

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES**



REQUEST FOR PROPOSAL DCAM-17-CS-0123

**ST. ELIZABETH EAST CAMPUS PHASE 1 INFRASTRUCTURE
IMPROVEMENTS - DEMOLITION OF DOROTHEA DIX
ADMINISTRATION BUILDING**

AMENDMENT NO. 11

Amendment Number 11 is hereby issued and posted on the Department's web site at dgs.dc.gov October 20, 2017. Except as otherwise noted, all other terms and conditions of the Request for Proposal remain unchanged.

1. Section A.8 Attachments

Insert: Attachment M Form of Contract (provided as Attachment 1 to Amendment No. 11)

2. Section A.8 Attachments,

Insert: Attachment N Notice to Proceed and Letter Contract (provided as Attachment 2 to Amendment No. 11)

3. Section G, Insurance

Delete: In its entirety

Insert: the following

Section G Insurance

Section G.1 General Requirements. The Contractor at its sole expense shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverages prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A- / VII or higher. The Contractor shall require all of its subcontractors to carry the same insurance required herein.

All required policies shall contain a waiver of subrogation provision in favor of the Government of the District of Columbia.

The Government of the District of Columbia shall be included in all policies required hereunder to be maintained by the Contractor and its subcontractors (except for workers' compensation and professional liability insurance) as an additional insureds for claims against The Government of the District of Columbia relating to this contract, with the understanding that any affirmative obligation imposed upon the insured Contractor or its subcontractors (including without limitation the liability to pay premiums) shall be the sole obligation of the Contractor or its subcontractors, and not the additional insured. The additional insured status under the Contractor's and its subcontractors' Commercial General Liability insurance policies shall be effected using the ISO Additional Insured Endorsement form CG 20 10 11 85 (or CG 20 10 07 04 **and** CG 20 37 07 04) or such other endorsement or combination of endorsements providing coverage at least as broad and approved by the CO in writing. All of the Contractor's and its subcontractors' liability policies (except for workers' compensation and professional liability insurance) shall be endorsed using ISO form CG 20 01 04 13 or its equivalent so as to indicate that such policies provide primary coverage (without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an Additional Insured) for all claims against the additional insured arising out of the performance of this Statement of Work by the Contractor or its subcontractors, or anyone for whom the Contractor or its subcontractors may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

If the Contractor and/or its subcontractors maintain broader coverage and/or higher limits than the minimums shown below, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Grantee and subcontractors.

Section G.1.1 Commercial General Liability Insurance ("CGL") - The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. ("ISO") form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor, including ongoing and completed operations under all subcontracts, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$5,000,000 each occurrence, a \$10,000,000 general aggregate (including a per location or per project aggregate limit endorsement, if applicable) limit, a \$1,000,000 personal and advertising injury limit, and a \$10,000,000 products-completed operations aggregate limit.

Section G.1.2 Automobile Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the CO in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Contractor, with minimum per accident limits equal to the greater of (i) the limits set forth in the Contractor's commercial automobile liability policy or (ii) \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

Section G.1.3 Workers' Compensation Insurance - The Contractor shall provide evidence satisfactory to the CO of Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

Section G.1.4 Employer's Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of employer's liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.

All insurance required by this paragraph 3 shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.

Section G.1.5 Cyber Liability Insurance - The Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, with limits not less than \$1,000,000 per occurrence or claim, \$1,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. This insurance requirement will be considered met if the general liability insurance includes an affirmative cyber endorsement for the required amounts and coverages.

Section G.1.6 Environmental Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of pollution legal liability insurance covering losses caused by pollution conditions that arise from the ongoing or completed operations of the Contractor. Completed operations coverage shall remain in effect for at least ten (10) years after completion of the work. Such insurance shall apply to bodily injury, property damage (including loss of use of damaged property or of property that has been physically injured), cleanup costs, liability and cleanup costs while in transit, and defense (including costs and expenses incurred in the investigation, defense and settlement of claims). There shall be neither an exclusion nor a sublimit for mold-related claims. The minimum limits required under this paragraph shall be equal to the greater of (i) the limits set forth in the Contractor's

pollution legal liability policy or (ii) \$1,000,000 per occurrence and \$1,000,000 in the annual aggregate. If such coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverages under the policy precedes the Contractor's performance of any work under the Contract and that continuous coverage will be maintained or an extended reporting period will be exercised for at least ten (10) years after completion. The Contractor also must furnish to the Owner certificates of insurance evidencing pollution legal liability insurance maintained by the transportation and disposal site operators(s) used by the Contractor for losses arising from facility(ies) accepting, storing or disposing hazardous materials or other waste as a result of the Contractor's operations. Such coverages must be maintained with limits of at least the amounts set forth above.

Section G.1.7 Employment Practices Liability - The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the operations performed to cover the defense of claims which the District of Columbia would be named as a co-defendant in claims arising from employment related wrongful acts including but not limited to: Discrimination, Sexual Harassment, Wrongful Termination, or Workplace Torts. The policy shall include an endorsement naming the District of Columbia as a co-defendant or additional insured and shall also include the Client Company Endorsement for Temporary Help Firms and the Independent Contractors Endorsement. The policy shall provide limits of not less than \$1,000,000 for each wrongful act and \$1,000,000 annual aggregate for each wrongful act.

Section G.1.8 Contractors Professional Liability Insurance (Errors & Omissions) - The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of \$1,000,000 per claim or per occurrence for each wrongful act and \$1,000,000 annual aggregate. The Contractor warrants that any applicable retroactive date precedes the date the Contractor first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services.

Section G.1.9 Commercial Umbrella or Excess Liability -The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits equal to the greater of (i) the limits set forth in the Contractor's umbrella or excess liability policy or (ii) \$25,000,000 per occurrence and \$25,000,000 in the annual aggregate, following the form and in excess of all liability policies. All required liability coverages must be scheduled under the umbrella or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.

Section G.2 Construction Projects Controlled by the District For construction projects controlled by the District, the District should shall procure the following policies with the District listed as the first named insured.

This cost should be built into the Agency's budget. Funds will be transferred from applicable Agency to ORM to pay the premium for the Builders Risk Coverage.

Builders Risk – The District shall purchase and maintain builders risk insurance at 100% replacement cost upon the entire Work at the site and portions of the Work stored off the site with the District's approval, and contingent transit coverage for portions of the Work in transit. This insurance shall include the interests of the District, the Contractor and the Subcontractors in the Work and shall insure against all risk of physical damage subject to standard exclusions. Losses not covered by the District's insurance or Contractor's insurance shall be borne pursuant to the provisions of the Contract. The builders risk policy will have a deductible of not more than \$10,000. Losses within the deductible will be paid by the Contractor or the responsible Subcontractor. If not covered under the builders risk insurance or otherwise provided in the Contract Documents, the Contractor shall effect and maintain similar property insurance on portions of the Work stored off the site or in transit. Coverage may be purchased through either the District's insurance broker or the Contractor's insurance broker in the sole discretion of the District.

Section G.3 Primary and Noncontributory Insurance. The insurance required herein shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the Government of the District of Columbia.

Section G.4 Duration. The Contractor shall carry all required insurance until all contract work is accepted by the District of Columbia, and shall carry listed coverages for ten years for construction projects following final acceptance of the work performed under this contract and two years for non-construction related contracts.

Section G.5 Liability. These are the required minimum insurance requirements established by the District of Columbia. **HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE WILL NOT IN ANY WAY LIMIT THE CONTRACTOR'S LIABILITY UNDER THIS CONTRACT.**

Section G.6 Contractor's Property. Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.

Section G.7 Measure of Payment. The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.

Section G.8 Notification. The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of

coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. The Contractor will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract.

Section G.9 Certificates of Insurance. The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Certificates of insurance must reference the corresponding contract number. Evidence of insurance shall be submitted to:

The Government of the District of Columbia

And mailed to the attention of:
George G. Lewis
Associate Director/Chief Contracting Officer
Department of General Services
2000 14th Street 8th Floor
Washington, DC 20009
202 727-2800
george.lewis@dc.gov

The CO may request and the Contractor shall promptly deliver updated certificates of insurance, endorsements indicating the required coverages, and/or certified copies of the insurance policies. If the insurance initially obtained by the Contractor expires prior to completion of the contract, renewal certificates of insurance and additional insured and other endorsements shall be furnished to the CO prior to the date of expiration of all such initial insurance. For all coverage required to be maintained after completion, an additional certificate of insurance evidencing such coverage shall be submitted to the CO on an annual basis as the coverage is renewed (or replaced).

Section G.10 Disclosure of Information. The Contractor agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.

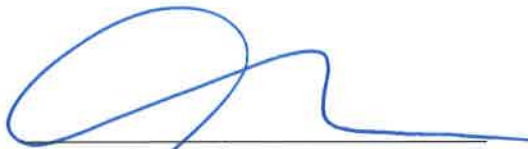
Section G.11 Carrier Ratings. All Contractor's and its subcontractors' insurance required in connection with this contract shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A- VII (or the equivalent by any other rating agency) and licensed in the in the District.

4. **Responses to Questions About the Solicitation** provided as Attachment 2 to Amendment No. 8, the **revised** response to Question No. 28 is provided below:

28	Attachment C	Will a unit rate schedule for hazardous material be added if the quantities in the hazardous material report are incorrect and for unforeseen items that the surveyors could not access such as mastics behind the brick facades on the outside of the building; or asbestos mastics under the exterior walls or columns?	No. Abatement services and related costs should be included in the Contractor's Lump Sum amount.
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5. Responses to Questions About the Solicitation

46		On the revised drawings dated 10-06-17, Sheet BD-15 at the Basement Floor Plan, there are numerous "X"s shown on the basement level. Above - in Section B-B, below the Sub-basement Level, there is a note to Document the Pile Caps and Piles. Are the "X"s to represent the approximate quantity and locations for the existing Pile caps and Piles?	No.
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George G. Lewis
Chief Contracting Officer


Date

End of Amendment No. 11

Attachment 1

Form of Contract
(Attachment M to RFP)

**DEMOLITION SERVICES AGREEMENT
ST. ELIZABETHS EAST CAMPUS INFRASTRUCTURE IMPROVEMENTS -
DOROTHEA DIX ADMINISTRATION BUILDING
DCAM-17-CS-0123**

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 **[INSERT 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: St. Elizabeths East Campus Infrastructure Improvements - Dorothea Dix Administration Building Demolition (the “Project”)

Lump Sum Price: \$**[INSERT]**

Demolition Plans and Specifications: Attached hereto as **Exhibit A**

Substantial Completion Date: April 6, 2018

Final Completion Date: April 27, 2018

Project Manager: Vanassa Simmons, vanassa.simmons@dc.gov

Liquidated Damages: One Thousand Dollars (\$1,000) per calendar day not to exceed Seventy Five Thousand Dollars (\$75,000) in the aggregate.

B. EXHIBITS

Exhibit A	Demolition Plans & Specifications
Exhibit B	Reference Information Documents (RIDS) <ul style="list-style-type: none">- B1 Phase 1 Environmental Site Assessment Update- B2 Hazardous Material Inspection Report, Dorothea Dix Pavilion Building- B3 Condition Assessment Building 83 and Building 90 St. Elizabeths East Campus
Exhibit C	Offer Letter
Exhibit D	Bidder/Offeror’s Certification Form
Exhibit E	Davis Bacon Wage Rates
Exhibit F	Standard Contract Provisions
Exhibit G	Subcontracting Plan
Exhibit H	First Source Employment Agreement
Exhibit I	2017 Living Wage Rate
Exhibit J	Key Personnel
Exhibit K	Contractor’s Designated Representative
Exhibit L	Schedule of Values

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 Department and its 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.

Section 1.2 Project Description. In general, the Contractor shall provide all labor, tools, equipment and materials necessary to cap and cut utilities at the mains, abate the Project building, perform the work called for in the Demolition Plans & Specifications (**Exhibit A**), and backfill the site with structural fill (collectively, the "Work"). To the extent there is any inconsistency in the Demolition Plans & Specifications, or between the Demolition Plans & Specifications, and this Agreement, the Contractor shall be required to provide the more expensive requirement. The Contractor acknowledges and agrees that prior to submitting its Lump Sum Price, the Contractor carefully reviewed the Demolition Drawings & Specifications. At all times during the course of this Agreement, the Contractor shall be obligated to bring any inconsistency or error in the Demolition Drawings & Specifications to the attention of the Department in writing. To the extent that a competent contractor could have identified any such inconsistency or error, such inconsistency or error shall not serve as the basis for a change order and the Contractor shall assume the risk of such inconsistency or error.

Section 1.2.1 The Contractor shall implement an aggressive rodent control plan immediately upon award and shall continue such implementation for the entire duration of building abatement and demolition.

Section 1.2.2 Access to building 81A (801 Shelter Building) must be maintained 24 hours per day/7 days per week during the entire abatement and demolition phases of the Project. All utility services to the 801 Shelter Building are to remain active and are not to be disturbed by the Project work without prior approval from the Department.

Section 1.2.3 In addition, there are two (2) in-service water mains located west of the Dix building (10 inch and 14 inch diameter mains) that the Contractor shall locate, mark and protect within the limits of work and must remain in service during the entire length of the Project Work.

Section 1.2.4 Details on the existing conditions of the Project building(s) and the areas impacted by the work can be found in the information contained in **Exhibit A** Demolition Plans & Specifications.

Section 1.2.5 The Contractor shall deliver a Project Work Plan no later than twenty (20) business days following the issuance of the Notice to Proceed (NTP), which shall include the

following elements:

- (a) Confirmed locations of all utilities, vaults or other underground elements that could potentially impact the building and site demolition or the means and methods for the demolition.
- (b) Results of all test pits, compiled in a report by the vendor that carried out all test pits.
- (c) Existing above grade elements including but not limited to trees, shrubs, overhead wires and sidewalks that may be impacted by the building and site demolition or that may impact the means and methods for the abatement and demolition work.
- (d) Planned final layout of site grading elements post-demolition.

Section 1.2.5.1 The Project Work Plan shall be delivered to the Department in hard copy, PDF and CAD format. The Contractor shall assume that multiple comments and/or revisions will be required in order to obtain an approved Project Work Plan.

Section 1.3 Completion Dates. Subject to the terms 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 clean-up required by the Contract has been completed; and (4) 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.

Section 1.4 Program Manager. The Department has assigned a Program Manager to oversee the Contractor's efforts in furtherance of this Project. Such Program Manager shall, at all times, be acting solely for the benefit of the Department, not the Contractor. The name and contact information for the assigned Program Manager is specified in the Project Information section of this Agreement. The Contractor shall take direction from, and coordinate its Work with, the assigned Program Manager. **The Contractor acknowledges, however, that the Program Manager is not authorized to modify any of the rights or obligations of the Department or the Contractor pursuant to this Contract, or to issue Change Orders or Change Directives.**

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) invoices/applications for payment (full package including all forms required by DGS); (v) certified

payrolls (in addition to upload via LCP Tracker); (vi) drawings and specifications; (vii) punchlist; and (viii) other documents as may be designated by the Department.

Section 1.6 Contract Documents. Contract Documents shall mean any and all components of the documents that comprise the Agreement between the Department and the Contractor, including any addenda, modifications or changes thereof.

SECTION 2 ABATEMENT PHASE

During the Abatement Phase, the Contractor shall review the Demolition Plans & Specifications (**Exhibit A**) and the Reference Information Documents (RID) (**Exhibit B**) including, **Exhibit B1** Phase 1 Environmental Site Assessment Update, **Exhibit B2** Hazardous Material Inspection Report, Dorothea Dix Pavilion Building and **Exhibit B3** Condition Assessment Building 83 and Building 90 St. Elizabeths East Campus and cut and cap utilities at the mains, and abate the Project building. The Contractor shall obtain any necessary permits for the performance of the Project, including the raze permit as filed initially by the Department, and perform any modifications or changes to Demolition Plans & Specifications required to obtain the raze permit and perform the work. The Department will submit the initial application for the raze permit prior to the NTP for the Abatement Phase.

The Contractor's scope of work shall include the abatement and removal of hazardous materials found on the site. The cost of such remediation shall be included within the Lump Sum Price. In performing such 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's obligations under this paragraph shall include signing (as the agent for the Department) any manifests required for the disposal of hazardous materials. The Contractor shall refer to **Exhibit A** Demolition Plans & Specifications and **Exhibit B** RID (**Exhibit B1, B2, and B3**) as necessary.

Section 2.1 Detailed Schedule. Within seven (7) days of the issuance of a NTP for the Abatement Phase, the Contractor shall submit to the Department for its approval a schedule for the Project. Such schedule shall include a schedule for submittals, if applicable, that is reasonably acceptable to the Program Manager.

Section 2.2 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 2.3 Review of Demolition Plans & Specifications. Prior to providing its bid for the Project, the Contractor had an opportunity to review the Demolition Plans & Specifications for the Project and to ascertain what additional services, if any, were necessary for the delivery of a fully functioning Project.

Section 2.4 Abatement Phase Scope of Work. The Contractor shall provide all labor, tools, equipment and materials necessary to cap and cut utilities at the mains and abate the Project Buildings in accordance with the Demolition Plans & Specifications (**Exhibit A**). The Phase 1 Environmental Site Assessment Update (**Exhibit B1**), the Hazardous Material Inspection Report, Dorothea Dix Pavilion (**Exhibit B2**) and the Condition Assessment Building 83 and Building 90 St. Elizabeths East Campus (**Exhibit B3**) are provided as reference documents to be used at the discretion of the Contractor to complete the required services. The Contractor shall perform all required services in accordance with the Environmental Protection Agency ("EPA") and all jurisdictional agencies as further explained in Section 3.8 below. Before beginning any work, the Contractor will be required to take control of the site and install the necessary construction fences and other devices to properly secure the site.

Section 2.5 Permits. The Contractor shall be required to secure and pay for any permits (e.g., trade permit fees, building permit fees, if required, and raze permit fees), governmental fees, licenses and inspections necessary for the execution and completion of the Work, including but not limited to, abatement, demolition, utilities abandonment, and utility relocation work. 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. The costs of any such fees or inspections are included in the Lump Sum Price.

Section 2.6 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 2.7 Letter Contract. It is understood and agreed that certain of the Abatement Phase activities described above were performed while the Letter Contract was in place, and the terms of the Letter Contract shall merge into and be superseded by this Agreement upon the execution of this Agreement. For the avoidance of doubt, any services provided for work performed pursuant to the merged Letter Contract, and prior to the date of execution of this Agreement, shall be governed by the terms and conditions of this Agreement.

SECTION 3 DEMOLITION PHASE

Section 3.1 General. The Demolition Phase shall commence when the Department issues a written NTP for Demolition, after a raze permit has been received. The Contractor shall complete the work described in the Demolition Plans & Specifications including any work that is not specifically shown thereon but is reasonably inferable therefrom or necessary for a fully functioning Project. In general, the Contractor shall be required to demolish the Project Buildings and backfill the sites with structural fill in accordance with the Demolition Plans & Specifications (**Exhibit A**). 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 3.1.1 Supervision & Coordination.

The Contractor will be required to properly supervise and coordinate its work. At a minimum, the Contractor shall:

- (a) Participate and assist in Project/Planning meetings;
- (b) Maintain full-time on-site abatement and demolition supervision and provide daily inspections, quality control, monitoring, coordination of various trades, record drawings, and daily work log, as applicable;
- (c) Conduct weekly progress meetings following a Contractor generated agenda with the Program Manager and all trades;
- (d) 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;
- (e) Obtain all job permits and approvals from the Department of Consumer and Regulatory Affairs that are required to perform and complete the Work;
- (f) Provide a written bi-weekly report that includes (i) an updated schedule analysis, (ii) an updated cost report, and (iii) a monthly review of cash flow;
- (g) Manage the change order process with the trade subcontractors to verify validity, purpose, and cost;
- (h) Prepare payment requests, verify accuracy and forward to Department for approval and payment;
- (i) Assemble close-out documents required;
- (j) Provide assistance to the Department and DMPED through all applicable warranty periods; and
- (k) Meet the DGS Program Manager as necessary to review the Contractor's work. The Contractor shall provide the DGS Program Manager meeting minutes of this weekly on-site meeting within three (3) business days of the meeting.

Section 3.2 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:

- (a) 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;
- (b) 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;
- (c) that the Department is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit;
- (d) 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;
- (e) that the subcontractor or supplier shall comply immediately with a written order from the Department to the Contractor to suspend or stop work;
- (f) that the subcontractor or supplier shall maintain records of all work it is requested or authorized to do on a time and material or cost-plus basis, or with respect to claims that it has asserted on a time and materials or cost-plus basis, during the Project and for a period of time specified in the General Conditions and requiring the subcontractor or supplier to make those records available for review or audit by the Department during that time;
- (g) 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;
- (h) 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;
- (i) 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; and
- (j) 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.

Section 3.3 Certified Subcontractors. The Contractor shall not revise the approved SBE Subcontracting Plan (**Exhibit G**) including 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 3.4 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 3.5 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 Demolition Plans & Specifications. The Contractor shall carefully study and compare the Demolition Plans & Specifications 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 Demolition Plans & Specifications; 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 3.6 Warranty of the 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 Work will be free from defects not inherent in the quality required or permitted; and that the Work will conform to the Demolition Plans & Specifications 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 3.7 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 Section 7 of this Agreement.

Section 3.8 Unsafe Materials and Hazardous Materials

Section 3.8.1 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 3.8.2 If Hazardous Materials are discovered on the site in excess of the quantities specified in the Hazmat Reports, 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 Section 7 of this Agreement for any additional Hazardous Materials abatement and disposal work beyond the quantities identified in the Hazmat Reports. 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.**

Section 3.8.3 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 3.9 Progress Meetings. The Contractor shall schedule and conduct at a minimum bi-weekly progress meetings at which the Department, the Program Manager and the Contractor and appropriate subcontractors can discuss the status of the Work.

Section 3.10 Written Reports. The Contractor shall provide written reports to the Program Manager on the progress of the entire Work 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 Department's architect/engineer of record ("Architect/Engineer") and the Program Manager.

Section 3.11 Key Personnel. To carry out its duties, the Contractor shall provide at least the key personnel identified in **Exhibit J** to this Agreement, who shall carry out the functions identified in **Exhibit J**. The Contractor shall not replace any of the key personnel without the Department's prior written approval, which shall not be unreasonably withheld.

Section 3.12 Work by Separate Contractors. The Department reserves the right to perform 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 operations on the site.

Section 3.13 Site Safety and Clean-Up. The Contractor shall: (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, ensuring site is locked during non-work hours and absences from the site during working hours; and (iv) be responsible for the cost of temporary power used to complete the required services of the Project, including, but not limited to, the cost of installing such temporary wiring as may be required. The Contractor shall also be responsible for the cost of all temporary construction necessary on the site.

Section 3.14 Close-out. The Program Manager shall perform a walk-through inspection in the presence of the Contractor. The Contractor shall prepare a written report stating any deficiencies found during the walk through, identify the responsible parties, and ensure that all the deficiencies are corrected by the Contractor prior to demobilization. The Contractor shall not demobilize from the site until receiving written notice from the Program Manager that the deficiencies have been corrected to the Program Manager's satisfaction.

Section 3.15 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 3.16 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 the Work of the Department or separate contractors by cutting, patching or otherwise altering such work, or by excavation.

Section 3.17 Correction of Work.

Section 3.17.1 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 3.17.2 The Contractor shall promptly correct Work rejected by Department for failing to conform to the requirements of the Demolition Plans & Specifications 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 3.17.3 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 3.18 Manufacturers' Warranties.

Section 3.18.1 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 3.18.2 The Contractor warrants that the installation of all materials and equipment shall be in strict accordance with the manufacturers' requirements or specifications.

SECTION 4 CONTRACT SUM

Section 4.1 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 achieve Final Completion of the Project.

Section 4.2 Nature of the Lump Sum Price. The Contractor acknowledges and understands that the Lump Sum Price is based on the Demolition Plans & 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 deliver a fully functional Project site as contemplated in the Demolition Plans & Specifications 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 drawings; (iii) elements of Work not shown on the Demolition Plans & Specifications, but which are reasonably inferable from the Demolition Plans & Specifications; (iv) cost associated with acceleration of the Work and expediting of materials necessary to meet the Project Schedule; and (v) the risk of subcontractor default.

Section 4.3 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 Demolition Plans & Specifications 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 his performance of the Work.

Section 4.4 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 5 PAYMENT PROVISIONS

Section 5.1 Compensation. The Contractor will be paid the Lump Sum Amount provided in **Exhibit C**, Offer Letter. The Contractor's compensation will be 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. The Lump Sum price includes all necessary costs to abate the building and obtain the raze permit.

Section 5.2 Schedule of Values. The Contractor has prepared the Schedule of Values attached hereto as **Exhibit L** 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 5.3 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 5.4 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.

Section 5.5 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 5.6 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.

Section 5.7 Submission. On the twenty-fifth (25th) 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.

Section 5.8 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:

- (a) the Work is defective and such defects have not been remedied; or
- (b) 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
- (c) 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
- (d) 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
- (e) the Contractor is otherwise in substantial breach of this Agreement.

Section 5.9 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 6 DESIGNATED REPRESENTATIVES

Section 6.1 Department's Designated Representative. The Department designates George G. Lewis, Associate Director Contracting & Procurement/Chief Contracting Officer, Department of General Services, and Franklin Austin, Contracting Officer as its representatives with express authority to bind the Department with respect to all matters requiring the Department's approval or authorization; provided, however, that James Marshall and Kimberly Gray, Supervisory Contract Specialists in the Contracts & Procurement Division, shall have the express authority to bind the Department for matters that are administrative in nature or of a value no greater than One Hundred Thousand Dollars (\$100,000). 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(s).

Section 6.2 Contractor's Designated Representative. The Contractor designates the individual(s) identified in **Exhibit K** 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 or her 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 7 CHANGES CLAUSE

Section 7.1 Changes Authorized. The Department may, without invalidating the Agreement, and without notice to or approval of any surety, order changes in the Work, including additions, deletions or modifications. Any such change must be conveyed by the Department to the Contractor via written Change Directive or Change Order.

Section 7.2 Executed Change Directive/Change Order Required. Only a written Change Directive or Change Order, executed by the Department, may make changes to the Agreement. In particular, but without limitation, a written Change Directive or Change Order executed by the Department is the only means by which changes may be made to the Substantial or Final Completion Date, or the Lump Sum Price.

Section 7.3 Department-Initiated Changes. If the Department wishes to make a change in the Work or to accelerate the Work, it will execute and issue to the Contractor a written Change Directive, either directing the Contractor to proceed at once with the changed Work or directing it to not to proceed at once with the changed Work or directing it to not to proceed. but to inform the Department, in writing, of the amount, if any, by which the Contractor believes that Substantial or Final Completion Date and/or the Lump Sum Price should be adjusted to take the Change Order or Change Directive into account.

Section 7.4 Notice of Change Event. The Contractor must give the Department written notice of any change event ("Change Event") within ten (10) calendar days of the date on which the Contractor knew, or reasonably should have known, of the Change Event. To the extent available, the notice must state the nature of the Change Event and describe, generally, all changes in the Contract to which the Contractor believes it is entitled. Such notice is an express condition precedent to any claim or request for adjustment to the Substantial or Final Completion Date, or the Lump Sum Price arising from the Change Event and, if the notice is not given within the required time, the Contractor will have waived the right to any adjustment to the Substantial or Final Completion Date or the Lump Sum Price arising from the Change Event.

Section 7.5 Detailed Change Request. Within twenty (20) days after giving notice of a Change Event, the Contractor shall submit a written change request describing, in reasonable detail, all adjustments it seeks to the Substantial or Final Completion Date or the Lump Sum Price as a result of the Change Event. The change request shall include the same information as described in Section 7.3 with respect to any Contract changes the Contractor seeks due to the Change Event, and the amount of any requested adjustment to the Lump Sum Price shall be limited in accordance with that Subsection.

Section 7.6 Markups. For Changes to the Lump Sum Price, the following conditions shall apply:

- (a) For increases in the Work which the Contractor is permitted to perform by the 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); 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 not be limited to, labor, rented equipment, Contractor's owned equipment, and materials. Direct Cost of the Work does not, however, include home office overhead, field supervision, general conditions or profit of either the Contractor or subcontractor. No personnel above the level of a working foreman shall be considered a Direct Cost of the Work;
- (b) 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 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.

- (c) 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.

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

- (d) The amount of credit to be allowed by the Contractor to the 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 the Department plus fifteen percent (15%) for profit on the deleted work.

Section 7.7 Failure to Agree. If the Contractor claims entitlement to a change in the Contract, and the Department does not agree that any action or event has occurred to justify any change in time or compensation, or if the Parties fail to agree upon the appropriate amount of the adjustment in time or compensation, the Department will unilaterally make such changes, if any, to the Contract, as it determines are appropriate pursuant to the Contract. The Contractor shall proceed with the Work and the Department's directives, without interruption or delay, and shall make a claim as provided in the Standard Contract Provisions (**Exhibit F**). Failure to proceed due to a dispute over a change request shall constitute a material breach of the Contract and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

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.

SECTION 9 INSURANCE AND BONDS

Section 9.1 INSURANCE

Section 9.1.1 General Requirements. The Contractor at its sole expense shall procure and maintain, during the entire period of performance under this Contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverages prior to

commencing performance under this Contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A- / VII or higher. The Contractor shall require all of its subcontractors to carry the same insurance required herein.

All required policies shall contain a waiver of subrogation provision in favor of the Government of the District of Columbia.

The Government of the District of Columbia shall be included in all policies required hereunder to be maintained by the Contractor and its subcontractors (except for workers' compensation and professional liability insurance) as an additional insureds for claims against the Government of the District of Columbia relating to this Contract, with the understanding that any affirmative obligation imposed upon the insured Contractor or its subcontractors (including without limitation the liability to pay premiums) shall be the sole obligation of the Contractor or its subcontractors, and not the additional insured. The additional insured status under the Contractor's and its subcontractors' Commercial General Liability insurance policies shall be effected using the ISO Additional Insured Endorsement form CG 20 10 11 85 (or CG 20 10 07 04 **and** CG 20 37 07 04) or such other endorsement or combination of endorsements providing coverage at least as broad and approved by the CO in writing. All of the Contractor's and its subcontractors' liability policies (except for workers' compensation and professional liability insurance) shall be endorsed using ISO form CG 20 01 04 13 or its equivalent so as to indicate that such policies provide primary coverage (without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an Additional Insured) for all claims against the additional insured arising out of the performance of this Statement of Work by the Contractor or its subcontractors, or anyone for whom the Contractor or its subcontractors may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

If the Contractor and/or its subcontractors maintain broader coverage and/or higher limits than the minimums shown below, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Grantee and subcontractors.

Section 9.1.1.1 Commercial General Liability Insurance ("CGL") - The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. ("ISO") form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor, including ongoing and completed operations under all subcontracts, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising

out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$5,000,000 each occurrence, a \$10,000,000 general aggregate (including a per location or per project aggregate limit endorsement, if applicable) limit, a \$1,000,000 personal and advertising injury limit, and a \$10,000,000 products-completed operations aggregate limit.

Section 9.1.1.2 Automobile Liability Insurance. The Contractor shall provide evidence satisfactory to the CO of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the CO in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Contractor, with minimum per accident limits equal to the greater of (i) the limits set forth in the Contractor's commercial automobile liability policy or (ii) \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

Section 9.1.1.3 Workers' Compensation Insurance. The Contractor shall provide evidence satisfactory to the CO of Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

Section 9.1.1.4 Employer's Liability Insurance. The Contractor shall provide evidence satisfactory to the CO of employer's liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.

All insurance required by this paragraph 3 shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.

Section 9.1.1.5 Cyber Liability Insurance. The Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, with limits not less than \$1,000,000 per occurrence or claim, \$1,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. This insurance requirement will be considered met if the general liability insurance includes an affirmative cyber endorsement for the required amounts and coverages.

Section 9.1.1.6 Environmental Liability Insurance. The Contractor shall provide evidence satisfactory to the CO of pollution legal liability insurance covering losses caused by pollution conditions that arise from the ongoing or completed operations of the

Contractor. Completed operations coverage shall remain in effect for at least ten (10) years after completion of the work. Such insurance shall apply to bodily injury, property damage (including loss of use of damaged property or of property that has been physically injured), cleanup costs, liability and cleanup costs while in transit, and defense (including costs and expenses incurred in the investigation, defense and settlement of claims). There shall be neither an exclusion nor a sublimit for mold-related claims. The minimum limits required under this paragraph shall be equal to the greater of (i) the limits set forth in the Contractor's pollution legal liability policy or (ii) \$1,000,000 per occurrence and \$1,000,000 in the annual aggregate. If such coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverages under the policy precedes the Contractor's performance of any work under the Contract and that continuous coverage will be maintained or an extended reporting period will be exercised for at least ten (10) years after completion. The Contractor also must furnish to the Owner Certificates of Insurance evidencing pollution legal liability insurance maintained by the transportation and disposal site operators(s) used by the Contractor for losses arising from facility(ies) accepting, storing or disposing hazardous materials or other waste as a result of the Contractor's operations. Such coverages must be maintained with limits of at least the amounts set forth above.

Section 9.1.1.7 Employment Practices Liability. The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the operations performed to cover the defense of claims which the District of Columbia would be named as a co-defendant in claims arising from employment related wrongful acts including but not limited to: Discrimination, Sexual Harassment, Wrongful Termination, or Workplace Torts. The policy shall include an endorsement naming the District of Columbia as a co-defendant or additional insured and shall also include the Client Company Endorsement for Temporary Help Firms and the Independent Contractors Endorsement. The policy shall provide limits of not less than \$1,000,000 for each wrongful act and \$1,000,000 annual aggregate for each wrongful act.

Section 9.1.1.8 Contractors Professional Liability Insurance (Errors & Omissions) The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of \$1,000,000 per claim or per occurrence for each wrongful act and \$1,000,000 annual aggregate. The Contractor warrants that any applicable retroactive date precedes the date the Contractor first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services.

Section 9.1.1.9 Commercial Umbrella or Excess Liability. The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits equal to the greater of (i) the limits set forth in the Contractor's umbrella or excess liability policy or (ii) \$25,000,000 per occurrence and \$25,000,000 in the annual aggregate, following the form and in excess of all liability policies. All required liability

coverages must be scheduled under the umbrella or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.

Section 9.1.2 Construction Projects Controlled by the District. For construction projects controlled by the District, the District shall procure the following policies with the District listed as the first named insured. This cost should be built into the Agency's budget. Funds will be transferred from applicable Agency to ORM to pay the premium for the Builders Risk Coverage.

Section 9.1.2.1 Builders Risk. The District shall purchase and maintain builders risk insurance at 100% replacement cost upon the entire Work at the site and portions of the Work stored off the site with the District's approval, and contingent transit coverage for portions of the Work in transit. This insurance shall include the interests of the District, the Contractor and the subcontractors in the Work and shall insure against all risk of physical damage subject to standard exclusions. Losses not covered by the District's insurance or Contractor's insurance shall be borne pursuant to the provisions of the Contract. The builders risk policy will have a deductible of not more than \$10,000. Losses within the deductible will be paid by the Contractor or the responsible subcontractor. If not covered under the builders risk insurance or otherwise provided in the Contract Documents, the Contractor shall effect and maintain similar property insurance on portions of the Work stored off the site or in transit. Coverage may be purchased through either the District's insurance broker or the Contractor's insurance broker in the sole discretion of the District.

Section 9.1.3 Primary and Noncontributory Insurance. The insurance required herein shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the Government of the District of Columbia.

Section 9.1.4 Duration. The Contractor shall carry all required insurance until all Contract work is accepted by the District of Columbia, and shall carry listed coverages for ten years for construction projects following final acceptance of the work performed under this Contract and two years for non-construction related contracts.

Section 9.1.5 Liability. These are the required minimum insurance requirements established by the District of Columbia. **HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE WILL NOT IN ANY WAY LIMIT THE CONTRACTOR'S LIABILITY UNDER THIS CONTRACT.**

Section 9.1.6 Contractor's Property. Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools

and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.

Section 9.1.7 **Measure of Payment.** The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.

Section 9.1.8 **Notification.** The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. The Contractor will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract.

Section 9.1.9 **Certificates of Insurance.** The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Certificates of insurance must reference the corresponding contract number. Evidence of insurance shall be submitted to the Government of the District of Columbia and mailed to the attention of:

George G. Lewis
Associate Director/Chief Contracting Officer
Department of General Services
2000 14th Street 8th Floor
Washington, DC 20009
202 727-2800
george.lewis@dc.gov

The CO may request and the Contractor shall promptly deliver updated certificates of insurance, endorsements indicating the required coverages, and/or certified copies of the insurance policies. If the insurance initially obtained by the Contractor expires prior to completion of the Contract, renewal certificates of insurance and additional insured and other endorsements shall be furnished to the CO prior to the date of expiration of all such initial insurance. For all coverage required to be maintained after completion, an additional certificate of insurance evidencing such coverage shall be submitted to the CO on an annual basis as the coverage is renewed (or replaced).

Section 9.1.10 **Disclosure of Information.** The Contractor agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.

Section 9.1.11 **Carrier Ratings.** All Contractor's and its subcontractors' insurance required in connection with this Contract shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A- VII (or the equivalent by any other rating agency) and licensed in the in the District.

Section 9.2 **Performance Bond and Payment Bond.** The Contractor shall, before beginning work required, 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 LSDBE Utilization. The Contractor shall perform at least 35% of the Work with its own forces, and if the Contractor subcontracts any Work, 35% of the subcontracted effort must be subcontracted to small business enterprises SBEs. 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 applicable subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal. The Contractor has developed a Subcontracting Plan that is attached hereto as **Exhibit G**. The Contractor shall comply with the terms of the SBE Subcontracting Plan in making purchases and administering its subcontracts and supply agreements.

Section 10.1.1 Mandatory Subcontracting Requirements. The mandatory subcontracting requirements are as follows:

- (a) Unless the Director of the Department of Small and Local Business Development (DSLBD) has approved a waiver in writing in accordance with D.C. Official Code § 2-218.51, for all contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted to qualified small business enterprises (SBEs).
- (b) If there are insufficient SBEs to completely fulfill the requirement of subsection (a) above, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.
- (c) A prime contractor that is certified by DSLBD as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections 10.1.1 (a) and 10.1.1 (b) of this clause.
- (d) Except as provided in sections 10.1.1 (e) and 10.1.1 (f), a prime contractor that is a CBE and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- (e) A prime contractor that is a certified joint venture and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the

subcontracting effort shall be with CBEs. A certified joint venture prime contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

- (f) Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.
- (g) A prime contractor that is a CBE and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the on-site work with its own organization and resources if the contract is \$1 million or less.
- (h) A list of Certified Business Enterprises can be found on the District of Columbia, Department of Small and Local Business Development website at <http://dslbd.dc.gov/> DC/DSLBD, click on "Doing Business in the District", click on "Find CBE Certified Contractors."

Section 10.1.2 Subcontracting Plan If the Contractor is required by law to subcontract under this Contract, it must submit a Subcontracting Plan in accordance with D.C. Official Code § 2-218.46 (d). The Subcontracting Plan may only be amended with the prior written approval of the Contracting Officer (CO) and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the Subcontracting Plan shall inure to the benefit of the District. The Subcontracting Plan shall include the following:

- (a) The name and address of each subcontractor;
- (b) A current certification number of the small or certified business enterprise;
- (c) The scope of work to be performed by each subcontractor; and
- (d) The price that the prime contractor will pay each subcontractor.

Section 10.1.3 Copies of Subcontracts. Within twenty-one (21) days of the date of award, the Contractor shall provide fully executed copies of all subcontracts identified in the subcontracting plan to the CO, DGS Project Manager, District of Columbia Auditor and the Director of DSLBD.

Section 10.1.4 Subcontracting Plan Compliance Reporting. If the Contractor has a Subcontracting Plan required by law for this Contract, the Contractor shall submit a quarterly report to the CO, City Administrator (CA), District of Columbia Auditor and the Director of DSLBD. The quarterly report shall include the following information for each subcontract identified in the Subcontracting Plan:

- (a) The price that the prime contractor will pay each subcontractor under the subcontract;
- (b) A description of the goods procured or the services subcontracted for;
- (c) The amount paid by the prime contractor under the subcontract; and
- (d) A copy of the fully executed subcontract, if it was not provided with an earlier quarterly report.

Section 10.1.4.1 If the fully executed subcontract is not provided with the quarterly report, the prime contractor will not receive credit toward its subcontracting requirements for that subcontract.

Section 10.1.5 **Annual Meetings.** Upon at least 30-days written notice provided by DSLBD, the Contractor shall meet annually with the CO, DGS Project Manager, District of Columbia Auditor and the Director of DSLBD to provide an update on its Subcontracting Plan, if applicable.

Section 10.1.6 **Notices.** The Contractor shall provide written notice to the DSLBD and the District of Columbia Auditor upon commencement of the Contract and when the Contract is completed.

Section 10.1.7 **Enforcement and Penalties for Breach of Subcontracting Plan.**

Section 10.1.7.1 The Contractor shall be deemed to have breached a subcontracting plan required by law, if the Contractor (i) fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information in a reasonably timely manner; (ii) submits a monitoring or compliance report or other required subcontracting information containing a materially false statement; or (iii) fails to meet its subcontracting requirements.

Section 10.1.7.2 A contractor that is found to have breached its subcontracting plan for utilization of CBEs in the performance of a contract shall be subject to the imposition of penalties, including monetary fines in accordance with D.C. Official Code § 2-218.63.

Section 10.1.7.3 If the CO determines the Contractor's failure to be a material breach of the Contract, the CO shall have cause to terminate the Contract for default pursuant to the terms set forth in the Standard Contract Provisions (**Exhibit F**).

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 (**Exhibit H**) 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 11 CLAIMS AND DISPUTES

Section 11.1 All claims or disputes arising out of this Agreement shall be governed by the terms of the Standard Contract Provisions (**Exhibit F**).

SECTION 12 MISCELLANEOUS PROVISIONS

Section 12.1 **Ownership and Use of Documents.** The Drawings, Specifications and other documents prepared by the Architect/Engineer and copies thereof furnished to the Contractor, are for use solely with respect to this Project. 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. The referenced Drawing, Specifications and other documents shall become the property of the Department.

Section 12.2 **Assignment.** The Department and the Contractor respectively bind themselves, their partners, members, joint ventures, constituent entities, successors, assigns and legal representative to the other party hereto and to partners, members, joint ventures, constituent entities, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Agreement. Neither party to the Agreement shall assign the Agreement or its rights and obligations under the Agreement, without written consent of the other party. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement.

Section 12.3 **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 12.3.1 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, 105963 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 Agreement, except for non-domestic material listed in the Agreement.

Section 12.3.2 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 12.3.3 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 12.3.4 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 12.4 Davis-Bacon Act Provision. The Contractor agrees that the construction work performed under this Agreement 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 E**. 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 12.5 The Quick Payment Clause

Section 12.5.1 Interest Penalties to Contractors

Section 12.5.1.1 The District will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code §2-221.01 *et seq.*, for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before:

- (a) the 3rd day after the required payment date for meat or a meat product;
- (b) the 5th day after the required payment date for an agricultural commodity; or
- (c) the 15th day after the required payment date for any other item.

Section 12.5.1.2 Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

Section 12.5.2 Payments to Subcontractors

Section 12.5.2.1 The Contractor must take one of the following actions within seven (7) days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under this Contract:

- (a) Pay the subcontractor for the proportionate share of the total payment received from the District that is attributable to the subcontractor for work performed under the Contract; or
- (b) Notify the District and the subcontractor, in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

Section 12.5.2.2 The Contractor must pay any subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before:

- (a) the 3rd day after the required payment date for meat or a meat product;
- (b) the 5th day after the required payment date for an agricultural commodity; or
- (c) the 15th day after the required payment date for any other item.

Section 12.5.2.3 Any amount of an interest penalty which remains unpaid by the Contractor at the end of any 30-day period shall be added to the principal amount of the debt to the subcontractor and thereafter interest penalties shall accrue on the added amount.

Section 12.5.2.4 A dispute between the Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District of Columbia is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

Section 12.5.3 Subcontract Requirements

Section 12.5.3.1 The Contractor shall include in each subcontract under this Contract a provision requiring the subcontractor to include in its contract with any lower-tier subcontractor or supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code §2-221.02(d).

Section 12.5.4 Requirements for Change Order payments

Section 12.5.4.1 The Department and the Contractor are prohibited from requiring a prime contractor or a subcontractor to undertake any work that is determined to be beyond the original scope of the prime contractor's or a subcontractor's contract or subcontract, including work under a District-issued change order, when the additional work increases the contract price beyond the not-to-exceed price or negotiated maximum price of the underlying contract, unless the Contracting Officer:

- (a) Agrees with the prime contractor and, if applicable, the subcontractor on a price for the additional work;
- (b) Obtains a certification from the Chief Financial Officer that there are sufficient funds to compensate the prime contractor and, if applicable, the subcontractor for the additional work;
- (c) Has made a written, binding commitment with the prime contractor to pay for the additional work within 30 days after the prime contractor submits a proper invoice for the additional work to the Contracting Officer; and
- (d) Gives written notice of the funding certification from the Chief Financial Officer to the prime contractor;

Section 12.5.4.2 The Contractor is required to include in its subcontracts a clause that requires the prime contractor to:

- (a) Within 5 business days of receipt of the notice required under Section 12.5.4.1(d), provide the subcontractor with notice of the approved amount to be paid to the subcontractor based on the portion of the additional work to be completed by the subcontractor;
- (b) Pay the subcontractor any undisputed amount to which the subcontractor is entitled for any additional work within 10 days of receipt of payment for the additional work from the District; and
- (c) If the prime contractor withholds payment from a subcontractor, notify the subcontractor in writing and state the reason why payment is being withheld and provide a copy of the notice to the Contracting Officer.

Section 12.5.4.3 The Department, Contractor, prime contractor, or a subcontractor are prohibited from declaring another party to the contract to be in default or assessing, claiming, or pursuing damages for delays in the completion of the Work due to the inability of the parties to agree on a price for the additional work.

Section 12.6 Contract Work Hours And Safety Standards Act Provision. The Contractor agrees that the applicable work performed under this Agreement shall be subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333).

Section 12.7 False Claims Act. The Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to DC government, including the prescriptions set forth in District of Columbia Code §22-2514 and §§2-381.01 et seq. In the event that it is discovered that the Contractor has made a false, fraudulent or unsupported statement or claim to the Department, the Department may terminate this Agreement without liability.

Section 12.8 Interpretation of Contract and Order of Precedence. All of the documents comprising the Agreement should be read as complementary, so that what is called for by one is called for by all. Ambiguities shall be construed in favor of a broader scope of Work for the Contractor, as the intent of the Agreement is, with specific identified exceptions, to require the Contractor to assume the entire responsibility for the Project. If there is any inconsistency among the Contract Documents, the order of precedence among them is as follows, with the first listed document having the highest priority:

- (a) This Agreement and its Modifications, Change Orders, Change Directives and any Exhibits thereto;
- (b) The Department's Standard Contract Provisions (**Exhibit F**), as amended, and any missing term in this Agreement shall be addressed in accordance with the Standard Contract Provisions (**Exhibit F**); and
- (c) Any Construction Documents released or approved by the Department.

Section 12.9 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 the Project safety.

Section 12.10 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 12.11 Media Releases. Neither the Contractor, its employees, agents or subcontractors or material suppliers shall make any press release or similar media release related to the Project unless such press release have been discussed with the Department prior to its issuance.

Section 12.12 Construction. This Agreement shall be construed fairly as to all Parties and not in favor of or against any party, regardless of which party prepared the Agreement.

Section 12.13 Notices. All notices or communications required or permitted under the Agreement shall be in writing and shall be hand delivered or sent by telecopier or by recognized overnight carrier to the intended recipient at the address stated below, or to such other address as the recipient may have designated in writing. Any such notice or communication shall be deemed delivered as follows: if hand delivered, on the day so delivered, if sent by telecopier, on confirmation of successful transmission, and if sent by recognized overnight carrier, the next business day.

If to the Department:

If to the Contractor:

George Lewis, Associate Director
and Chief Contracting Officer
Department of General Services
2000 14th Street, NW, 8th Floor
Washington, DC 20009

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

Section 12.14 Limitations. The Contractor agrees that any statute of limitations applicable to any claim or suit by the Department arising from this Agreement or its breach shall be controlled by applicable District of Columbia law.

Section 12.15 Survival. All agreements warranties, and representations of the Contractor contained in the Agreement or in any certificate or document furnished pursuant to the Agreement shall survive termination or expiration of the Agreement.

Section 12.16 No Waiver. If the Department waives any power, right, or remedy arising from the Agreement or any applicable law, the waiver shall not be deemed to be a waiver of the power, right, or remedy on the later recurrence of any similar events. No act, delay, or course of conduct by the Department shall be deemed to constitute the Department's waiver, which may be effected only by an express written waiver signed by the Department.

Section 12.17 Remedies Cumulative. Unless specifically provided to the contrary in the Agreement, all remedies set forth in the Agreement are cumulative and not exclusive of any other remedy the Department may have, including, without limitation, at law or in equity. The Department's rights and remedies will be exercised at its sole discretion, and shall not be regarded as conferring any obligation on the Department's to exercise those rights or remedies for the benefit of the Contractor or any other person or entity.

Section 12.18 Headings/Captions. The headings or captions used in this Agreement or its table of contents are for convenience only and shall not be used in interpreting the Agreement.

Section 12.19 Entire Agreement; Modification. The Agreement supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to the Agreement shall be effective against the Department unless made in writing signed by both the Department and the Contractor, unless otherwise expressly provided to the contrary in the Agreement. Notwithstanding the foregoing, nothing herein shall be construed to limit the Department's ability to unilaterally modify the Agreement.

Section 12.20 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable; each part of this Agreement is intended to be severable.

Section 12.21 Anti-Deficiency Act. The Department's obligations and responsibilities under the terms of the Agreement and the Contract Documents are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) the D.C. Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act. Neither the Agreement nor any of the Contract Documents shall constitute an indebtedness of the Department, nor shall it constitute an obligation for which the Department is obligated to levy or pledge any form of taxation, or for which the Department has levied or pledged any form of taxation. **IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE AGREEMENT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.**

Section 12.22 Time. Time, if stated in a number of days, will be calendar days and thus include Saturdays, Sundays, and holidays, unless otherwise stated herein.

SECTION 13 TERMINATION OR SUSPENSION

Section 13.1 All terminations or suspensions arising out of or under this Agreement shall be in accordance with the terms of the Standard Contract Provisions (**Exhibit F**).

SECTION 14 OTHER CONDITIONS

Section 14.1 This Agreement and the rights and obligations of the Department and the Contractor herein are subject to the approval of the Council for the District of Columbia.

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: _____

Attachment 2

Form of Notice to Proceed/Letter Contract
(Attachment N to RFP)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES**



Contracts and Procurement

Insert Date

Sent via email to Insert Email Address

Name

Title

Company

City, State Zip

Reference: Request for Proposal DCAM-17-CS-0123

St. Elizabeths East Campus Phase 1 Infrastructure Improvements –
Demolition of Dorothea Dix Administration Building

Letter Contract and Notice to Proceed

Mr/Ms. Insert Name:

We refer to the proposal submitted by Insert Contractor Name (“Insert Contractor Name” or the “Contractor”) in response to the Department’s Request for Proposal (RFP) to provide abatement and demolition services of the Dorothea Dix Administration Building located on the east campus of St. Elizabeths (the “Work”).

The Contractor shall provide all labor, tools, equipment and materials necessary to cap and cut utilities at the mains, abate the Project building, perform the work called for in the Demolition Plans & Specifications (Attachment 1), and backfill the site with structural fill (collectively, the “Work”).

If this Letter Contract is signed by Insert Contractor without modification of any kind, it will serve as the Notice to Proceed (NTP) for the work described with in this document. The NTP is subject to the following terms:

1. Letter Contract. This is a letter contract between Insert Contractor and the District of Columbia Government, acting by and through its Department of General Services (“DGS” or the “Department”), and shall govern our relationship until such time as a final agreement is entered into for the abatement and demolition services (the “Definitive Contract”); provided, however, that to the extent an issue is not covered in this Letter Contract, the Standard Contract Provisions (Attachment 2) will govern. Once the Definitive Contract is signed, this Letter Contract shall automatically terminate and merge into the Definitive Contract.

2. Scope of Work. The Contractor is hereby authorized to proceed with the Abatement Phase of the Work. Such services shall include, but not be limited to, the following activities:

- (a) Prepare and submit Project Schedule
- (b) Provide List of Subcontractors
- (c) Review Demolition Plans & Specifications (Attachment 1),
- (d) Review Reference Information Documents
- (e) Cut and cap utilities at the mains,
- (f) Abate the Project building
- (g) Obtain any necessary permits to complete the Work

3. Deliverables. The Contractor shall develop and submit the following Deliverables during the Letter Contract:

- a. Project Schedule
- b. Preliminary Construction Schedule to be submitted to DGS in P6 format for approval within 30 calendar days of the execution of the Letter Contract.

4. Not to Exceed Amount. The limit of this authorization is not to exceed Insert Amount. In no event will the Contractor be entitled to receive more than this amount under this Letter Contract. This not-to-exceed amount includes all costs incurred by the Contractor in connection with the work authorized hereby.

5. Insurance.

5.1 General Requirements. The Contractor at its sole expense shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A- / VII or higher. The Contractor shall require all of its subcontractors to carry the same insurance required herein.

All required policies shall contain a waiver of subrogation provision in favor of the Government of the District of Columbia.

The Government of the District of Columbia shall be included in all policies required hereunder to be maintained by the Contractor and its subcontractors (except for workers' compensation and professional liability insurance) as an additional insureds for claims against The Government of the District of Columbia relating to this contract, with the understanding that any affirmative obligation imposed upon the insured Contractor or its subcontractors (including without limitation the liability to pay premiums) shall be the sole obligation of the Contractor or its subcontractors, and not the additional insured. The additional insured status under the

Contractor's and its subcontractors' Commercial General Liability insurance policies shall be effected using the ISO Additional Insured Endorsement form CG 20 10 11 85 (or CG 20 10 07 04 **and** CG 20 37 07 04) or such other endorsement or combination of endorsements providing coverage at least as broad and approved by the CO in writing. All of the Contractor's and its subcontractors' liability policies (except for workers' compensation and professional liability insurance) shall be endorsed using ISO form CG 20 01 04 13 or its equivalent so as to indicate that such policies provide primary coverage (without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an Additional Insured) for all claims against the additional insured arising out of the performance of this Statement of Work by the Contractor or its subcontractors, or anyone for whom the Contractor or its subcontractors may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

If the Contractor and/or its subcontractors maintain broader coverage and/or higher limits than the minimums shown below, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Grantee and subcontractors.

- 5.1.1 Commercial General Liability Insurance ("CGL") - The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. ("ISO") form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor, including ongoing and completed operations under all subcontracts, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$5,000,000 each occurrence, a \$10,000,000 general aggregate (including a per location or per project aggregate limit endorsement, if applicable) limit, a \$1,000,000 personal and advertising injury limit, and a \$10,000,000 products-completed operations aggregate limit.
- 5.1.2 Automobile Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the CO in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Contractor, with minimum per accident limits equal to the greater of (i) the limits set forth in the Contractor's commercial automobile liability policy or (ii) \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

5.1.3 Workers' Compensation Insurance - The Contractor shall provide evidence satisfactory to the CO of Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

5.1.4 Employer's Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of employer's liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.

All insurance required by this paragraph shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.

5.1.5 Cyber Liability Insurance - The Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, with limits not less than \$1,000,000 per occurrence or claim, \$1,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. This insurance requirement will be considered met if the general liability insurance includes an affirmative cyber endorsement for the required amounts and coverages.

5.1.6 Environmental Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of pollution legal liability insurance covering losses caused by pollution conditions that arise from the ongoing or completed operations of the Contractor. Completed operations coverage shall remain in effect for at least ten (10) years after completion of the work. Such insurance shall apply to bodily injury, property damage (including loss of use of damaged property or of property that has been physically injured), cleanup costs, liability and cleanup costs while in transit, and defense (including costs and expenses incurred in the investigation, defense and settlement of claims). There shall be neither an exclusion nor a sublimit for mold-related claims. The minimum limits required under this paragraph shall be equal to the greater of (i) the limits set forth in the Contractor's pollution legal liability policy or (ii) \$1,000,000 per occurrence and \$1,000,000 in the annual aggregate. If such coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverages under the policy precedes the Contractor's performance of any work under the Contract and that continuous coverage will be maintained or an extended reporting period will be exercised for at least ten (10) years after completion. The Contractor also must furnish to the Owner certificates of insurance evidencing pollution legal liability insurance maintained by the transportation and disposal site operators(s) used by the Contractor for losses arising from facility(ies) accepting, storing or disposing hazardous materials or other waste as a result of the Contractor's operations. Such coverages must be maintained with limits of at least the amounts set forth above.

- 5.1.7 Employment Practices Liability - The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the operations performed to cover the defense of claims which the District of Columbia would be named as a co-defendant in claims arising from employment related wrongful acts including but not limited to: Discrimination, Sexual Harassment, Wrongful Termination, or Workplace Torts. The policy shall include an endorsement naming the District of Columbia as a co-defendant or additional insured and shall also include the Client Company Endorsement for Temporary Help Firms and the Independent Contractors Endorsement. The policy shall provide limits of not less than \$1,000,000 for each wrongful act and \$1,000,000 annual aggregate for each wrongful act.
- 5.1.8 Contractors Professional Liability Insurance (Errors & Omissions) - The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of \$1,000,000 per claim or per occurrence for each wrongful act and \$1,000,000 annual aggregate. The Contractor warrants that any applicable retroactive date precedes the date the Contractor first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services.
- 5.1.9 Commercial Umbrella or Excess Liability -The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits equal to the greater of (i) the limits set forth in the Contractor's umbrella or excess liability policy or (ii) \$25,000,000 per occurrence and \$25,000,000 in the annual aggregate, following the form and in excess of all liability policies. All required liability coverages must be scheduled under the umbrella or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.

5.2 Construction Projects Controlled by the District. For construction projects controlled by the District, the District should shall procure the following policies with the District listed as the first named insured.

This cost should be built into the Agency's budget. Funds will be transferred from applicable Agency to ORM to pay the premium for the Builders Risk Coverage.

- 5.2.1 Builders Risk – The District shall purchase and maintain builders risk insurance at 100% replacement cost upon the entire Work at the site and portions of the Work stored off the site with the District's approval, and contingent transit coverage for portions of the Work in transit. This insurance shall include the interests of the District, the Contractor and the Subcontractors in the Work and shall insure against all risk of physical damage subject to standard exclusions. Losses not covered by the District's insurance or Contractor's

insurance shall be borne pursuant to the provisions of the Contract. The builders risk policy will have a deductible of not more than \$10,000. Losses within the deductible will be paid by the Contractor or the responsible Subcontractor. If not covered under the builders risk insurance or otherwise provided in the Contract Documents, the Contractor shall effect and maintain similar property insurance on portions of the Work stored off the site or in transit. Coverage may be purchased through either the District's insurance broker or the Contractor's insurance broker in the sole discretion of the District.

5.3 Primary and Noncontributory Insurance. The insurance required herein shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the Government of the District of Columbia.

5.4 Duration. The Contractor shall carry all required insurance until all contract work is accepted by the District of Columbia, and shall carry listed coverages for ten years for construction projects following final acceptance of the work performed under this contract and two years for non-construction related contracts.

5.5 Liability. These are the required minimum insurance requirements established by the District of Columbia. **HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE WILL NOT IN ANY WAY LIMIT THE CONTRACTOR'S LIABILITY UNDER THIS CONTRACT.**

5.6 Contractor's Property. Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.

5.7 Measure of Payment. The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.

5.8 Notification. The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. The Contractor will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract.

5.9 Certificates of Insurance. The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Certificates of insurance must reference the corresponding contract number. Evidence of insurance shall be submitted to:

The Government of the District of Columbia

And mailed to the attention of:
(Name of Contracting Officer/Agency)
(Address)
(Phone Number)
(E-mail Address)

The CO may request and the Contractor shall promptly deliver updated certificates of insurance, endorsements indicating the required coverages, and/or certified copies of the insurance policies. If the insurance initially obtained by the Contractor expires prior to completion of the contract, renewal certificates of insurance and additional insured and other endorsements shall be furnished to the CO prior to the date of expiration of all such initial insurance. For all coverage required to be maintained after completion, an additional certificate of insurance evidencing such coverage shall be submitted to the CO on an annual basis as the coverage is renewed (or replaced).

5.10 Disclosure. The Contractor agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.

5.11 Carrier Ratings. All Contractor's and its subcontractors' insurance required in connection with this contract shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A- VII (or the equivalent by any other rating agency) and licensed in the in the District.

6. Duration. Once signed by the Contractor, the Letter Contract will become effective on the date the Letter Contract is executed by the Department. This Letter Contract will terminate on the earlier to occur of the following: (i) the date the Definitive Contract becomes effective; or (ii) December 31, 2017. DGS reserves the right to terminate this Letter Contract, in whole or specified part, for convenience in the manner described in the District of Columbia Department of General Services Standard Contract Provisions GENERAL PROVISIONS (Construction Contract) (Attachment 2).

7. Billing. All invoices shall be submitted directly to the Department at the address specified in Section 5.3 of the proposed Definitive Contract. Properly prepared invoices with the necessary backup shall be paid within thirty (30) days of receipt. Invoices not paid by that date shall bear interest in accordance with the Quick Payment Act

8. Purchase Order Number. The Department's contracting division will issue a purchase order to fund the services authorized under this Letter Contract. The purchase order will be sent in a separate cover. That number should be included in all future invoices and accounting records. In the event that you do not obtain a purchase order number please contact James Marshall (via email at james.marshall@dc.gov) directly to obtain this number.

9. Ownership and Use of Documents. All documents and work product prepared by the Contractor shall become the property of the Department upon the payment of invoices submitted under the Letter Contract.

10. Trade Work/Site Control. Unless otherwise directed by the Department, the Contractor shall not perform any trade work. Any authorization to proceed with trade work will include appropriate provisions relating to bonds, insurance, and safety procedures. At a minimum, however, the Department's Standard Contract Provisions for Construction shall apply and in addition to the requirements set forth in any such subsequent authorization, prior to commencing any construction activity, the Contractor shall provide the Department's Contracting Officer with certificates evidencing insurance, a payment and performance bond having a penal value equal to the then value of the Letter Contract and the Contractor's agreement of indemnity. In the event the Contractor fails to provide the Department with such certificates of insurance, the agreement for indemnity or bond, the Department may withhold any subsequent payment until such documents are provided.

11. Indemnification. See Standard Contract Provisions (Attachment 2)

12. Order of Precedence The following documents are incorporated into this Letter Contract by reference in the following order of precedence: (a) this Letter Contract; (b) Insert Contractor's proposal dated Insert Date; (c) the Request for Proposals (RFP) issued August 25, 2017 and (d) the District of Columbia Department of General Services Standard Contract Provisions GENERAL PROVISIONS (Construction).

13. Entire Agreement; Modification. This Letter Contract, along with the Standard Contract Provisions (Attachment A) supersede all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to this Letter Contract shall be effective against the Department and unless made in writing signed by the Department. Notwithstanding the provisions of this Section 14, nothing herein shall limit the Department's ability to unilaterally modify this Letter Contract.

14. Termination or Suspension. See Standard Contract Provisions (Attachment 2)

Assuming the foregoing terms are acceptable, please sign below to indicate your acceptance. Should you have any questions, please feel free to contact at James H. Marshall (202) 528-3874.

ISSUED BY:
DEPARTMENT OF GENERAL SERVICES

ACCEPTED BY:
Insert Contractor

By: _____
Name: George G. Lewis
Title: Associate Director/
Chief Contracting Officer
Date: _____

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