

**FORM OF CONTRACT FOR
Project Management Services DCPS & DRP Portfolio Projects
DCAM-17-NC-0015**

THIS AGREEMENT (“Agreement”) is made by and between the **DISTRICT OF COLUMBIA GOVERNMENT**, acting by and through its **DEPARTMENT OF GENERAL SERVICES** (the “Department” or “DGS”) and **[INSERT CONTRACTOR NAME]** (the "Contractor") duly organized under the laws of the **DISTRICT OF COLUMBIA**, and with a place of business at **[INSERT CONTRACTOR ADDRESS]**. Once this Agreement is executed by the Department of General Services without modification of any kind, it will serve as a Notice to Proceed with the work as described below.

WITNESSETH:

WHEREAS, the Department of General Services (“Department” or “DGS”) issued a Request for Proposal (“RFP”) to engage five (5) Contractors to provide Project Management Services for DCPS and DPR portfolio construction projects;

WHEREAS, the Contractor submitted a proposal in response to the RFP, and the Department wishes to engage the Contractor to provide the requested services;

WHEREAS, the Department desires that the Contractor provide the services specified herein for one (1) year from date of award, with four (4) one year option periods;

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the sufficiency and adequacy of which is hereby acknowledged, the parties to this Agreement agree as follows:

AGREEMENT

ARTICLE ONE (1)

SCOPE OF WORK

Section 1.1 Project Management Contractor's Duties; General Intent

This section of the RFP provides a general description of the Project Management Contractor's duties with regard to a specific project. In general, however, the Project Management Contractor shall support the assigned DGS Project Manager and assist such individual in supervising and managing the project so that such project will meet the Department's schedule, budget, programmatic and aesthetic goals. The DGS Project Manager, working in consultation with the Client Agency and DGS management, will be responsible for setting the project's overall parameters and making key decisions. The Project Management Contractor will be required to provide subject matter expertise and technical support relative to the assigned projects. These services will include programming, cost estimating, scheduling, design reviews, change order analysis, and on-site observation as an owner's representative. The Program Management Contractor will also assist the Department in reviewing and processing payment applications.

In performing these functions, the Project Management Contractor will assist the Department in overcoming obstacles and delays related to the project and will use commercially reasonable efforts to guard the Department and the Client Agency from cost overruns and avoidable project delays.

Section 1.2 Programming & Needs Assessment

The Project Management Contractor's initial task shall be to assist the Department and the Client Agency in defining the project and its parameters. The Program Management Contractor's scope of work during this phase shall include the following:

Section 1.2.1 Program Development

The Program Management Contractor shall prepare a program of requirements for the selected project. In general, the program shall specify: (i) the approximate size of the facility (expressed in square feet) and its general purpose; (ii) identify the required spaces or functions that the facility must provide; (iii) establish the size and relationship between the required spaces; (iv) specify the level of quality or finishes for such spaces; (v) sustainability requirements (e.g. LEED); and (vi) other special requirements unique to the project. For most projects, it is assumed that the Project Management Contractor will have the necessary skill and expertise to prepare the program with in-house resources. However, for certain complex projects, it may be necessary for DGS to engage a design or programming consultant to prepare the necessary document. In either case, the program shall be prepared

with input from DGS and the Client Agency. The final form of the program shall be approved by the Client Agency.

Concurrently with the development of the program, the Program Management Contractor shall develop preliminary budget and schedule information to assist DGS and the Client Agency in assessing a cost/benefit analysis of specific program options.

Section 1.2.2 Preliminary Project Budget

Concurrently with the development of the program, the Program Management Contractor shall prepare a preliminary cost estimate that sets forth the Contractor's best estimate of the likely cost of the project. To the extent requested by DGS or the Client Agency, such estimate shall be broken out by program element to facilitate budget management discussions. No later than fifteen (15) days after the final program is approved by the Client, the Program Management Contractor shall update such estimate to reflect the estimated final cost of the final program selected by and approved by the Client Agency.

Section 1.2.3 Preliminary Project Schedule

Concurrently with the development of the program, the Program Management Contractor shall prepare a project schedule that sets forth the Contractor's best estimate of the likely duration of the project. This schedule shall include key milestone dates that are necessary for the Client Agency to understand the impact of the project on its operations. To the extent that the proposed project will require the Client Agency to surrender the use of some or all of an existing facility, the schedule shall identify the date when occupancy will be lost as well as the expected date on which the facility can resume full (or expanded) operation. No later than fifteen (15) days after the final program is approved by the Client, the Program Management Contractor shall update such schedule to reflect the final program selected by and approved by the Client Agency.

Section 1.2.4 Preliminary Land Use/Entitlement Evaluation

Concurrently with the development of the program, the Project Management Contractor shall assess the zoning and entitlement process applicable to the proposed project to assess its impact on schedule, budget and feasibility. The Program Management Contractor shall also assess compliance with the District of Columbia Environmental Policy Act and the need for conducting any environmental assessments prior to proceeding with the work. The Program Management Contractor shall deliver a report that

assesses its findings prior to or concurrent with delivery of the final program.

Section 1.2.5 Project Implementation Plan

The Project Management Contractor shall work with the Department to develop a project implementation plan that describes how the project will be delivered. Such a plan shall include a discussion of program, budget, schedule, swing space, and operational considerations.

Section 1.3 Concept Design & Control Budget

During this phase, the Project Management Contractor shall assist the Department and the Client Agency in developing a concept design for the project and a control budget. The Project Management Contractor's scope of work during this phase shall include the following:

Section 1.3.1 Design Progress Meetings

Once a design consultant or design-builder is engaged for the project by the Department, the Project Management Contractor shall schedule and participate in periodic design management meetings. Unless otherwise directed by the DGS Project Manager, such meetings should occur every other week (i.e. roughly twice a month). These meetings will be chaired by the DGS Project Manager assigned to the project and a representative of the Client Agency shall be invited to participate. In general, the purpose of these meetings shall be to review the design as it evolves and to provide feedback/input to the design consultant. Unless otherwise directed by the DGS Project Manager, the Project Management Contractor shall keep the minutes of these meetings and shall maintain an action item list of open issues.

Section 1.3.2 Design Coordination

As appropriate, the Project Management Contractor shall cause the design consultant to issue progress sets. The Project Management Contractor shall review each such progress printing and submit its findings and recommendations to the DGS Project Manager. The Project Management Contractor shall deliver a set of coordinated comments to the design consultant that incorporates the comments of the Program Management Contractor, the Client Agency and the DGS Project Manager.

Section 1.3.3 Design Review

As and when directed by the DGS Project Manager, the Project Management Contractor shall cause the design consultant to prepare a proposed concept design for review and approval by DGS and the Client Agency. The Project Management Contractor

shall thereafter review the concept design in order to determine (i) whether it is consistent with the design directives given by DGS and the Client Agency; (ii) whether it is consistent with the approved program for the project; and (iii) whether it meets the Client Agency's schedule and budget requirements. As part of this effort, the Project Management Contractor shall undertake an independent review of the estimated construction costs. Unless otherwise directed by the DGS Project Manager, the Project Management Contractor shall complete such review and submit a written memorandum to the DGS Project Manager no later than fifteen (15) days after the concept design is submitted.

Section 1.3.4 Value Engineering Management

If the proposed concept design exceeds the available budget for the project, the Project Management Contractor shall work with the DGS Project Manager, the Client Agency and the design consultant to develop value engineering strategies that are likely to return the project to budget. In the event the Project Management Contractor determines that, in its professional opinion, the approved budget is insufficient to satisfy the project's program, it shall so advise the DGS Project Manager and the Department's Deputy Director for Capital Construction in writing. In no event, however, shall the Project Management Contractor have the authority to increase a project's budget, and any decision to increase a project's budget shall be made by the Department's Deputy Director for Capital Construction.

Section 1.3.5 Develop Control Budget

Based on the approved concept design and value engineering, if any, the Project Management Contractor shall prepare and submit to the DGS Project Manager a revised project budget. The Project Management Contractor shall revise this budget as requested by the DGS Project Manager, and once it is approved by DGS and the Client Agency shall serve as the project control budget (such budget, the "Control Budget").

Section 1.3.6 Preliminary Concept Design

The Project Management Contractor shall use its best efforts to cause the design consultant to revise the concept design so that it reflects the comments received from the Client Agency, the Department and to reflect any approved value engineering ideas. The Project Management Contractor shall review the revised concept design and advise the Department whether the requested changes and value engineering changes have been incorporated. The Project Management Contractor shall not have the authority to approve the concept design. The decision to approve or reject the

revised concept design shall be made by the DGS Project Manager. The approved concept design is referred to herein as the “Preliminary Concept Design”.

Section 1.3.7 Public Stakeholder Engagement

The Client Agency shall manage the public engagement process with community stakeholders. In general, however, until such time as DGS and the Client Agency agree upon a preliminary concept and Control Budget, the Project Management Contractor shall not share the design with the public or otherwise participate in a community engagement process. Once the Preliminary Concept Design has been approved by DGS, the Project Management Contractor shall provide support to the Client Agency and the DGS Project Manager throughout the community engagement process. In general, the Project Management Contractor shall be required to attend, and if requested by the Department, to participate in community and other similar meetings related to the project. As the public engagement process unfolds, the Project Management Contractor shall use commercially reasonable efforts to ensure that the design consultant incorporates only those design refinements as are requested by the DGS Project Manager.

Section 1.3.8 Final Concept Design

In most cases, it is contemplated that the Preliminary Concept Design will be revised to reflect input from the affected community stakeholders. The Project Management Contractor shall provide input and make recommendations to the DGS Project Manager regarding the cost, schedule and programmatic impact of revisions requested by the community stakeholders. The decision to incorporate any such revisions shall be made the DGS Project Manager rather than the Project Management Contractor. As directed by the DGS Project Manager, the Project Management Contractor shall cause the design consultant to revise the Preliminary Concept Design and shall review any such revisions for completeness and conformance with directions from the DGS Project Manager. These final design adjustments shall be subject to review and approval by the DGS Project Manager, and the design as revised and approved shall be referred to as the “Final Concept Design”. If the adjustments reflected in the Final Concept Design have an impact on the likely final cost of the project, the Project Management Contractor shall revise the Control Budget and shall submit the same to the DGS Project Manager for review and approval.

Section 1.3.9 Separate Contractors

To the extent, the approved project plan contemplates that contractors other than the design consultant will be engaged during this phase; the Project Management Contractor shall assist the DGS Project Manager in developing the need requirements related to such separate contractors, and identifying the schedule and budget implications of such work. In addition, the Project Management Contractor shall assist the DGS Project Manager in coordinating the work of those additional contractors.

Section 1.4 Project Design & Entitlement

During this phase, the Project Management Contractor shall assist the DGS Project Manager and the Client Agency in advancing the Final Concept Design through the completion of the design development phase. As part of this process, the Project Management Contractor shall use commercially reasonable efforts to ensure that the design development documents are consistent with the Control Budget, the Final Concept design and that any significant zoning or entitlement issues are addressed. If the project is being delivered through a design-build delivery method, the design development documents will most likely be used as the basis for the project's GMP and negotiating the GMP with the design-build contractor will be considered part of this phase. The Project Management Contractor's scope of work during this phase includes:

Section 1.4.1 Design Progress Meetings

The Project Manager shall continue the design progress meetings in the same manner as in the proceeding phase. The number and frequency of such meetings may be adjusted at directed by the DGS Project Manager. In any event, however, there shall be at least one design progress meeting per month.

Section 1.4.2 Schematic Progress Printing

The Project Management Contractor shall use commercially reasonable efforts to cause the design consultant to issue a progress printing when the schematic design is approximately 50% complete. The Contractor shall review the progress printing. As part of this review, the Contractor shall (i) confirm adherence to the project's program and the Final Concept Design; (ii) identify the addition of any items or elements that were not included in the Final Concept Design and/or the deletion of or material change to any items or elements that were not included in the Final Concept Design; (iii) confirm that the design is progressing in a manner that is generally consistent with the design progress meetings; and (iv) confirm that the design consultant is making sufficient progress to meet the approved project schedule. The Project Management Contractor shall prepare a consolidated set of comments incorporating comments from the DGS Project Manager, the Client

Agency and the Project Management Contractor and shall submit them to the DGS Project Manager for review and approval. Once the DGS Project Manager approves such comments, the Project Management Contractor shall submit the consolidated comments (the “Schematic Progress Submission Comments”) to the design consultant.

Section 1.4.3 Schematic Design Review

Through the design progress meetings and other methods, the Project Management Contractor shall use commercially reasonable methods to cause the design consultant to incorporate the design comments resulting from the progress printing into the schematic design. Once the schematic design is complete, the Project Management Contractor shall review such design for (i) completeness; (ii) consistency with the Final Concept Design; and (iii) adherence to Schematic Progress Submission Comments. The Project Management Contractor shall identify deviations from the Final Concept Design, the Schematic Progress Submission Comments as well as the addition of any new program elements that were not reflected in the previously approved version of the design. The Contractor shall also conduct an independent cost estimate and identify variances from the Control Budget. The Project Management Contractor shall prepare and submit to the DGS Project Manager a written memorandum that summarizes its findings.

Section 1.4.4 Value Engineering

If the proposed schematic design exceeds the available budget for the project, the Project Management Contractor shall work with the DGS Project Manager, the Client Agency and the design consultant to develop value engineering strategies that are likely to return the project to budget. Among other things, the Project Management Contractor should make recommendations as to whether any such value engineering strategies should be incorporated into a revised set of schematic design documents or whether any such strategy is best incorporated in the design development phase. In the event the Project Management Contractor determines that, in its professional opinion, the approved budget is insufficient to satisfy the project’s program, it shall so advise the DGS Project Manager and the Department’s Deputy Director for Capital Construction in writing. In no event, however, shall the Project Management Contractor have the authority to increase a project’s budget, and any decision to increase a project’s budget shall be made by the Department’s Deputy Director for Capital Construction.

Section 1.4.5 Schematic Design Approval

The Project Management Contractor shall use its best efforts to cause the design consultant to revise the schematic design so that it reflects the comments received from the Client Agency, the Department and to reflect any approved value engineering ideas. The Project Management Contractor shall review the revised schematic design and advise the Department whether the requested changes and value engineering changes have been incorporated. The Project Management Contractor shall not have the authority to approve the schematic design. The decision to approve or reject the revised schematic design shall be made by the DGS Project Manager. The approved schematic design is referred to herein as the “Final Schematic Design”. The Project Management Contractor shall update the Control Budget to reflect the likely cost of the Final Schematic Design.

Section 1.4.6 Design Development Progress Printing

The Project Management Contractor shall use commercially reasonable efforts to cause the design consultant to issue a progress printing when the design development drawings are approximately 50% complete. The Contractor shall review the progress printing. As part of this review, the Contractor shall (i) confirm adherence to the project’s program and the Final Schematic Design; (ii) identify the addition of any items or elements that were not included in the Final Schematic Design and/or the deletion of or material change to any items or elements that were not included in the Final Concept Design; (iii) confirm that the design is progressing in a manner that is generally consistent with the design progress meetings; and (iv) confirm that the design consultant is making sufficient progress to meet the approved project schedule. The Project Management Contractor shall prepare a consolidated set of comments incorporating comments from the DGS Project Manager, the Client Agency and the Project Management Contractor and shall submit them to the DGS Project Manager for review and approval. Once the DGS Project Manager approves such comments, the Project Management Contractor shall submit the consolidated comments (the “*Design Development Progress Submission Comments*”) to the design consultant.

Section 1.4.7 Design Development Approval (Design-Bid-Build/CM)

The Project Management Contractor shall use its best efforts to cause the design consultant to revise the design development documents so that they reflect the comments received from the Client Agency. The Project Management Contractor shall review the revised design development documents and advise the

Department, via a written report, of whether the requested changes and value engineering changes have been incorporated. The Project Management Contractor shall not have the authority to approve the design development documents. The decision to approve or reject the design development documents shall be made by the DGS Project Manager. The approved design development documents are referred to herein as the “***Final Design Development Documents***”. The Project Management Contractor shall update the Control Budget to reflect the likely cost of the Final Design Development Documents.

Section 1.4.8 Value Engineering (Design-Bid-Build/CM)

If the project is being delivered through design-bid-build or construction management delivery method, the Project Management Contractor shall conduct a review of the design development documents that is appropriate to: (i) confirm adherence to the project’s program and the Final Schematic Design; (ii) identify the addition of any items or elements that were not included in the Final Concept Design; and (iii) confirm that the design is progressing in a manner that is generally consistent with the design progress meetings. The Project Management Contractor shall also review the cost estimates prepared by the design consultant and the Construction Manager and shall update the Control Budget. The Project Management Contractor shall advise the DGS Project Manager of its findings and the DGS Project Manager, in consultation with the Client Agency, shall determine whether the design consultant should be directed to proceed or whether value engineering is required.

Section 1.4.9 Design Development Approval (Design-Build)

If the project is being delivered through a design-build delivery method, the Project Manager Contractor shall conduct a review of the design development documents that is appropriate to: (i) confirm adherence to the project’s program and the Final Schematic Design; (ii) identify the addition of any items or elements that were not included in the Final Schematic Design; and (iii) confirm that the design is progressing in a manner that is generally consistent with the design progress meetings. The Project Management Contractor shall advise the DGS Project Manager of its findings and the DGS Project Manager, in consultation with the Client Agency, shall determine whether such documents should be issued for bid by the design-build contractor. If so directed by the DGS Project Manager, the Project Management Contractor shall cause the design-build contractor to issue the design development documents for bid in accordance

with the terms of the applicable contract between the Department and the design-build contractor.

Section 1.4.10 GMP Review Negotiation (Design-Build)

The Project Management Contractor shall use its best efforts to cause the design-build contractor to submit a GMP proposal in a timely manner and in accordance with the terms of the contract between the design-build contractor and the Department. Once such proposal is submitted, the Project Management Contractor shall review the proposal for completeness and compliance with the applicable contractual requirements and submit a report outlining the results of such review. Among other things, the Contractor shall: (i) review the bid tabs for completeness, to verify that any bid leveling is consistent and appropriate, and to verify that adequate competition was achieved in the subcontracting process; (ii) review any assumptions, clarifications or exclusions contained within the GMP proposal to ensure that the GMP covers the scope contemplated by the Department and the Client Agency; and (iii) verify that pricing is consistent with then current market conditions. The Project Management Contractor shall assist the DGS Project Manager in negotiating any necessary adjustments to the GMP. The DGS Project Manager, in consultation with the Client Agency, shall determine whether the GMP is to be accepted.

Section 1.4.11 Zoning & Entitlements

The Project Management Contractor shall assist the Department, the Client Agency and the design consultant in managing the entitlement process and to obtain the necessary land use approvals. The exact scope of work for each project will be outlined in the Task Order related to such project.

Section 1.4.13 Separate Contractors

To the extent the approved project plan contemplates that contractors other than the design consultant will be engaged during this phase, the Project Management Contractor shall assist the DGS Project Manager in coordinating the work of those additional contractors. The exact scope of work for each project will be outlined in the Task Order related to such project.

Section 1.5 Final Design & Construction

During this phase, the Project Management Contractor shall assist the DGS Project Manager and the Client Agency in advancing the Final Design Development Documents into construction documents. Depending upon the project delivery method for the project, the Project Management Contractor may also be required to assist the DGS Project Manager in overseeing construction activities. If the project is being delivered through a construction management

delivery method, the Project Management Contractor shall assist the Department in negotiating the GMP during this phase. If the project is being delivered through a design-bid-build delivery method, the Project Management Contractor shall assist the Department in developing the necessary solicitation documents to procure a general contractor. The Project Management Contractor's scope of work during this phase includes:

Section 1.5.1 Design Management (Design-Bid-Build/CM)

If the project is being delivered through design-bid-build or construction management delivery method, the Project Manager shall continue the design progress meetings in the same manner as in the proceeding phase. The number and frequency of such meetings may be adjusted at directed by the DGS Project Manager. In any event, however, there shall be at least one design progress meeting per month, and the Project Management Contractor shall use commercially reasonable efforts to: (i) ensure that the construction documents adhere to the project's program and the Final Design Development Documents; and (ii) cause the design to progress in a manner that is generally consistent with the design progress meetings. The Project Management Contractor shall keep the DGS Project Manager and the Client Agency apprised as to the project's status and any significant cost issues that arise during the design management process.

Section 1.5.2 Design Review (Design-Build)

The Project Management Contractor shall use commercially reasonable best efforts to cause the design-build contractor to submit construction documents as and when required by the design-build contract. Upon receipt of each such submittal, the Project Management Contractor shall review the proposed submittal for: (i) consistency with the Final Design Development Documents as the same may have been modified by the GMP for the project; and (ii) level of completeness and quality. The Project Management Contractor shall advise the DGS Project Manager of its findings and whether, in the Project Management Contractor's opinion, such drawings should be approved or rejected no later than ten (10) days after receipt of such drawings.

Section 1.5.3 GMP Negotiation (CM Delivery Method)

The Project Management Contractor shall use its best efforts to cause the construction manager to submit a GMP proposal in a timely manner and in accordance with the terms of the contract between the construction management contractor and the Department. Once such proposal is submitted, the Project Management Contractor shall review the proposal for completeness and compliance with the applicable contractual

requirements and submit a written report to the Department based on such review. Among other things, the Contractor shall: (i) review the bid tabs for completeness, to verify that any bid leveling is consistent and appropriate, and to verify that adequate competition was achieved in the subcontracting process; (ii) review the any assumptions, clarifications or exclusions contained within the GMP proposal to ensure that the GMP covers the scope contemplated by the Department and the Client Agency; and (iii) verify that pricing is consistent with then current market conditions. The Project Management Contractor shall also use its best efforts to cause the design consultant to review the GMP proposal for the purpose of verifying that any exclusions, adjustments or substitutions are consistent with the design intent. The Project Management Contractor shall assist the DGS Project Manager in negotiating any necessary adjustments to the GMP. The DGS Project Manager, in consultation with the Client Agency, shall determine whether the GMP is to be accepted.

Section 1.5.4 IFB/RFP Preparation & Bidding (Design-Bid-Build)

If the project is being delivered through the design-bid-build delivery method, the Project Management Contractor shall assist the Department in preparing the necessary solicitation documents. As part of this effort, the Project Management Contractor shall cause the design consultant to prepare a bid set of documents and shall assist the Department to prepare such documents (i.e. sketches, schedules, site descriptions, etc.) as may be necessary.

Section 1.5.5 Pre-Construction Submittal Review

Prior to the commencement of construction, the Project Management Contractor shall use its best efforts to cause the builder to submit: (i) a safety plan; (ii) a quality control plan; (iii) a baseline schedule. Upon receipt, the Project Management Contractor shall review such plans and schedule for completeness and compliance with the underlying contract documents and shall make a recommendation to the DGS Project Manager as to whether such documents should be accepted or rejected.

Section 1.5.6 Site Observations

The Project Management Contractor shall visit the site and observe the status of the work as described in the Task Order for such project. At a minimum, however, the Project Management Contractor shall visit the site at least twice per week and shall document such visits with digital photographs. The purpose of such visits shall be to monitor the progress of the work relative to schedule and to observe the quality of the work.

Section 1.5.7 Construction Progress Meetings

Unless otherwise set forth in the Task Order for a project, the Project Management Contractor shall cause the builder to hold weekly progress meetings and shall attend such meetings. The Project Management Contractor shall keep the DGS Project Manager informed of any significant issues discussed during such meetings. The obligation to keep the DGS Project Manager informed is not satisfied by simply forwarding meeting minutes to the DGS Project Manager, but rather requires active engagement with the DGS Project Manager.

Section 1.5.8 Schedule Update

As and when requested by the DGS Project Manager but no less often than monthly, the Project Management Contractor shall review the builder's then current schedule for adequacy and completeness. The Project Management Contractor shall inform the DGS Project Manager of any significant deficiencies in the builder's then current schedule. As part of such reviews, the Project Management Contractor shall evaluate whether the schedule complies with the requirements of the underlying contract and contains durations and logic ties that are reasonable and appropriate. Among other things, the Project Management Contractor shall identify any activity that has a planned duration of more than two (2) months.

Section 1.5.9 Separate Contractors

To the extent, the approved project plan contemplates that contractors other than the design consultant will be engaged during this phase; the Project Management Contractor shall assist the DGS Project Manager in coordinating the work of those additional contractors. The exact scope of work for each project will be outlined in the Task Order related to such project.

Section 1.6 Project Close-outs

During this phase, the Project Management Contractor shall assist the Department in handing over the completed project to the Client Agency. The Project Management Contractor's scope of work during this phase includes the following:

Section 1.6.1 Punch List

When the project has reached an appropriate level of completion, the Project Management Contractor shall cause the design consultant or design-builder to prepare a draft punch list. The Project Management Contractor shall review such punch list and advise the DGS Project Manager whether to accept the project as substantially complete and, if so, whether any additions or modifications to the proposed punch list are necessary. The

decisions to accept the project as substantially complete and to accept or reject the punch list shall be made by the DGS Project Manager. Once the punch list has been approved by the DGS Project Manager, the Project Management Contractor shall work with the builder and the design consultant to monitor completion of the punch list. Unless otherwise directed by the DGS Project Manager, the Project Management Contractor shall provide the DGS Project Manager and the Client Agency with an update of the punch list at least every other week.

Section 1.6.2 O&M Manuals/Record Drawings

The Project Management Contractor shall use commercially reasonable efforts to cause the builder to prepare and submit warranties, operations and maintenance manuals, attic stock, and such other documents and materials as may be required by the underlying contract. The Project Management Contractor shall review such submissions for completeness and shall recommend to the DGS Project Manager whether such submittals should be approved or rejected.

Section 1.6.3 Initial HVAC Operations

The Project Management Contractor shall assist the DGS Project Manager and the Client Agency in overseeing the initial start-up of the project's HVAC system. This service shall be provided once for the initial cooling season and once for the initial heating season. The Project Management Contractor shall support the DGS Project Manager as required in resolving any issues that need to be resolved

Section 1.6.4 Warranty Issues

For a period of one year after substantial completion, the Project Management Contractor shall assist the DGS Project and the Client Agency in responding to any warranty issues that may arise, including coordinating any warranty work with the appropriate contractor.

Section 1.6.5 11-Month Walk

The Project Management Contractor shall use its best efforts to schedule a joint walk of the project approximately eleven (11) months after substantial completion but prior to the expiration of the warranty period. The purpose of such walk shall be to document the condition of the building and identify any warranty issues that require correction. The Project Management Contractor shall prepare a written report that documents the result of such walk and shall submit it to the DGS Project Manager. If requested, the Project Management Contractor shall also coordinate and

oversee any warranty work arising as a result of the 11-month walk.

Section 1.7 Administrative Matters

The Program Management Contractor shall be required to submit the reports as described in this *Section 1.7*.

Section 1.7.1 Quarterly IDIQ Contract Report

No later than the fifteenth day after the close of each quarter (i.e. January 15th, April 15th, July 15th and October 15th), the Project Management Contractor shall submit to the Contracting Officer, the COTR and the Department's Deputy Director for Capital Construction a financial report that summarizes the Task Orders that have been awarded to the Project Management Contractor and the status of each. The Department shall develop a reporting format for this report, but in general it will list the Task Orders awarded to such contractor, the initial value of each, its expected duration, any change orders issued against such Task Order and whether the Task Order has been completed.

Section 1.7.2 Monthly Report

With regard to each Task Order issued to a Project Management Contractor, the Project Management Contractor shall prepare and submit a monthly report to the DGS Project Manager that describes: (i) financial status of the project; (ii) the project's then current schedule; (iii) potential change orders; and (iv) significant issues related to the project that will require input or decision from the Department of the Client Agency within the next sixty (60) days. The monthly report shall specifically identify any variances from the Control Budget and approved schedule for the project. A copy of this report shall be provided to the COTR, the Contracting Officer and the Department's Deputy Director for Capital Construction.

Section 1.7.3 Weekly Status Report

The Project Management Contractor shall provide a weekly status report to the DGS Project Manager. This report shall summarize any key developments that occurred during the prior week as well as key decisions that need to be made in the next two weeks. This report can be prepared in bullet format. A copy of the report should be submitted to the COTR.

Section 1.7.4 Payment Applications

The Project Management Contractor shall review payment applications submitted by the various contractors and vendors working on the project. Such review shall include all invoices

submitted by the design consultant and the builder (or design-builder) as well as any other separate contractors or vendors working on the project. With regard to each such invoice, the Project Management Contractor shall take commercially reasonable steps to verify that: (i) the work specified in the invoice was completed; (ii) such work complies with the requirements of the underlying contract; (iii) the amounts requested for payment comply with the applicable contract provisions; and (iv) the invoice submission includes all of the forms and documentation required by the Department. After such review, the Project Management Contractor shall make a recommendation to the DGS Project Manager regarding payment. All payments shall be approved by the DGS Project Manager. The Project Management Contractor, however, shall assist the DGS Project Manager in preparing the necessary documents to process the invoice. In the event the Project Management Contractor determines that adjustments are required to the invoice and the DGS Project Manager agrees with such assessment, the Project Management Contractor shall advise the relevant contractor of the Department's position and the required adjustments. The Project Management Contractor shall use its best efforts to complete its initial review of invoices within five (5) business days and shall promptly advise any vendor within that timeframe if the Project Management Contractor recommends withholding payment.

Section 1.7.5 Change Orders

The Project Management Contractor shall: (i) review proposed change orders; (ii) advise the Department concerning the necessity for, scope of and proposed cost of change orders; and (iii) if so requested and subject to the Department's control and approval, negotiate, on the Department's behalf, all change orders. The Project Management Contractor shall also assist in the Department's processing of approved change orders. Approval of change orders will, in every instance, be made by the Department.

Section 1.8 Liquidated Damages

The Department's overall goal in engaging Project Management Contractors is to minimize the potential for cost overruns, schedule delays or the need for extensive value engineering/re-design late in the Project and therefore, the reports and other documents required under **Sections 1.2 through Section 1.7** are key to realizing the value of the Project Management Contractor's services. In the event the Project Management Contractor fails to deliver any of the following deliverables, the Project Management Contractor shall be subject to liquidated damages as set forth below.

Section 1.8.1 Programming & Needs Assessment

If the Project Management Contractor fails to produce the reports required by *Section 1.2.1, 1.2.2, 1.2.3, or 1.2.4* (and unless such failure is the result of any event of Force Majeure), the Program Management Contractor shall be subject to liquidated damages in an amount of Five Thousand Dollars (\$5,000) plus Five Hundred Dollars (\$500) per day after receiving written notice from either the COTR or the Contracting Officer of failure to submit such report. Failure to produce such reports shall also be a factor in selecting among the various IDIQ contractors for future assignments.

Section 1.8.2 Concept Design & Control Budget

If the Project Management Contractor fails to produce the reports required by *Sections 1.3.3 and 1.3.5* (and unless such failure is the result of any event of Force Majeure), the Program Management Contractor shall be subject to liquidated damages in an amount of Five Thousand Dollars (\$5,000) plus Five Hundred Dollars (\$500) per day after receiving written notice from either the COTR or the Contracting Officer of failure to submit such report. Failure to produce such reports shall also be a factor in selecting among the various IDIQ contractors for future assignments.

Section 1.8.3 Project Design & Entitlement

If the Project Management Contractor fails to produce any of the reports required by *Sections 1.4.3, 1.4.7 or 1.4.10* (and unless such failure is the result of any event of Force Majeure), the Program Management Contractor shall be subject to liquidated damages in an amount of Five Thousand Dollars (\$5,000) plus Five Hundred Dollars (\$500) per day after receiving written notice from either the COTR or the Contracting Officer of failure to submit such report. Failure to produce such reports shall also be a factor in selecting among the various IDIQ contractors for future assignments.

Section 1.8.4 Final Design & Construction

1.8.4.1 Construction Document Packages

If the Project Management Contractor fails to review any construction document package required under *Section 1.5.2* (and unless such failure is the result of any event of Force Majeure), the Program Management Contractor shall be subject to liquidated damages in an amount of One Thousand Dollars (\$1,000) plus Two Hundred Fifty Dollars (\$250) per day after receiving written notice from either the

COTR or the Contracting Officer of failure to submit such report. Failure to produce such reports shall also be a factor in selecting among the various IDIQ contractors for future assignments.

1.8.4.2 GMP Review

If the Project Management Contractor fails to produce any of the reports required by **Section 1.5.3** (and unless such failure is the result of any event of Force Majeure), the Program Management Contractor shall be subject to liquidated damages in an amount of Five Thousand Dollars (\$5,000) plus Five Hundred Dollars (\$500) per day after receiving written notice from either the COTR or the Contracting Officer of failure to submit such report. Failure to produce such reports shall also be a factor in selecting among the various IDIQ contractors for future assignments.

1.8.4.3 Preconstruction Submittals

If the Project Management Contractor fails to review either of the submittals required under **Section 1.5.5** (and unless such failure is the result of any event of Force Majeure), the Program Management Contractor shall be subject to liquidated damages in an amount of One Thousand Dollars (\$1,000) plus Two Hundred Fifty Dollars (\$250) per day after receiving written notice from either the COTR or the Contracting Officer of failure to submit such report. Failure to produce such reports shall also be a factor in selecting among the various IDIQ contractors for future assignments.

Section 1.8.5 Project Close-out

If the Project Management Contractor fails to prepare an initial draft of the punch-list as required under **Section 1.6.1** (and unless such failure is the result of any event of Force Majeure), the Program Management Contractor shall be subject to liquidated damages in an amount of One Thousand Dollars (\$1,000) plus Two Hundred Fifty Dollars (\$250) per day after receiving written notice from either the COTR or the Contracting Officer of failure to submit such report. Failure to produce such reports shall also be a factor in selecting among the various IDIQ contractors for future assignments.

Section 1.9 Duty to Maintain Timesheets

The Project Management Contractor shall be required to maintain timesheets in sufficient level of detail to describe the general nature of the services provided

and the number of hours devoted to such activities by all of its personnel assigned a specific project. The Project Management Contractor shall submit such timesheets to the Department with its monthly invoices.

Section 1.10 Standards of Care

Section 1.10.1 General

In performing its duties hereunder, the Project Management Contractor shall use a level of skill and exhibit a standard of care that is appropriate for the management of urban development in the Washington, D.C. metropolitan area. Further, entering into any task order shall constitute the Project Management Contractor's representation that it or its assigned personnel have experience: (i) preparing and evaluating scopes of work; (ii) reviewing design documents (including but not limited to, schematic designs, design development documents, construction documents, RFIs, submittals) as an owner's representative or program manager to promote design quality, system functionality and life cycle costs; (iii) developing and reviewing construction schedules and budgets; (iv) managing claims and submittal processes; (v) assisting owners in interfacing with regulatory agencies and building code officials; and (vi) managing day to day construction project activities as an owner's representative.

Section 1.10.2 Best Efforts Defined

At all times while working on projects for the Department, the Project Management Contractor shall endeavor to promote the interests of the Department and the Client Agency. In certain instances, the term "**Best Efforts**" is used in the scope of work. When the term Best Efforts is used, such term shall mean that the Department considers the task to be of substantial importance and that the Project Management Contractor shall make every effort to achieve the desired result. The term, however, shall not be meant to impose a level of skill or standard of care beyond that required in *Section 1.10.1* nor shall it require the Project Management Contractor to undertake an action where the cost of such action is grossly disproportionate the benefit of such action.

Section 1.11 Deliverable List

- i. Program of Requirements
- ii. Preliminary Project Budget
- iii. Preliminary Project Schedule
- iv. Preliminary Land Use/Entitlement Evaluation
- v. Concept Design Review Memo
- vi. Revised Control Budget (based on Concept Design)

- vii. 50% Schematic Design Review Comments
- viii. Schematic Design Review Memo & Cost Estimate
- ix. Schematic Design Stage Value Engineering Recommendations
 - x. Revised Control Budget (based on Schematic Design)
- xi. Final Schematic Design Value Engineering Review Findings
- xii. 50% Design Development Review Comments
- xiii. Design Development Review Memo
- xiv. Design Development Control Budget Update (Design-Bid-Build / CM)
- xv. GMP Review Reports (Design-Build / CM)
- xvi. Construction Document Design Review Memo
- xvii. Recommendations re: Contractor safety and quality control plans and baseline schedule
- xviii. Meeting Minutes & Open Issues Action List
- xix. Weekly Status Report
- xx. Monthly Schedule Update
- xxi. Monthly Report
- xxii. Punch list Review and Updates
- xxiii. 11 Month Walk Through Report
- xxiv. Quarterly IDIQ Contract Report
- xxv. Payment Application Recommendations
- xxvi. Proposed Change Order Recommendations

Section 1.12 Basic Ordering Agreement & Task Orders

It is contemplated that the selected Project Management Contractors will enter in IDIQ contracts with the Department and that all work under the resulting IDIQ contracts will be awarded and authorized by Task Order. In no instance shall a Project Management Contractor be entitled to compensation for work that was performed without a Task Order. It is contemplated that Task Orders will be competed and awarded as generally outlined in **Section B.13**.

Section 1.13 Task Order Awards

Absent unusual circumstances, Task Orders will be awarded through a competitive process run by the Department as new projects are initiated. For each such project, the Department will request a Task Order Proposal from two (2) or more of the Awarded IDIQ Project Management Contractors. In general, such firms will have two weeks to prepare and submit a Task Order Proposal. Each Task Order Proposal should include: (i) the proposed personnel that will be assigned to the project and their roles; (ii) a resume for each of the proposed personnel; (iii) a staffing plan that shows the level of effort expected for the proposed staff; (iv) a description of similar projects managed by the Project Management Contractor as well as the proposed staff; (v) a management plan that identifies the key issues associated with the project and the Project Management

Contractor's initial evaluation of those issues as well as a preliminary plan to address them; and (vi) a firm, fixed price for the work as contemplated in **Section B.14**. It is contemplated that the Task Order Proposals should be relatively short submissions of approximately five (5) to seven (7) pages (excluding resumes and attachments).

In evaluating the Task Order Proposals, the Department will select the proposal that is most advantageous to the District. It is envisioned that the key elements of this decision will be the proposed personnel and their relevant experience, project specific relevant experience (i.e. experience with similar facilities), and the project management plan. The technical elements of the proposal will be of primary importance; however, as technical elements become more equal, price considerations will be given more emphasis.

As Task Order durations cannot extend beyond the duration of the underlying IDIQ contract, it is envisioned that the last Task Orders under the resulting contract will be competed and awarded during the third year of the contract. It is possible, however, that Task Orders for projects that have an estimated duration of one year or less may be competed and awarded in the fourth year of the contract..

Section 1.14 Task Order Pricing

Unless otherwise directed by the Department, the Project Management Contractors shall include with each Task Order Proposal a proposed lump sum price for the work. The proposed lump sum price shall be based on the estimated level of effort required to fully complete the work multiplied by the approved fully loaded hourly rates established in the Project Management Contractor's IDIQ contract and shall be submitted on a pricing form to be provided by the Department. As such, with each Task Order Proposal, the Offerors shall prepare a detailed level of effort chart that shows the expected time commitment for each of its proposed staff members by month throughout the expected duration of the engagement. That level of effort (expressed in hours) will be multiplied by the approved hourly rate for each such individual and converted into a firm, fixed price for the entire team. This information should be presented in a tabular format with each Task Order Proposal submitted by the Project Management Contractor.

The Department reserves the right to adjust the overall level of effort or its composition as part of the Task Order negotiation process. The Department also reserves the right to award Task Orders on an hourly basis.

Section 1.15 Level of Effort & Clawback

Each Task Order awarded on a fixed price basis will include a "claw back" provision designed to protect the Department should the selected Project Management Contractor provide substantially less staff than set forth in its Task Order Proposal. The Project Management Contractor shall be required to maintain timesheets for its professional personnel in sufficient level of detail to

describe the general nature of the services provided and the number of hours devoted to such activities as outlined in **Section 1.9**. To the extent during any two (2) month period that any individual listed in the estimated level of effort table submitted as part of the Task Order Proposal works less than seventy five percent (75%) of the indicated level of effort based on a forty (40) hour work week, without offset by additional personnel, the DGS shall be entitled to an appropriate reduction to the lump sum price. Such “claw back” shall be in addition to any liquidated damages for diversion of key personnel outlined in **Section 1.16.2** that may be applicable.

Section 1.16 Key personnel; Liquidated Damages

Section 1.16.1 Identification of Key Personnel

Included within each Task Order Proposal, the Project Management Contractor shall include a list of proposed key personnel. At a minimum, such personnel shall include: (i) the project officer or principal in charge that will have oversight responsibility for the resulting Task Order; and (ii) the project manager who will have day-to-day responsibility for the Task Order. Based on the nature of the Task Order, the Department may designate other individuals as key personnel in the resulting Task Order, and the selected Project Management Contractor will not be permitted to reassign any of the key personnel unless the Department approves the proposed reassignment and the proposed replacement.

Section 1.16.2 Liquidated Damages

If the Project Management Contractor removes or reassigns one of the key personnel (excluding, however, instances where such personnel become unavailable due to death, disability, or separation from the employment of the Project Management Contractor or any affiliate of the Project Management Contractor) without the prior written consent of the Department’s Designated Representative, the Project Management Contractor shall pay to the Owner the sum of Twenty Five Thousand Dollars (\$25,000) as liquidated damages. These liquidated damage amount shall not bar recovery of any other damages, costs or expenses other than the Department’s internal administrative costs. In addition, the Department shall have the right, to be exercised in its sole discretion, to remove, replace or to reduce the scope of services of the Project Management Contractor in the event that a member of the key personnel has been removed or replaced by the Project Management Contractor without the consent of the Department.

Section 1.16.3 Adjustments to Task Order Pricing

In general, the Project Management Contractor shall only be entitled to an increase in the lump sum price established in a task order if: (i) the Department intentionally delays the project by more than thirty (30); or (ii) the Department makes a substantial change to the project's program and such change materially increases the Project Management Contractor's cost of performance. For purposes of the (i) of the preceding sentence, delays resulting from differing site conditions or adverse weather shall not be considered an "intentional delay" by the Department, but delays due to inadequate funding shall be considered an "intentional delay".

ARTICLE TWO (2)

CONTRACTOR'S FEES

Section 2.1 Contract Type

This is an Indefinite Delivery, Indefinite Quantity type of contract ("IDIQ"). The Contractor(s) compensation will be based on fixed, fully loaded hourly rates for performing Project Management Services as described in *Section 1 – Scope of Work (SOW)*. The pricing as defined in the SOW and in accordance with the *Attachment A – Contractor's Pricing* shall be the Contractor's sole method of compensation for all work performed and required under the contract.

Section 2.2 Mandatory Subcontract Provisions

The Contractor shall ensure that all subcontracts in excess of \$250,000.00 and required by law, as described in Section 13, contain the following provisions;

Section 2.2.1 That, to the extent of the Work or supply within the agreement'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;

Section 2.2.2 that the Subcontractor or supplier is not in privity with the Department and shall not seek compensation directly from the Department on any third-party beneficiary, quantum meruit, or unjust enrichment claim, or otherwise, except as may be permitted by any applicable mechanic's lien law;

Section 2.2.3 that the Department is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit;

Section 2.2.4 that the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Contractor is terminated for default;

Section 2.2.5 that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Contractor to suspend or stop work;

Section 2.2.6 that the Subcontractor or supplier shall maintain records of all Work it is requested or authorized to do on a time and material or cost-plus basis, or with respect to claims that it has asserted on a time and materials or cost-plus basis, during the Project and for a period of time specified in the General Conditions and requiring

the Subcontractor or supplier to make those records available for review or audit by the Department during that time;

Section 2.2.7 that the Subcontractor shall obtain and maintain, throughout the Project, workers' compensation insurance in accordance with the laws of the District of Columbia (This provision is not applicable to supply agreements.);

Section 2.2.8 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;

Section 2.2.9 that the Department shall have the right to enter into a contract with the Subcontractor or supplier for the same price as its subcontract or supply agreement price less amounts already paid, if the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;

Section 2.2.10 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 2.3 Certified Subcontractors

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

Section 2.4 Value of Contract

The Contractor shall be entitled to receive a minimum of Two Hundred Fifty Dollars (\$250.00) pursuant to this Contract regardless of whether any work is performed under this Contract. However, in no event shall the Contractor be entitled to receive more than Five Million Dollars (\$5,000,000.00) per year for work performed pursuant to services performed under this Contract.

SECTION THREE (3)

TERM OF CONTRACT

Section 3.1 Term

The Base term of this Agreement shall begin on the date of Award, and end one (1) year thereafter.

Section 3.2 Option Years

The Department shall have the right to unilaterally extend the term of this agreement for four (4), one (1) year option periods or successive portions thereafter. The Department shall give the Contractor preliminary, written notice of its intent to exercise an option period at least thirty (30) days in advance of the contract expiration. The Contractor may waive the thirty (30) day notice requirement by providing a written waiver to the Contracting Department prior to the expiration of the Contract.

Section 3.2.1 Option Years Pricing. In the event the Department exercises its option to extend the term of the Agreement to cover the Option Period(s), the fixed, fully loaded hourly rates applicable to such Option Year(s) are set forth in the ***Bid Form Attachment D***.

SECTION FOUR (4)

CHANGES / MODIFICATION TO CONTRACT

Section 4.1 Changes Authorized

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

Section 4.2 Executed Change Directive/Order Required

Modification/Changes to the Contract may be made only by a written Change Directive or Change Order executed by the Department.

Section 4.3 Prompt Notice

In the event the Contractor encounters a situation which the Contractor believes to be a change to this contract, the Contractor shall provide the Department with prompt written notice of such event and the possible impact such event could have on cost and schedule. All such notices shall be given promptly, considering the then applicable situations, but in no event more than ten (10) calendar days after encountering the situation. The Contractor acknowledges that the failure to provide such notice in a timely manner could limit or eliminate the Department's ability to mitigate such events, and thus, the Contractor shall not be entitled to an adjustment in the event it fails to provide prompt notice. The Contractor shall include provisions similar to this provision in all of its subcontracts.

Section 4.4 Executed Modification/Change Orders Final

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

Section 4.5 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 terms of this Agreement. The Contractor shall proceed with the Work and the Department's directives, without interruption or delay, and may make a claim as provided in Section 14 of this Agreement. 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 4.6 Indemnification

The Contractor agrees to defend, indemnify and hold harmless the District, its officers, agencies, departments, agents, and employees (collectively the “District”) from and against any and all claims, losses, liabilities, penalties, fines, forfeitures, demands, causes of action, suits, costs and expenses incidental thereto (including cost of defense and attorney’s fees), resulting from, arising out of, or in any way connected to activities or work performed by the Contractor, Contractor’s officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the Contractor in the performance of this Contract. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed in performance of this Contract. The Contractor shall repair or replace any District property that is damaged by the Contractor, Contractor’s officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the Contractor while performing work hereunder.

The indemnification obligation under this section shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor, and shall survive the termination of this Contract. The District agrees to give Contractor written notice of any claim of indemnity under this section. Monies due or to become due the Contractor under the Contract may be retained by the District as necessary to satisfy any outstanding claim which the District may have against the Contractor.

SECTION FIVE (5)

PAYMENTS

Section 5.1 Invoicing

The Contractor shall invoice the Department on a monthly basis. Each such invoice shall itemize all of the work performed during the invoice period.

- The District will pay the Contractor on or before the 30th day after receiving a proper invoice from the Contractor. The Contractor shall submit invoices to the Department on a monthly basis. Each such invoice shall itemize all goods and services provided during the previous month and include a valid Purchase Order Number.
- The Contractor shall utilize the Department's Prolog system to submit any and all documentation required to be provided by the Contractor for the Project, including, but not limited to, (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) proposed Changes; and (v) applications for payment.

Section 5.2 Supporting Documentation

The Contractor shall submit with each invoice cost backup supporting such invoice.

Section 5.3 Right to Withhold Payments

The Department will notify the Contractor within fifteen (15) calendar days after receiving any invoice for payment of any defect in the invoice or the work which may result in the Department's declining to pay all or a part of the invoiced amount. The Department may withhold payment from the Contractor, in whole or part, as appropriate, if

- i. the work is defective and such defects have not been remedied; or
- ii. the Department has determined that the Contractor's progress has fallen behind the Project Schedule, and the Contractor fails, within five calendar days of the Department's written demand, to provide the Department with a realistic and acceptable plan to recover the delays; or
- iii. the Contractor has failed to pay subcontractors promptly or has made false or inaccurate certifications that payments to Subcontractors or Suppliers are due or have been made; or
- iv. the Contractor is otherwise in substantial breach of the Contract (including, without limitation, failures to comply with the these Special Provisions).

SECTION SIX (6)

ECONOMIC INCLUSION REQUIREMENTS

Section 6.1 SBE Utilization

The Contractor shall comply with the following:

Section 6.1.1 Mandatory Subcontracting Requirements

- (a) Unless the Director of the Department of Small and Local Business Development (DSLBD) has approved a waiver in writing, for all contracts in excess of \$250,000, at least 50% 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 paragraph 12.1 (a), then the subcontracting may be satisfied by subcontracting 50% 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 Section 12.1.1 and Section 12.1.2 of this clause.
- (d) Except as provided in Section 12.1 (e) and 12.1 (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 35% of the contracting effort with its own organization and resources and, if it subcontracts, 50% 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, 50% 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.

Section 6.1.2 Subcontracting Plan

If the prime contractor is required by law to subcontract, it shall subcontract at least 50% of the dollar volume of Task Orders in accordance with the provisions of Section 12.1. The subcontracting Plan shall be submitted as part of the Contractor's Task Order proposal and may only be amended with the prior written approval of the CO and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the plan shall inure to the benefit of the District. Each 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 6.1.2.1 Copies of Subcontracts

If the Contractor has a subcontracting plan required by law for this contract or Task Orders issued pursuant to this agreement, the Contractor shall submit fully executed copies of all subcontracts identified in the subcontracting plan to the CO, PM, District of Columbia Auditor and the Director of DSLBD within twenty-one (21) days of the execution of a Task Order.

Section 6.1.2.2 Subcontracting Plan Compliance Reporting

If the Contractor has a subcontracting plan required by law for this contract or Task Orders issued pursuant to this agreement, the Contractor

shall submit a quarterly report to the CO, PM, 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 6.1.3 Annual Meetings Upon at least 30-days written notice provided by DSLBD, the Contractor shall meet annually with the CO, PM, District of Columbia Auditor and the Director of DSLBD to provide an update on its subcontracting plan.

Section 6.1.4 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 6.1.5 Enforcement and Penalties for Breach of Subcontracting Plan

- (a) 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.
- (b) 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.
- (c) 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 under the default provisions in Section 14.16 of the agreement.

SECTION SEVEN (7)

SUBCONTRACTS

Section 7.1 Subcontracts

The Contractor shall perform the work with its own forces. In the event that the Contractor desires to engage one or more subcontractors to assist with the work, it shall advise the Department and obtain the Department's written approval of any such subcontractor. All subcontractors shall be required to comply with the insurance requirements set forth herein. In addition, the Contractor shall be responsible for all work performed by the subcontractors and shall assume the risk of the subcontractors' non-performance.

SECTION EIGHT (8)

FIRST SOURCE AGREEMENT

- Section 8.1** Upon execution of the Contract, the Contractor and all its member firms, if any, and each of its Subcontractors shall submit to the Department a list of current employees that will be assigned to the Contract, the date they were hired and whether or not they live in the District of Columbia.
- Section 8.2** The Contractor and its constituent entities shall comply with subchapter III of Chapter 11 Title 1, and subchapter II of Chapter 11 of Title 1 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The Contractor and all member firms and Subcontractors shall execute a First Source Agreement with the District of Columbia Department of Employment Services (“DOES”) prior to beginning Work at the Project site.
- Section 8.3** The Contractor shall maintain detailed records relating to the general hiring of District of Columbia and community residents.
- Section 8.4** The Contractor shall be responsible for: (i) including the provisions of this Section 13 in all subcontracts; (ii) collecting the information required in this Section 13 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in any reports required to be submitted by the Contractor pursuant to this Section 13.

SECTION NINE (9)

TERMINATION FOR CONVENIENCE

Section 9.1 The Department may at any time terminate this Agreement, in whole or specified part, for convenience. In such an event, the Contractor shall be entitled to receive compensation for services performed through the effective date of termination in accordance with the terms of this Agreement. In no event, however, shall the Contractor be entitled to recover lost profits or opportunity costs on the unperformed portion of work.

SECTION TEN (10)
TERMINATION FOR DEFAULT

Section 10.1 The Department may terminate this Contract for default if the Contractor fails materially to perform any of its duties or obligations under this Contract and such failure continues for a period of at least seven (7) days after receiving written notice of such failure from the Department.

SECTION ELEVEN (11)
CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)

Section 11.1 The COTR is responsible for general administration of the contract and advising the Contracting Officer as to the Contractor's compliance or noncompliance with the contract. The COTR has the responsibility of ensuring that the work conforms to the requirements of this contract and such other responsibilities and authorities as may be specified in the contract. These include:

- (a) Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;
- (b) Coordinating site entry for Contractor personnel, if applicable;
- (b) Reviewing invoices for completed work and recommending approval by the CO if the Contractor's prices and costs are consistent with the contractual amounts and progress is satisfactory and commensurate with the rate of expenditure;
- (c) Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and
- (d) Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, and equipment) and invoice or vouchers.
- (e) The contact information of the COTR is:

TBD

SECTION TWELVE (12)

CLAIMS AND DISPUTE RESOLUTION

Section 12.1 Notice of Claim

If the Contractor submits a written request to change the terms of the agreement and the Department denies the change(s) requested in a written Change Proposal, or fails to respond to a written Change Proposal within thirty (30) days, and the Contractor wishes to pursue a claim over the disputed item; or, if the Contractor wishes to assert a claim over a contract dispute not arising from matters related to a Change Proposal, Change Order or Change Directive, then a written notice of claim must be submitted to the Department pursuant to the procedures in section 4732 of the Department of General Services (“DGS” or “Department”) procurement rules (27 DCMR 4732) and section 1004 of the District's *Procurement Practices Reform Act of 2010* (PPRA) (D.C. Official Code section 2-361.06(a)(2))(2011 Repl.).

Section 12.2 Contents of Notice of Claim

The notice of claim shall state the nature of the claim, the events or circumstances giving rise to the claim, the type of relief requested, and the amount of time or additional compensation, or other damages sought. If the amount of time, compensation, or other damages sought is not reasonably ascertainable at the time, the Contractor shall so state, explain why, and provide whatever estimates it can reasonably provide. The notice shall state clearly that the Contractor intends to assert a claim against the Department.

Section 12.3 Appeal Procedures

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

SECTION THIRTEEN (13)

INSURANCE

Section 13.1 Required Insurance

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

- i. Commercial general public liability insurance ("Liability Insurance") against liability for bodily injury and death and property damage, such Liability Insurance written on an occurrence basis to be in an amount not less than Two Million Dollars (\$2,000,000.00) for liability for bodily injury, death and property damage arising from any one occurrence and Two Million Dollars (\$2,000,000.00) from the aggregate of all occurrences within each policy year. The policies shall contain blanket contractual coverage (including coverage for the indemnity clauses to be provided under the Agreement) and completed operations coverage (for 3 years beyond completion of the Work).
- ii. Workers' compensation providing statutory benefits for all persons employed by the Contractor, or its contractors and subcontractors at or in connection with the Work.
- iii. Automobile Liability, including Hired and Non-Owned Auto Liability in the amount of at least One Million Dollars (\$1,000,000.00) for each occurrence for bodily injury and property damage.

Section 13.2 Additional Insurers

Each insurance policy shall be issued in the name of the Contractor and shall name as additional insured the Department and the District of Columbia and shall not be cancelable or reduced without thirty (30) calendar days' prior written notice to the Department.

Section 13.3 Waiver of Subrogation

All such insurance shall contain a waiver of subrogation against the Department and its respective agents.

Section 13.4 Strength of Insurer

All insurance shall be placed with insurers that are reasonably acceptable to the Department and with an A.M. Best's rating of not less than a then-current rating of "A-" or better and a financial size category of Class XV or higher. All such insurers shall be licensed/approved to do business in the District of Columbia.

SECTION FOURTEEN (14)
MISCELLANEOUS PROVISIONS

Section 14.1 Standard Contract Provisions

The District of Columbia Department of General Services Standard Contract Provisions, dated January 14, 2016, is incorporated by reference as part of this contract as *Attachment G*.

Section 14.2 Service Contract Act Provision

The Contractor agrees that the work performed under this Contract shall be subject to the Service Contract Act. The wage rates applicable to this Project are attached as *Attachment K (U.S. DOL Wage Determination No. 2015-4281 Revision 3, dated 04/08/2016)*.

Section 14.3 Living Wage Act

The Contractor agrees that the work performed under this Contract shall be subject to the District of Columbia Living Wage Act, *Attachment J*.

Section 14.4 False Claims Act

The Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in D.C. Code § 2-308.14.

Section 14.5 Americans with Disabilities Act Of 1990 (ADA)

During the performance of this contract, the Contractor and any of its subcontractors shall comply with the ADA. The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability. See 42 U.S.C. §12101 et seq.

Section 14.6 Buy American Act Provision

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

Section 14.7 Freedom of Information Act

The District of Columbia Freedom of Information Act, at D.C. Official Code § 2-532 (a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the COTR designated in subsection 6.7., which will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the

Contractor pursuant to the contract, the COTR will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the COTR within the timeframe designated by the COTR. The FOIA Officer for the agency with programmatic responsibility will determine the releasability of the records. The District will reimburse the Contractor for the costs of searching and copying the records in accordance with D.C. Official Code §2-532 and Chapter 4 of Title 1 of the D.C. Municipal Regulations.

Section 14.8 Retention of Records: Inspections and Audits

Section 14.8.1 The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under the Contract in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Contract.

Section 14.8.2 The Contractor shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Department and the required cost submissions in effect on the date of execution of the Department.

Section 14.8.3 The Department, the District of Columbia government, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Contractor for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection.

Section 14.8.4 The Contractor agrees to include the wording of this Section 19 in all its subcontracts in excess of Five Thousand Dollars (\$5,000.00) that directly relate to Project performance.

Section 14.8.5 Audits conducted pursuant to this Section will be in accordance with generally accepted auditing standards with the results prepared in accordance with generally accepted accounting principles and established procedures and guidelines of the applicable reviewing or audit agency.

Section 14.8.6 The Contractor agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The

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

Section 14.8.7 The Contractor shall preserve all records described herein from the effective date of the Contract completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

SECTION FIFTEEN (15)
GRATUITIES AND OFFICERS NOT TO BENEFIT PROVISIONS

Section 15.1 If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any official, employee or agent of the Department or the District with a view toward securing the Contract or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract and may pursue such other rights and remedies provided by law and under the Contract.

Section 15.1.2 In the event the Contract is terminated the Department shall be entitled:

- (a) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor; and
- (b) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Department) which shall be not less than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

Section 15.2 No member of, nor delegate to Congress, Mayor or City Council Member, nor officer nor employee of the District, nor officer nor employee of the Department shall be admitted to any share or part of the Contract or to any benefit that may arise therefrom, and all agreements entered into by the Contracting Officer of the Department in which he or any officer or employee of the Department shall be personally interested as well as all agreements made by the Department in which the Mayor or City Council Member or officer or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department or by any officer thereof; but this provision shall not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or officer or employee of the District is de minimis.

Section 15.3 Ethical Standards For Department's Employees And Former Employees

The Department expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated

with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed under the Contract. The Contractor may not assign to any former Department or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Subcontractor or vendor.

Section 15.4 Anti-Deficiency Act

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

SECTION TWENTY-ONE (21)
ORDER OF PRECEDENCE

A conflict in language shall be resolved by giving precedence to the document in the highest order of priority that contains language addressing issue in question. The following documents are incorporated into the contract by reference and made a part of the contract in the following order of precedence:

This Contract document

- a. Contract Exhibits other than the Standard Contract Provisions
- b. Rate Schedule/Contractor's Proposal
- c. The RFP dated, November 16, 2016, as amended
- d. District of Columbia Department of General Services Standard Contract

IN WITNESS WHEREOF, each of the parties to this Agreement has caused this Agreement to be signed by its duly authorized representative.

[CONTRACTOR NAME]

By: _____

Name: _____

Title: _____

Date: _____

DEPARTMENT OF GENERAL SERVICES

By: _____

Name: George G. Lewis, CPPO

Title: Interim Associate Director/
Chief Contracting Officer

Date: _____