditions on or adjacent to the Project site which differ materially from those indicated in the geotechnical reports prepared by the Contractor. The term Differing Site Conditions shall also include unknown physical conditions at the site of an unusual nature which differ materially from those ordinarily encountered and generally recognized as inhering to work of the character provided for in this Contract. During the Preconstruction Phase, the Contractor shall be required to conduct a thorough review of the Project site and the surrounding area and shall document its findings. In the event the Contractor fails to undertake and document such a thorough review, the Contractor shall be deemed to have known of those conditions which a thorough review would have detected.

SECTION 6 PAYMENT PROVISIONS

Section 6.1 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 Program Manager's good faith estimate of the level of completion for each component of the Schedule of Values. Contractor shall prepare the Schedule of Values which breaks down the Lump Sum Price for the various parts of the Work.

Section 6.2 Schedule of Values. The Contractor has prepared the Schedule of Values attached hereto as **Exhibit B** 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 Program 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 each part of the Work if so required by the Program Manager. The Contractor and the Program Manager shall meet as necessary to maintain the schedule of values for the Project in a manner acceptable to the Program Manager. No progress payments shall be made unless the then current Schedule of Values is acceptable to the Program Manager.

Section 6.3 Retention. The Department shall withhold from each progress payment an amount equal to ten percent (10%) of each progress payment. Once Substantial Completion has occurred, the Department will reduce the retention being withheld to an amount that is equal to two hundred percent (200%) of the Program Manager's good faith estimate of the remaining Work.

Section 6.4 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. An executed Release of Liens and Claims in the format required by the Contracting Officer must accompany each Application for Payment.

Section 6.5 Timely Payment of Subcontractors. Within seven (7) days of receiving any payment from the Department including amounts attributable to Work performed, or materials or equipment supplied, by a Subcontractor or supplier, the Contractor shall either pay the Subcontractor or supplier for its proportionate share of the amount paid to the Contractor 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 Contractor's intention to withhold all or part of the payment and state the reason for the withholding. All monies paid to the Contractor 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 retained by the Contractor. 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 Contractor has failed to pay them in timely fashion shall not entitle the Contractor to a Change Order.

Section 6.6 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 6.7 Submission. On the twenty-fifth day of each month the Contractor shall submit to the Department (with a copy to the Program Manager) an Application for Payment, which Application for Payment shall cover the entire month during which the Application for Payment is submitted. All amounts formally submitted via Application for Payment and not disputed by the Department shall be due and payable on the last day of the month following submission or, if that is not a business day, on the following business day. If the Contractor and Department are unable to agree on the amounts properly due and owing, the Department shall pay in accordance with its good faith determination and the Contractor may protest and pursue a claim as provided in this Agreement.

Section 6.8 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:

- .1 the Work is defective and such defects have not been remedied; or
- .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
- .3 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
- .4 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

- .5 the Contractor has failed to provide the monthly report as required by this Agreement; or
- .6 the Contractor is otherwise in substantial breach of this Agreement; or
- .7 the Department has reasonable evidence that the Work will not be completed by the Substantial Completion Date, as required, that the unpaid balance of the Lump Sum Price would not be adequate to cover actual or liquidated damages arising from the anticipated delay; or
- .8 the Department has reasonable evidence that the Work cannot be completed for the unpaid balance of the Lump Sum Price; or
- .9 the Contractor is otherwise in substantial breach of this Contract (including, without limitation, failures to comply with LSDBE requirements in Section 10); or
- .10 the Application for Payment is incomplete, unsubstantiated and/or does not contain sufficient documentation for evaluation by the Contracting Officer.

Section 6.9 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 7 CHANGES CLAUSE

Section 7.1 Changes Generally. Unless otherwise specified herein, changes to the Work shall be reviewed in accordance with the District of Columbia Department of General Services Standard Contract Provisions, General Provisions (Construction Contract), as amended, and attached hereto as **Exhibit I** and incorporated herein.

Section 7.2 Markups. For Changes to the Lump Sum Price, the following conditions shall apply:

- .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);

.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.

.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.

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

.5 The amount of credit to be allowed by 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 fifteen percent (15%) for profit on the deleted work.

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

- (a) **Labor.** Payment will be made for direct labor cost plus indirect labor cost such as insurance, taxes, fringe benefits and welfare provided such costs are considered reasonable. Indirect costs shall be itemized and verified by receipted invoices. If verification is not possible, up to eighteen percent (18%) of direct labor costs may be allowed.
- (b) **Rented Equipment.** Payment for required equipment rented from an outside company that is neither an affiliate of, nor a subsidiary of, the 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.

- (c) **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.

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

Section 7.3 Department's Designated Representative. The Department designates George Lewis, Associate Director, Brenda Allen, Chief Contracting Officer, Contract & Procurement Division, as its representatives with express authority to bind the Department with respect to all matters requiring the Department's approval or authorization. These representatives 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 Contractor. In order for the Department to effectively manage the Project and assure that the Contractor does not receive conflicting instructions regarding the Work, the Contractor shall promptly notify the Department's representative upon receiving any instructions or other communication in connection with the Contractor's Work from any employee of the Department or other purported agent of the Department other than the Department's representative.

Section 7.4 Contractor's Designated Representative. The Contractor designates the individual(s) identified in **Exhibit H** as its representative with express authority to bind the Contractor with respect to all matters requiring the Contractor'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 Contractor'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 Contractor shall be performed in accordance with the highest professional standards recognized and adhered to by Contractors that perform historic renovation construction services for municipal facilities.

SECTION 8 LIQUIDATED DAMAGES

Section 8.1 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 set forth in the Project Information Section of this Agreement per day for each calendar day of delay for failure to meet the Substantial Completion Date. The 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. In the event the Contractor fails to meet the Substantial Completion Date for more than 50 days, the Contractor consents to a termination for default.

SECTION 9 INSURANCE AND BONDS

Section 9.1 The Contractor will be required to maintain the following types of insurance throughout the life of the Contract. In the event that a claim for or related to the Project is made on any such policy or any other policy, the Contractor shall be responsible for the payment of any applicable deductible and shall not be entitled to an increase in Lump Sum for the costs of paying such deductible.

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

- .6 Excess umbrella liability coverage (on at least a follow form basis) and when combined with the general liability policy has an aggregate limit of at least Ten Million Dollars (\$10,000,000).
- .7 With respect to the design team, errors and omissions coverage written on a claims made basis and having an aggregate policy limit of at least Two Million Dollars (\$2,000,000).

Section 9.2 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 policies shall not be cancelable or reduced without thirty (30) days prior written notice to the Department.

Section 9.3 All such insurance policies shall contain a waiver of subrogation against the Department and the District of Columbia, and their respective agents.

Section 9.4 All insurance shall be placed with insurers that are reasonably acceptable to the Department and with an A.M. Best's rating of not less than A- (Excellent) and a surplus size of not less than XV. All such insurers shall be licensed/approved to do business in the District of Columbia.

Section 9.5 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 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. All bonding companies must be included on the Department of Treasury's Listing of Approved Sureties.

SECTION 10 ECONOMIC INCLUSION REQUIREMENTS

Section 10.1 Subcontracting Plan. The Contractor shall **perform at least 35% of the contracting effort with its own forces, and if such Offeror subcontracts any work, 35% of the subcontracted effort must be subcontracted to CBEs.** For subcontracted work, pass through entities will not count toward this goal. In order to count toward the subcontracting requirement, the SBE must perform at least thirty five percent (35%) of the work that is being counted toward the goal with its own forces. The LSDBE certification shall be, in each case, as of the effective date of the subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal. The Contractor has developed an LSDBE Utilization Plan that is attached hereto as **Exhibit C.** The Contractor shall comply with the terms of the LSDBE Utilization Plan in making purchases and administering its Subcontracts and Supply Agreements.

Section 10.2 First Source Employment Act. The Contractor shall comply with subchapter X of Chapter II of Title 2 of the D.C. Code, and all successor acts thereto, including but not limited to the *Workforce Intermediary Establishment and Reform of First Source*

Amendment Act of 2011, and all successor acts thereto and the rules and regulations promulgated thereunder. The 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 10.3 Compliance with the Apprenticeship Act. The Contractor agrees to comply with the requirements of the Apprenticeship Act of 1946, D.C. Code §§ 32-1401, *et seq.* It is understood and agreed that thirty five percent (35%) of all apprentice hours for the Project must be District residents. If the Contractor or any of its subcontractors fail to use its best efforts to meet this goal, the Contractor or the subcontractor shall be subject to a penalty of five percent (5%) of the labor costs associated with the Contract, in accordance with D.C. Code § 32-1431 and implementing regulations.

Section 10.4 Workforce Utilization Plan. The Contractor shall comply with the requirements of the approved Workforce Utilization Plan attached as **Exhibit G**. At least fifty one percent (51%) of the Offeror’s Team and every subconsultant’s employees hired after the Offeror enters into a contract with the Department, or after such subconsultant enters into a contract with the Offeror, to work on this project, shall be residents of the District of Columbia. (such requirement, the “Workforce Utilization Requirement”). If the Department determines that the Contractor has achieved the Workforce Utilization Requirement, the Contractor shall be entitled to an incentive payment equal to one half of one percent (½%) of the Lump Sum Price. The Department shall also pay each subcontractor an incentive payment equal to Ten Percent (10%) of the payroll that is paid by the subcontractor to District residents who are employed on the Project. These calculations would be based the certified payrolls required to be submitted under the Davis Bacon Act as set forth in Section 11.4 of this Agreement.

SECTION 11 MISCELLANEOUS PROVISIONS

Section 11.1 Ownership And Use of Documents. The drawings, specifications and other documents prepared by the Contractor and its subconsultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project and shall become the property of the Department. They are not to be used by the Contractor, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Department and the Architect/Engineer.

Section 11.2 Governing Law. The Contract shall be governed by and construed in accordance with the laws of the District of Columbia, without regard to its conflict of laws principles.

Section 11.3 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 11.3.1 In accordance with the Buy American Act (41 U.S.C. § 10a-10d), and Executive Order 10582. December 17, 1954 (3 CFR, 1954-58 Comp., p. 230), as amended by

Executive Order 11051, September 27, 1962 (3 CFR, 1059—63 Comp., p. 635), the 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.

Section 11.3.2 Domestic Construction Material. “Construction material” means any article, material or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a “domestic construction material” if it has been mined or produced in the United States. A manufactured construction material is a “domestic construction material” if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. “Component” means any article, material, or supply directly incorporated in a construction material.

Section 11.3.3 Domestic Component. A component shall be considered to have been “mined, produced, or manufactured in the United States” regardless of its source, in fact, if the article, material or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

Section 11.3.4 Foreign Material. When steel materials are used in a project a minimal use of foreign steel is permitted. The cost of such materials cannot exceed one-tenth of one percent of the total project cost, or \$2,500,000, whichever is greater.

Section 11.4 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 F**. 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 11.5 False Claims Act. The 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 § 2-381.02.

Section 11.6 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 11.7 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 11.8 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 shall not assign its rights under the Contract, including the right to all or a portion of its compensation, without the Department's prior written consent. Any delegation or assignment made contrary to the provisions of this Section shall be null and void.

Section 11.9 Warranties and Representations

Section 11.9.1 All disclosures, representations, warranties, and certifications the Contractor makes in its proposal in response to the RFP shall remain binding and in effect throughout the term of the Contract. The Contractor reaffirms that all such disclosures, representations, warranties, and certifications are true and correct.

Section 11.9.2 If any disclosure, representation, warranty or certification the Contractor has made or makes pursuant to the RFP or the Contract, including, without limitation, representations concerning the Contractor'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 11.9.3 The terms and conditions of Section 11.9 shall apply throughout the term of this Agreement.

Section 11.10 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. This Section 11.10 shall apply throughout the term of this Agreement.

Section 11.11 Independent Contractor. In carrying out all its obligations under the Agreement, the Contractor shall be acting as an independent contractor, and not as an employee or agent of the Department, or joint venture or partner with the Department. The 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.

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

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

By: _____

Name: _____
Title: _____
Date: _____

[INSERT CONTRACTOR]

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

Exhibit A

Project Specifications

Exhibit B

Schedule of Values

Exhibit C

Subcontracting Plan

Exhibit D

List of Allowances

Exhibit E

Key Personnel

Exhibit F

Davis-Bacon Wage Rates

Exhibit G

Workforce Utilization Plan

Exhibit H

Contractor Representative