

**Attachment 8**

RFP DCAM-20-CS-RFP-0005 Attachment L –  
Form of Contract

**DESIGN-BUILD AGREEMENT**  
**FOR**  
**REDEVELOPMENT OF THE ST. ELIZABETHS EAST CAMPUS –**  
**PARCEL 6 PARKING GARAGE**

**BY AND BETWEEN**

**THE DEPARTMENT OF GENERAL SERVICES**

**AND**

**[NAME OF CONTRACTOR]**

**CONTRACT NUMBER: DCAM-20-CS-RFP-0005**

## PROJECT INFORMATION

### A. PROJECT SUMMARY

1.	<b>Project Name:</b>	Design Build Services Redevelopment St. Elizabeths East Campus Parcel 6 Parking Garage
2.	<b>Project Address:</b>	Corner of Cypress Street, SE and a temporary extension of 13 <sup>th</sup> Street, SE Washington, D.C.
3.	<b>Agreement Type:</b>	Design-Build with Lump Sum Price
4.	<b>Client Agency:</b>	Deputy Mayor for Planning Economic Development (“DMPED”)
5.	<b>Design-Builder:</b>	
6.	<b>Project Budget</b>	\$19 – 21 million
7.	<b>Agreement Amount, including all Design-Builder Compensation:</b>	
i.	<b>NTE Amount</b>	
8.	<b>Liquidated Damages:</b>	
i.	<b>Failure to Submit Deliverables:</b>	\$5,000 per deliverable plus \$500/day of delay
ii.	<b>Delay in Substantial Completion:</b>	\$7,500/day
9.	<b>Substantial Completion Date:</b>	468 Calendar Days from Notice to Proceed
10.	<b>Final Completion Date:</b>	529 Calendar Days from Notice to Proceed
11.	<b>Administrative Term Expiration Date:</b>	
12.	<b>Key Personnel Replacement</b>	\$25,000
13.	<b>Letter Contract:</b>	

i.	<b>Period of Performance</b>	Date of Notice to Proceed until execution of definitive contract.
ii.	<b>NTE Amount:</b>	

## **DESIGN-BUILD AGREEMENT**

### **FOR REDEVELOPMENT OF THE ST. ELIZABETHS EAST CAMPUS – PARCEL 6 PARKING GARAGE**

**DCAM-20-CS-RFP-0005**

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

### **RECITALS**

**WHEREAS**, the Department issued a Request for Proposals dated November 5, 2019 (the “RFP”) to engage a design-builder to provide design-build services for a parking garage on Parcel 6 of St. Elizabeths East Campus to be located at the corner of Cypress Street, SE and a temporary extension of 13<sup>th</sup> Street, SE Washington, DC (the “Project”);

**WHEREAS**, the Department desires that the Project be completed and available for use no later than [INSERT DATE] (“Substantial Completion Date”);

**WHEREAS**, the Design-Builder submitted a proposal entitled [TITLE OF PROPOSAL] dated [DATE] to provide design-build services for the Project;

**WHEREAS**, the Department wishes to retain the Design-Builder to provide design-build services for the Project. The Project is to include design, pre-construction services, and construction services;

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

**WHEREAS**, the Department has retained the services of a program manager (the “Program Manager”) to advise it concerning the Project;

**WHEREAS**, the Design-Builder has established a Lump Sum Price for the Project, including all design fees, hard construction costs, loose furnishings, and fees and general conditions of the Design-Builder; and

**WHEREAS**, the Department and the Design-Builder entered into a letter contract dated

[DATE] (the “Letter Contract”) pursuant to which the Design-Builder was authorized to proceed with certain design and preconstruction services in furtherance of the Project.

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

## **ARTICLE 1 DEFINITIONS**

### **Section 1.1. Administrative Term.**

The Agreement shall have an administrative term (the “Administrative Term”) that runs from the effective date of the Notice to Proceed to the Administrative Term Expiration Date set forth in the Project Information Section above. In addition, within this time the Design-Builder shall execute and submit a Final Release of Liens and Claims in a form and format required by a Contracting Officer, inclusive of providing the Department with a complete set of any product manuals (O&M) and training videos. The Administrative Term is established for the sole purpose of permitting the Department’s Office of the Chief Financial Officer to process payments in the event any payments become due. Notwithstanding the foregoing, nothing herein shall be construed to: extend the Substantial Completion Date; extend the Final Completion Date; or, limit the Department’s ability to assess liquidated damages thereon.

### **Section 1.2. Agreement.**

The term “Agreement” shall mean this entire, integrated agreement between the Department and the Design-Builder with respect to the Project, consisting of this document and the Exhibits thereto, including but not limited to the Standard Contract Provisions (Construction Contract) (**Exhibit G**), Standard Contract Provisions (Architectural & Engineering Services Contract) (**Exhibit H**) (collectively, Standard Contract Provisions), the Construction Documents released for the Design-Builder’s use and any Change Orders or Change Directives that have been executed by the Department.

### **Section 1.3. Client Agency.**

The governmental or quasi-governmental entity represented by the Department, requesting the Project.

### **Section 1.4. Construction Documents.**

The final Drawings and Specifications, as prepared, sealed by the Architect’s design professional in accordance with the law, and issued by the Design-Builder for the purpose of obtaining bids from potential trade subcontractors and material suppliers for use in constructing the Project.

### **Section 1.5. Construction Phase Services.**

Services provided throughout the construction phase during which the Design-Builder shall carry out the bulk of the construction and manage the completion of the design for the Project.

**Section 1.6. Contract Documents.**

The term “Contract Document” refers one or more component of the documents that comprise the Agreement between the Department and the Design-Builder, including any modifications or changes thereof, the Drawings and Specifications, and any addenda issued thereto.

**Section 1.7. Design & Preconstruction Phase Services.**

The services to be provided under Article 3 constituting the design & preconstruction phase services to be performed by the Design-Builder.

**Section 1.8. Drawings.**

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and wherever issued, showing the design, locations and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

**Section 1.9. Final Completion.**

The point at which Substantial Completion has been achieved, all punch list items noted at Substantial Completion have been completed and all documents the Design-Builder is required to deliver to the Department as a condition to receiving final payment have been delivered.

**Section 1.10. Final Completion Date.**

The date established in the Agreement by which the Design-Builder shall achieve Final Completion. The Final Completion Date may be modified only by Change Order or Change Directive in accordance with the Agreement.

**Section 1.11. Fully Complete.**

To undertake all of the Work necessary to fully construct and complete the Project and execute all tasks necessary to obtain the final certificate of occupancy for the Project from the District of Columbia; submit final lien releases from the Design-Builder and Subcontractors and material suppliers; complete all punch list items to the Department’s approval and sign-off; and cause all representations, warranties and guarantees to be honored and otherwise fulfill all of the requirements set forth in the Agreement.

**Section 1.12. Hazardous Material.**

Hazardous Material includes, but is not limited to, any toxic substance or hazardous chemical defined or regulated pursuant to federal, state or local laws relating to pollution, treatment, storage or disposal of waste, or protection of human health or the environment. Such laws include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act and laws relating to emission, spills, leaks, discharges, releases or threatened releases of toxic material. The term Hazardous Materials shall also include petroleum and petroleum bi-products.

**Section 1.13. Notice to Proceed.**

A written notice to proceed, signed by the Department, directing the Design-Builder to proceed with the Project or any portion of the Project (“Notice to Proceed” or “NTP”).

**Section 1.14. Project Schedule.**

The schedule for the Project agreed to by the Department and the Design-Builder. Such schedule shall include a baseline schedule as updated periodically by the Design-Builder, and approved by the Department. The Project Schedule shall not be changed except by a Change Order or Change Directive issued by the Department. The Project Schedule shall be in a form and contain such detail as may be agreed upon by the Parties.

**Section 1.15. Self-Performed Work.**

Trade work performed by employees of: (1) the Design-Builder; (2) any entity that is a partner or member of the entity comprising the Design-Builder; (3) any entity that controls, is controlled by, or is under common control with the Design-Builder; or (4) any entity that controls, is controlled by, or is under common control with any entity that is part of the Design-Builder. Self-Performed Work is distinguished from trade work performed by Subcontractors unaffiliated with the Design-Builder or the entities of which the Design-Builder is comprised.

**Section 1.16. Services.**

The services to be provided pursuant to the Agreement which shall include the Design & Preconstruction Phase Services and the Construction Phase Services necessary to deliver the Project.

**Section 1.17. Specifications.**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

**Section 1.18. Standard Contract Provisions.**

The District of Columbia Department of General Services Standard Contract Provisions, General Provisions (Construction Contract), as amended, are attached hereto as **Exhibit G** and incorporated herein. The District of Columbia Department of General Services Standard Contract Provisions, General Provisions (Architectural & Engineering Services Contract), as amended, are attached hereto as **Exhibit H** and incorporated herein.

**Section 1.19. Subcontractor.**

Any person, natural or legal, to whom the Design-Builder delegates performance of any portion of the Work required by the Agreement. The term “Subcontractor,” used without a qualifier, shall mean a subcontractor in direct privity with the Design-Builder. “Subcontractors at all tiers” shall mean not only those Subcontractors in direct privity with the Design-Builder, but also those performing Work pursuant to sub-subcontracts, subsubsubcontracts, and so on. “Subcontractors” shall include both those who are retained to perform labor only and those who



are retained both to perform labor and to supply material or equipment. "Subcontractors" shall also include design professionals who are not the Design-Builder's employees and to whom the Design-Builder delegates any part of its responsibilities under the Agreement, except that references to "trade Subcontractors" shall exclude design professionals.

**Section 1.20. Substantial Completion.**

Substantial Completion shall mean that all of the following have occurred: (1) the construction and installation work have been completed with only minor punch list items remaining to be completed; (2) a temporary certificate of occupancy and all other required permits or approvals have been obtained; (3) draft copies of all operating and maintenance manuals, training videotapes and warranties required by the Agreement have been delivered to the Department and the Client Agency; (4) any supplemental training session required by the Agreement for operating or maintenance personnel have been scheduled; (5) all clean-up required by the Agreement has been completed; (6) the Project is ready for the Department and Client Agency to use it for its intended purpose; and (7) all equipment, supplies, materials and items to be installed have been installed in accordance with the manufacturer's specifications and industry standards and have undergone and passed the requisite testing and inspections. "Minor punch list items" are defined for this purpose as items that, in the aggregate, can be completed within thirty (30) days without interfering with the Department or Client Agency's normal use of the Project.

**Section 1.21. Substantial Completion Date.**

The date established herein by which the Design-Builder shall achieve Substantial Completion. The Substantial Completion Date may be modified only by Change Order, Contract Modification or Change Directive in accordance with the Agreement. In the event the Project is to be completed in parts or phases, references in the Agreement to the "Substantial Completion Date," and all rights and obligations associated therewith, shall individually apply to the Substantial Completion Date of each such part or phase.

**Section 1.22. Work.**

The term "Work" refers to any and all work done in performance of the Services necessary, at any and all phases of the Agreement, to Fully Complete the Project.

**Section 1.23. Department's Designated Contracting Officer.**

The Department designates the individual(s) identified in Exhibit C as its Contracting Officer(s) and representative(s) with express authority to bind the Department with respect to all matters requiring the Department's approval or authorization. Subject to the limitations on their authority specified in Exhibit C, these Contracting Officer(s) shall have the exclusive authority to make decisions on behalf of the Department concerning estimates and schedules, construction budgets, changes in the Work, and execution of Change Orders, Contract Modifications or Change Directives, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or performance of the Work of the Design-Builder. In order for the Department to effectively manage the Project and assure that the Design-Builder does

not receive conflicting instructions regarding the Work, the Design-Builder shall promptly notify the Department's Contracting Officer(s) upon receiving any instructions or other communication in connection with the Design-Builder's Work from any employee of the Department or other purported agent of the Department other than the Department's designated Contracting Officer(s).

**Section 1.24. Design-Builder's Designated Representative.**

The Design-Builder designates the individual(s) identified in **Exhibit D** as its representative with express authority to bind the Design-Builder with respect to all matters requiring the Design-Builder's approval or authorization. In addition, the Department retains the right to approve candidates to serve as on-site personnel in accordance with each candidate's experience with similar projects and local marketplace conditions. Once approved, individuals cannot be changed without the Department's prior approval. During the entire term, it is agreed that the Design-Builder's designated representative will devote his or her time exclusively to the Project, unless the Department consents to a reduction in time. All services provided by the Design-Builder shall be performed in accordance with the highest professional standards recognized and adhered to by design-builders that build first-class state-of-the-art buildings and projects that are similar to the Project in large urban areas.

**Section 1.25. Cost of the Work.**

The term "Cost of the Work" shall mean the costs necessarily incurred by the Design-Builder in the proper performance of the Work and shall include only the following:

**1.25.1** Payments made by the Design-Builder to Subcontractors and suppliers, other than design subconsultants, but only in accordance with the subcontracts and supply agreements;

**1.25.2** Payments made by the Design-Builder to its design consultants and subconsultants;

**1.25.3** All amounts due to the Design-Builder under the terms of the Department's written authorization for the Design-Builder to perform any portion of the Work as Self-Performed Work. If an authorization for the Design-Builder to engage in Self-Performed Work is not on a fixed-price basis, then, as to that Work, the following costs shall be within the Cost of the Work:

**(a) Labor.** Properly documented wages actually paid to Project foremen, construction workers, and other personnel in the direct employ of the Design-Builder, while engaged in approved Self-Performed Work, together with contributions, assessments, payroll taxes, or fringe benefits required by the laws or applicable collective bargaining agreements.

**(b) Incorporated Materials.** The cost, net of trade discounts, of all materials, products, supplies and equipment incorporated into the Self-Performed Work, including, without limitation, costs of transportation and handling.

(c) **Unincorporated Materials.** The cost of materials, products, supplies and equipment not actually installed or incorporated into the Self-Performed Work, but required to provide a reasonable allowance for waste or spoilage, subject to the Design-Builder's agreement to turn unused excess materials over to the Department at the completion of the Project or, at the Department's option, to sell the material and pay the proceeds to the Department or give the Department a credit in the amount of the proceeds against the Cost of the Work.

**1.25.4** Royalty and license fees paid for use of a design, process or product, if its use is required by this Agreement or has been approved in advance by the Department;

**1.25.5** Fees for obtaining all required approvals or permits associated with any abatement, demolition, utilities abandonment, and utility relocation (including utility connection fees), including any and all building and/or trade permits fees;

**1.25.6** All performance and payment bonds and general liability insurance. The Department may, in its sole discretion, allow the Design-Builder to recover the costs of subcontractor default insurance at a mutually agreed upon rate in lieu of trade level bonds, provided that such insurance be approved by the Department in advance and after being presented with a cost-benefit analysis of such use;

**1.25.7** All fees and other costs necessarily incurred to carry out testing and inspection required by the Agreement or applicable laws, or otherwise to maintain proper quality assurance. The costs the Design-Builder incurs to schedule and coordinate any additional testing and inspections the Department may decide to conduct itself shall not be within the Lump Sum Price unless the additional testing establishes that the Work tested was defective or otherwise failed to satisfy requirements set forth in the Agreement. In that case, the Design-Builder shall pay the costs, without reimbursement by Change Order;

**1.25.8** All bonds to jurisdictional agencies (utilities, storm water management, land disturbance, and grading);

**1.25.9** The Cost of General Conditions; and

**1.25.10** Costs of repairing or correcting damaged or nonconforming Work executed by the Architect, or Design-Builder's other consultants, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder, and only to the extent that the cost of repair or correction is not recoverable by the Design-Builder from insurance, sureties, Subcontractors or suppliers. It is understood that the cost of repairing, correcting damaged or nonconforming Work that was Self-Performed shall not be reimbursable in any event by Change Order.

## **ARTICLE 2 GENERAL PROVISIONS**

### **2.1 Letter Contract**

The Parties acknowledge that certain of the design and preconstruction activities described in Article 3 of this Agreement were performed pursuant to the Letter Contract between the Parties dated [INSERT DATE]. Pursuant to the terms of the Letter Contract, upon execution of this Agreement by the Department (the "Agreement Effective Date"), the Letter Contract shall automatically terminate and shall merge into and be superseded by this Agreement. For avoidance of doubt, any services provided or work performed pursuant to the merged Letter Contract, and prior to the date that this Agreement is effective, shall be governed by the terms and condition of this Agreement.

### **2.2 Term and Termination**

The period of performance under this Agreement shall commence from the date of execution of the Letter Contract by the Department and shall terminate upon the expiration of the Administrative Term or upon termination by the Department pursuant to Articles 5 and 6 of the Standard Contract Provisions (Construction Contract) and Article 8 of the Standard Contract Provisions (Architectural & Engineering Services Contract).

### **2.3 Relationship of Parties.**

The Design-Builder accepts the relationship of trust and confidence established with the Department by this Agreement, and covenants with the Department to furnish the Design-Builder's reasonable skill and judgment and to cooperate with the Program Manager in furthering the interests of the Department. The Design-Builder shall use its best efforts to perform the Work and complete the Project in an expeditious and economical manner consistent with the interests of the Department. The Department shall endeavor to promote harmony and cooperation among the Department, Design-Builder, Program Manager, and other persons or entities employed by the Department for the Project. In performing its duties under this Agreement, the Design-Builder shall at all times use the standard of care used by Design-Builders that construct projects similar to the Project in type, size and scope in large, urban areas. Whenever the term "competent" is used herein to describe the Design-Builder's actions or duties, the term shall refer to the level of competence customarily possessed by those Design-Builders that construct projects similar to the Project in type, size and scope in large, urban areas.

### **2.4 Confidentiality of Information**

The Design-Builder shall assure and keep all information and data obtained throughout the performance of the Project whether related to the Agreement, the Work in all of its aspects, the Department and the Department's employees confidential, during and following the term of the Agreement, and shall not use the information in connection with any other matters; nor shall it disclose any such information to any other person, firm or corporation, unless disclosure is required pursuant to court order, subpoena or other regulatory authority. The Design-Builder shall not be divulged of confidential information without the individual's and the Department's written

consent and only in accordance with the District's or Federal's laws, codes and regulations. The Design-Builder and any Subcontractors who utilize, access, or store personally identifiable information as part of the performance of this Agreement are required to safeguard this information and immediately notify the Department of any breach or suspected breach in the security of such information. The Design-Builder and all Subcontractors shall allow the Department to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. The Design-Builder, Subcontractors and their respective employees working on this Project may be required to sign a confidentiality statement.

## **2.5 Project Description.**

The Department intends to implement the Project through a design-build approach. The scope of work for the Project ("Scope of Work") will be divided into two phases: (i) the Design and Preconstruction Phase; and (ii) the Construction Phase. Project information is included in **Exhibit O**.

During the Design and Preconstruction Phase, the Design-Builder, in consultation with the Department, the parking management firm hired by the District, and affected government agencies, shall (i) develop and advance the design in accordance with the Department's programming requirements to permit drawings/specifications and submit for permit(s); (ii) progress the permit drawings/specifications for the Project to construction documents ("Construction Documents"); and (iii) participate in any on-going community engagement process.

During the Construction Phase, the Design-Builder, in consultation with the Department, shall provide construction and construction administration services to (i) selectively demolish sections of the sites, including tree removals, and site & utility demolition, where required; (ii) conduct abatement of hazardous materials, if necessary; and (iii) construct any new parking lot sections, drainage facilities, lighting, operational systems, etc., as necessary.

The Department has established the following preliminary milestone dates for the design phase. Long lead items may be released earlier, if necessary. While the Department is amenable to shifting the interim design milestones dates, the Department requires that the design development documents be completed no later than April 6, 2020. Any shift in the interim design milestones dates must be approved by DGS and must provide for the durations for DMPED and DGS design reviews reflected in the milestone schedule attached as **Exhibit [ ]**.

## **2.6 Program Manager.**

The Department has engaged a Program Manager to provide certain program management functions. Such Program Manager shall, at all times, be acting solely for the benefit of the Department, not the Design-Builder. However, **the Design-Builder hereby acknowledges and agrees that only a duly authorized and designated Contracting Officer shall have the authority to issue Change Orders, Contract Modifications or Change Directives on the Department's behalf. As of the date that this Agreement is signed, the Department's duly authorized and designated Contracting Officer(s) is/are set forth in Exhibit C.**

## **2.7 General Description of Design-Builder's Duties.**

Generally, the Design-Builder shall perform the required Services in a professional workmanlike manner. The Design-Builder shall supply and furnish at the location where the Work is to be performed all design service, labor, materials, equipment, tools, services, and supervision, and shall bear all items of expense, necessary to complete and satisfactorily perform this Agreement, except such items that the Department, in this Agreement, specifically agrees to supply or furnish to or for the use of Design-Builder. Any labor, materials, equipment, tools, services or supervision not specifically described in this Agreement, but which may be fairly implied as required thereby or necessary to properly complete the Work, shall be deemed within the Scope of the Work and shall be provided by Design-Builder at Design-Builder's sole expense.

The Design-Builder shall work with the Department and other government agencies, through a collaborative design process to develop a design for the Project in accordance with the requirements set forth in the RFP. The Design-Builder will be required to engage in necessary preconstruction efforts to ensure that the design is developed in a manner consistent with the Department's goals for the Project (e.g., programmatic, budgetary, schedule and quality); to develop an acceptable scope and schedule for the work; and to implement the requisite construction and other work necessary, for the Project no later than the Substantial Completion Date. The Design-Builder will be required to provide a "turn-key" Project ready for occupancy and use by DMPED and shall be responsible for all items of cost except for those items set forth in Section 4.9 of this Agreement.

## **2.8 Warranties and Representations**

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

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

2.8.3 The terms and conditions of this Section 2.8 shall apply during both the Design & Preconstruction and Construction Phases.

### **2.9 Responsibility for Agents and Contractors.**

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

## **ARTICLE 3 DESIGN-BUILDER'S DESIGN & PRECONSTRUCTION SERVICES**

### **3.1 Design and Preconstruction Phase**

#### **3.1.1. Initial Deliverables**

The Design-Builder's initial task will be to develop the concept plans and a schedule for the Project. As part of this effort, the Design-Builder shall prepare and provide the following initial deliverables:

**3.1.1.1. Baseline Schedule.** Within twenty one (21) days after the Preconstruction NTP is issued, the Design-Builder shall prepare and submit a Baseline Schedule for the Project (the "Baseline Schedule"). The Baseline Schedule shall be subject to review and approval by the Department and the Design-Builder shall incorporate such adjustments to the Baseline Schedule as may be reasonably requested by the Department. The Baseline Schedule shall be prepared in a critical path method ("CPM") in a sufficient level of detail to permit the Department and the Design-Builder and any other affected parties to properly plan the Project. The Baseline Schedule shall show: (i) key design milestones and bid packages; (ii) release dates for long lead items; (iii) release dates for key subcontractors; and (iv) Substantial and Final Completion Dates. The Baseline Schedule shall include durations and logic ties for those building systems that the Design-Builder is recommending for replacement. The Baseline Schedule must also be submitted in Primavera 6 native format and shall be updated by the Design-Builder, at a minimum, on a bi-weekly basis.

**3.1.1.2. Concept Design.** No later than six (6) weeks after the Preconstruction NTP is issued, the Design-Builder shall prepare and submit a proposed concept design for the Project. The concept design shall contain at least the level of detail as is typically required for a concept design under standard industry practice. The design submittal shall specifically identify any deviations from the Scope of Work and shall explain the rationale and cost implications associated with such deviation. The Department shall have the right to disapprove the concept design submittal for any reason. Following review of the concept design submission by the Client Agency and the Department, the Design-Builder shall make revisions to the schematic design submission as necessary to incorporate comments, feedback and other direction provided by the Client Agency and the Department. The Design-Builder's pricing shall assume that such revisions will be required, and such revisions shall not entitle the Design-Builder to additional compensation. The concept design submittal shall include but not limited to the following:

- (a) Conceptual floor plan and conceptual site plan;
- (b) Historic resources survey;
- (c) Hazardous materials survey, if needed, for removal of existing utilities and site structures. It is understood that the Design-Builder and/or its design component shall



- be required to engage the services of industrial hygienist that is acceptable to the Department to perform such survey;
- (d) Environmental Impact Screening Form (“EISF”) submission notification of exemption. The St. Elizabeths East Campus is exempt from this submission, but notification of the project and filing of the notice is still required;
  - (e) Summary of required agency review, timetables, including but not limited to: Office of Planning (“OP”) and Commission of Fine Arts (“CFA”), Historic Preservation Office (“HPO”), and National Capital Planning Commission (“NCPC”); and
  - (f) Parking lot plans and specifications.

The Design-Builder will submit the draft final conceptual site plan/response and cost estimate to DGS/DMPED for review.

**3.1.1.3. Preliminary Budget Estimate.** Concurrently with the delivery of the concept design, the Design-Builder shall submit a detailed cost estimate of the proposed design (such estimate, the “Preliminary Budget Estimate”). With regard to building systems (i.e. roofs, doors, HVAC, security, IT, etc.), the Preliminary Budget Estimate shall be prepared on a “system” basis that identifies the key building systems or functions and allocates an estimated cost for each such system. The Design-Builder’s overhead and profit, the cost of general conditions, and contingencies shall be broken out in separate line items. The primary purpose of the Preliminary Budget Estimate is to aid the Department and the Client Agency in understanding the costs associated with key elements of the Project to better prioritize and manage the use of the funding allocated to this Project.

**3.1.1.4. Construction Management Plan.** The Design-Builder shall submit a draft of its construction management plan (“Construction Management Plan”) within fourteen (14) days after the Preconstruction NTP is issued to include, but is not limited to, noise control, hours for construction and deliveries, truck routes, trash and debris removal plan, traffic and parking control, communications procedures, emergency procedures, quality control procedures, dust control, public street cleaning and repair, planned occupancy of public ways, erosion control, tree protection plan, vibration monitoring, temporary fire protection measures, project signage, pest control, construction staging plan, and construction logistics plan.

**3.1.2 Additional Preconstruction Services.** In addition to those items enumerated above, the Design-Builder shall provide such preconstruction services as are necessary to properly advance the Project. These services shall include, but are not limited to, scheduling, estimating, shop-drawings, the ordering of long-lead materials, condition assessments, conservator studies, archeological studies, recommended testing, additional geotechnical testing, and monitoring of historic assets.

**3.1.3. Deliverables Liquidated Damages.** The Design-Builder acknowledges that the Department is engaging the Design-Builder to provide an extensive level of preconstruction

support services to minimize the potential for cost overruns, schedule delays or the need for extensive Value Engineering/re-design late in the Project and that the deliverables required under this **Section 3.1.1** are key to identify the value of such services. In the event the Design-Builder fails to deliver any of the deliverables required in **Section 3.1.1** (and unless such failure is the result of any event of Force Majeure), the Design-Builder shall be subject to liquidated damages in an amount of Five Thousand Dollars (\$5000) plus Five Hundred Dollars (\$500) per day after receiving written notice from either the COTR or the Contracting Officer of failure to submit such deliverables.

### **3.2 Design Management**

The Design-Builder shall use commercially reasonable best efforts to ensure that: (i) the design evolves in a manner that is consistent with the Lump Sum Price and programmatic requirements, as the same were defined and established by the Department at the end of the concept design; (ii) the design work is properly coordinated; and (iii) the required design deliverables are produced on or before the dates contemplated in the Project schedule. As part of this undertaking, the Design-Builder shall provide the following:

**3.2.1 Schematic Design.** The Design-Builder shall prepare a schematic design that is a logical development of the approved concept design and is consistent with the Department's schedule, budget and programmatic requirements. The schematic design shall contain at least the level of detail as is typically required for a schematic design under standard industry practice. The design submittal shall specifically identify any deviations from the approved concept design and shall explain the rationale, cost and time implications associated with such deviation. The Department shall have the right to disapprove the schematic design submittal for any reason. Following review of the schematic design submission by the Client Agency and the Department, the Design-Builder shall make revisions to the schematic design submission as necessary to incorporate comments, feedback and other direction provided by the Client Agency and the Department. The Design-Builder's pricing shall assume that such revisions will be required, and such revisions shall not entitle the Design-Builder to additional compensation. In general, the Design-Builder shall be required to undertake the following tasks during this phase:

- (a) Utilize findings and final concept plans, perform site visits as necessary, attend and/or facilitate meetings with stakeholders and District staff to review program of requirements, required utilities, drainage, zoning and traffic needs where/when necessary to develop Schematic Design Documents.
- (b) Obtain and review applicable District standards and guidelines for design (Design Criteria Manual, Unified Development Code, DMPED Standards), where applicable, and provide a complete design that meets all applicable District codes. Coordinate security requirements with DC PSPD. Coordinate IT and Telecom requirements with DC OCTO and DC Net. Coordinate with CFA/NCPC for review and approval as necessary.

- (c) Attend and participate in community meeting(s) to update community regarding the Project.
- (d) Prepare a presentation and provide a minimum of three (3) presentation boards for each community meeting and present/display onsite. Presentation boards shall be in full color and include at least one (1) 3-D rendering.
- (e) Prepare and submit three (3) hard-copy sets, and one (1) electronic copy in PDF, of Schematic Design Documents, Preliminary Specifications, Schematic cost estimate to the Project Manager for review and approval. Components to include, but are not limited to:
  - i. Site plans, paving layouts, traffic circulation
  - ii. Floor plans, building circulation, ADA requirements
  - iii. Design Narrative
  - iv. Plan-to-Program Comparison
  - v. Exterior elevations, rendering and color palette
  - vi. Critical building sections and details
  - vii. Relevant right of way information such as easements, building set-backs etc.
  - viii. Location of utilities and sizes
  - ix. A preliminary lay-out for parking lot lighting and pavement markings including ADA requirements and shuttle pickup and drop off locations.
  - x. Preliminary designs for the revenue control systems for the Parking Garage operations, security, and revenue generation for daily and special event operations and any related system appurtenances. The preliminary revenue control plan will address the District operational parameters of use as a general daily use parking lot and as well valet services for large event time periods. The plan will be developed with the assistance of the District's parking management firm and constructed as part of the Project.
  - xi. Stormwater management
  - xii. Preliminary MEP systems
  - xiii. Copies of all surveys and reports
  - xiv. Updated schedule and cost estimate
- (f) After receiving schematic design comments, meet and coordinate as necessary with:
  - i. Owner, stakeholders, and all relevant regulatory or reviewing agencies as necessary to review project requirements.
  - ii. Pepco, DC Water, DOEE and all others as necessary for infrastructure and utility requirements.
  - iii. Private utilities and service providers if necessary
- (g) Respond in writing to all District and DMPED comments on plans.
- (h) Act as scribe for all design related meetings. Distribute meeting minutes to all attendees.

- (i) Perform comprehensive Value Engineering effort (VE) utilizing 35% Plan Review submission. Provide report of findings to DGS. Conduct a meeting with DGS and other stakeholders as necessary to present and discuss VE options.
- (j) Submit a Baseline Schedule bi-weekly update in the format set forth herein.

**3.2.2 Schematic Budget Update.** Concurrent with submission of the schematic design, the Design-Builder shall submit a budget update. The budget update shall be submitted in the same format as the Preliminary Budget Estimate and shall show variations from Preliminary Budget Estimate. To the extent the budget update shows an overrun from the approved budget, the Design-Builder shall submit Value Engineering suggestions that would return the Project to budget. Only the Department shall have the authority to increase the Project budget, and absent such direction, the Design-Builder shall proceed on the assumption that the budget remains as originally directed by the Department.

**3.2.3 Constructability/Sole Source/Long-Lead Time Memorandum.** Concurrently with the Schematic Design Budget Estimate, the Design-Builder shall prepare a memorandum identifying key construction concerns related to the Project. Such memorandum shall: (i) assess the constructability issues related to the Project, including site logistics; and (ii) identify any long-lead delivery items that could adversely affect the schedule contemplated in this RFP. To the extent any such long-lead items are identified, the memorandum shall make recommendations for addressing such items.

**3.2.4 Design Development.** The Design-Builder shall prepare a set of design development documents (“Design Development Documents”) that is a logical development of the approved schematic design and is consistent with the Department’s schedule, budget and programmatic requirements. The Design Development Documents shall contain at least the level of detail as is typically required for a schematic design under standard industry practice. The design submittal shall specifically identify any deviations from the approved schematic design and shall explain the rationale and cost implications associated with such deviation. The Department shall have the right to disapprove the Design Development Documents submittal for any reason. The design development submittal shall include at least the following:

- (a) Detailed and dimensioned plans, wall sections, building section, and schedules;
- (b) Draft specifications for materials, systems, equipment;
- (c) Complete code compliance analysis and drawing;
- (d) Space-by-space equipment layouts for key spaces. As part of the design development phase, the Design-Builder and/or the Architect and any design consultants shall confer with representatives from the Client Agency and the Department regarding these layouts to confirm that they are acceptable to the Client Agency;
- (e) A preliminary lay-out for FF&E;
- (f) Preliminary designs for approved building system upgrades. With regard to HVAC systems, the submission should include: (i) a detailed description of the proposed

- mechanical systems; (ii) their general layout, including ‘Single-Line Diagrams’ (aka ‘Riser Diagrams’); and (iii) any required load calculations. The HVAC design solution would also include preliminary layouts of other major components of the HVAC system, including the type and location of energy recovery units (ERUs), variable air volume (“VAV”) boxes, condensing units, and any related system appurtenances;
- (g) Present the design to CFA, Office of Planning, and other regulatory agencies as required; and
  - (h) Participate in community meetings.

**3.2.5. Permits.** The Design-Builder shall be responsible for preparing and submitting all of the required permit applications that are necessary to complete the Project. The Design-Builder shall develop a list of the required permits and shall track the progress of all such permits through the review process. The Design-Builder shall update the Department with the status of each permit that is required for the Project. The Design-Builder shall engage such permit expeditors as the Design-Builder deems necessary or appropriate in light of the Project’s schedule.

**3.2.6. Entitlements.** The Design-Builder shall prepare such materials and make such presentations as are necessary to obtain the required land use and entitlement approvals. Approvals may be required from (i) the Office of Zoning, (ii) OP, and (iii) the CFA. Given the nature of the Work, it is not envisioned that such approvals will require extensive hearings or submissions.

### **3.2.7. Early Release/Abatement & Demolition**

**3.2.7.1 Abatement & Selective Demolition.** Once the schematic design has been approved, the Department may release the Design-Builder to commence hazardous material abatement and interior demolition, or other early activities, as applicable.

#### **3.2.7.2 Unsafe Materials and Hazardous Materials**

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

3.2.7.2.2 The Design-Builder shall abate Hazardous Materials on the site as necessary to complete the Work contemplated by this Agreement. The Design-Builder shall comply with all laws, including, without limitation, the requirements of the EPA and all jurisdictional agencies as well as all laws relating to safety,

health welfare, and protection of the environment, in removing, treating, encapsulating, passivating, and/or disposing of Hazardous Materials, including, but not limited to, removal, treatment, encapsulation, passivation, and/or disposal of the Hazardous Materials. If any notices to governmental authorities are required, the Design-Builder shall also give those notices at the appropriate times.

3.2.7.2.3 The Design-Builder shall be entitled to submit a Change Request in accordance with Article 4 of the Standard Contract Provisions (Construction Contract) and Article 7 of the Standard Contract Provisions (Architectural & Engineering Services Contract) in the event the Design-Builder encounters Hazardous Materials beyond those contemplated in the Contract Documents.

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

**3.2.7.3 Long Lead Materials.** The Department will authorize the ordering of long-lead items once the Design Development Documents have been approved. If the Design-Builder believes an earlier release is required in order to meet the Project schedule, it shall advise the Department and make a recommendation as to the requested release date. Any decision to authorize an early release shall be made by the Department in its sole and absolute discretion.

## ARTICLE 4 CONSTRUCTION PHASE

### 4.1. General.

The Construction Phase shall not commence until the Department issues a Notice to Proceed for Construction Phase Services. The Design-Builder shall, through Subcontractors or, with the written consent of the Department, with its own forces, perform all of the Work necessary to construct the Project so that it is complete, safe, and properly built in strict accordance with the approved Construction Documents and the other requirements of this Agreement. Without limitation, the Design-Builder shall provide all of the labor, materials, tools, equipment, temporary services, and facilities necessary to complete the Project in accordance with the drawings, specifications, schedule and budget that are issued for the Project. The Design-Builder shall be responsible for paying for and obtaining all necessary permits and to pay all necessary fees for utility connections. The Work shall be carried out in a good and workmanlike, first-class manner, and in a timely fashion. All materials and equipment to be incorporated into the Project shall be new and previously unused, unless otherwise specified, and shall be free of manufacturing or other defects.

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

### 4.2 Design Management

The Design-Builder shall manage the completion of the design of the Project. As part of this effort, the Design-Builder shall undertake the following activities:

**4.2.1 Mid-Point Construction Document Review.** Based on the approved Design Development Documents and any approved Value Engineering, the Design-Builder shall prepare a set of Construction Documents. It is contemplated that the Construction Documents will be issued in several different sets (i.e. architectural, electrical, mechanical, structural, etc.). As each such set reaches a point where it is approximately Fifty percent (50%) complete, the Design-Builder shall prepare and submit a progress printing to the Department for its review and comment.

**4.2.2 Construction Document Review & Coordination.** The Design-Builder shall complete each of the Construction Documents packages in a manner that addresses the concerns raised by the Department during the review contemplated in Section 4.2.1 for such package. The Design-Builder shall issue one or more set of permit documents to the Department for its review and approval ("Permit Set"). With regard to each such set, the Design-Builder shall highlight (or bubble) any aspect of the design that represents a material deviation from the approved Design

Development Documents and shall address in a narrative format the impact, if any, such departure shall have on the Project's aesthetics, functionality or performance. The Department shall have the right to disapprove the Construction Documents for any reason. If the Department disapproves the Construction Documents, the Design-Builder will not be entitled to any additional compensation.

**4.2.3 Code Review.** The Design-Builder shall submit the Permit Set to the Department of Consumer and Regulatory Affairs ("DCRA") in order to obtain the necessary building permits to construct the Project. The Design-Builder shall monitor the permit process and shall incorporate any changes or adjustments required by the Code Official. The Design-Builder shall also issue any such changes to the Department for its review and approval. In this submittal, the Design-Builder shall highlight (or bubble) any aspect of the design that represents a material deviation from the permit set documents and shall address in a narrative format the impact, if any, such departure shall have on the Project's aesthetics, functionality or performance. Subsequent to obtaining the necessary building permits, the Design-Builder shall prepare one or more sets of "issued for construction documents" (the "IFC Set(s)").

**4.2.4 Design Changes.** If it should become necessary to amend any of the approved IFC Set(s), the Design-Builder shall prepare an amendment to the drawings and shall submit such amendment to the Department for its review and approval. In this submittal, the Design-Builder shall highlight (or bubble) any aspect of the design that represents a material deviation from the permit set documents and shall address in a narrative format the impact, if any, such departure shall have on the Project's aesthetics, functionality or performance. In the event the Department does not approve such document within ten (10) business days after issuance, unless otherwise denied, such document shall be deemed approved, provided however that the Department has not advised that such document is still under review.

**4.3. Construction Phase.** Based on the approved plans and specifications, the Design-Builder shall construct the Project. During the Construction Phase, the Design-Builder shall be required to cause the Work to be completed in a manner consistent with the design documents approved by the Department and shall provide all labor, materials, insurance, bonds and equipment necessary to fully complete the Project in accordance with the drawings, specifications, schedule and budget that are issued for the Project. The Design-Builder shall be responsible for paying for and obtaining all necessary permits and to pay all necessary fees for utility connections and the like. The construction phase services shall include, but are not necessarily limited to:

- a) Manage all aspects of the renovation and construction of the project.
- b) Manage bi-weekly progress meetings. Site visits are included in base fee. Hourly-not-to-exceed allowance is included for consultant site visits.
- c) Review and process shop drawing submissions, RFI's, etc.
- d) Prepare meeting notes and records of decisions/changes made.
- e) Conduct pre-closeout inspections.



- f) Review closeout documents for completeness, such as As-Built Drawings based on the Contractor's red line drawings and/or coordinated set developed during the subcontractor coordination process. As-Built Drawings should be transmitted to DGS in hard copy, PDF, and CAD formats.

The Work shall be accomplished in accordance with the following:

**4.3.1. Drawings & Specifications.** All of the Work shall be constructed in strict compliance and in accordance with the final Construction Documents issued for and approved by the Department.

**4.3.2 Compliance with Other Requirements.** In performing the Work, the Design-Builder and its subcontractors shall comply with all of the applicable provisions of the Standard Contract Provisions and the requirements set forth in **Section 4.4** (Site Safety), **Section 4.6** (Workhours; Coordination with the Client Agency and the Community), and **Section 4.7** (Quality Control Plan) of this Agreement.

**4.3.3 Site Office.** Throughout the Work, the Design-Builder shall provide and maintain a fully-equipped construction office on the Project site.

**4.3.4 Supervision.** Throughout the Work, the construction office shall be managed by personnel competent to oversee the Work at all times while construction is underway. Such personnel shall maintain full-time, on-site construction supervision and provide daily inspections, quality control, monitoring, coordination of various trades, record drawings, and daily work log.

**4.3.5 Weekly Progress Meetings.** Throughout the Work, the Design-Builder shall conduct weekly progress meetings following the Design-Builder's generated agenda with the Department's project manager and key trade subcontractors. The Design-Builder shall draft and circulate the meeting minutes on a weekly basis.

**4.3.6 Delay Liquidated Damages.** In addition to the penalty provided for in **Sections 4.10.2** relating to Key Personnel, and **3.1.3** relating to deliverables, if the Scope of Work is not substantially complete by the Substantial Completion Date, the Design-Builder shall be subject to liquidated damages in an amount of Seven Thousand Five Hundred Dollars (\$7,500) per day. These damages shall not apply if the delay is the result of Force Majeure and the Design-Builder otherwise complies with the provisions set forth in the Standard Contract Provisions.

**4.3.7 Hazardous Materials.** The Design-Builder's Scope of Work includes the abatement and removal of hazardous materials found anywhere on or within the Project site. In performing such work, the Design-Builder shall comply with all laws, including, without limitation, the requirements of the Environmental Protection Agency and all jurisdictional agencies and all laws relating to safety, health welfare, and protection of the environment, in removing, treating,

encapsulating, passivating, and/or disposing of hazardous materials, including, but not limited to, removal, treatment, encapsulation, passivation, and/or disposal of the hazardous materials. If any notices to governmental authorities are required, the Design-Builder shall also give those notices at the appropriate times. The Design-Builder shall ensure abatement subcontractors and disposal sites are appropriately licensed and qualified. In addition, the Design-Builder shall ensure that any subcontractors involved in the abatement of hazardous materials maintain a contractor's pollution legal liability insurance policy of at least Two Million Dollars (\$2,000,000) for the duration of the Project and a period of three (3) years after Substantial Completion of the Project, and that any disposal site to which hazardous materials are taken carries environmental impairment liability insurance for the duration of the Project and a period of three (3) years after Substantial Completion of the Project. The Design-Builder's obligations under this **Section 4.3.8** shall include signing (as the agent for the Department) any manifests required for the disposal of hazardous materials.

**4.3.8 Salvage Value and Store Items.** The Design-Builder shall be responsible for salvaging and storing all items as identified by the Department, and to the benefit of the Department, in accordance with all applicable District laws and regulations, after notifying the Department and receiving the Department's permission to proceed.

#### **4.4 Site Safety**

**4.4.1 General Responsibility.** The Design-Builder shall provide a safe and efficient site, with controlled access. As part of this obligation, the Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project, and shall comply with the requirements set forth in **Article 16, Section F** of the Standard Contract Provisions.

**4.4.2 Safety Plan.** Prior to the start of construction activities, the Design-Builder shall prepare a safety plan for the Construction Phase conforming to OSHA 29 CFR 1926 (such plan, the "Safety Plan"). This Safety Plan developed by the Design-Builder shall describe the proposed separation and the specific nature of the safety measures to be taken including fences and barriers that will be used and the site security details. This Safety Plan will be submitted to the Department and the Client Agency for their review and approval prior to the commencement of construction. Once the Safety Plan has been approved, the Design-Builder shall comply with the plan at all times during construction. The Design-Builder shall be required to revise the Safety Plan as may be requested by the Department or the Client Agency. The Design-Builder will not be permitted to commence the Construction Phase until the Safety Plan is submitted and in no event shall any resulting delay constitute an excusable delay. Additionally, the Design-Builder shall comply with the requirements of **Article 27, Section A** of the Standard Contract Provisions.

**4.4.3 Safety Barriers/Fences.** As part of its responsibility for Project safety, the Design-Builder shall install such fences and barriers as may be necessary to separate the construction areas of the site from those areas that are then being used by the Client Agency. The Design-Builder

shall describe in the Safety Plan the proposed separation and the specific nature of the fences and barriers that will be used.

**4.4.4 Site Security.** The Design-Builder shall be responsible for site security and shall be required to provide such watchman as are necessary to protect the site from unwanted intrusion. The Design-Builder shall ensure site is locked during non-work hours.

**4.4.5 Exculpation.** The right of the Department and the Client Agency to comment on the Safety Plan and the nature and location of the required fences and barriers shall in no way absolve the Design-Builder from the obligation to maintain a safe site.

#### **4.5 Reporting Requirements**

The Design-Builder shall be required to submit the following reports:

**4.5.1 Monthly Report.** The Design-Builder shall provide written reports to the Department, on the progress of the entire Work at least monthly from Preconstruction NTP until Final Completion of the Project. The monthly report shall include: (i) an updated schedule analysis, including any plans to correct defective or deficient work or recover delays; (ii) an updated cost report; (iii) a monthly review of cash flow; (iv) a quality control report; and (v) progress photos.

**4.5.2 Bi-Weekly Schedule Updates.** The Design-Builder shall provide a Baseline Schedule update to the Department, on the progress of the entire Work at least bi-weekly, in the same format set forth in **Section 3.1.1.1** of this RFP. The update shall reflect the actual progress of the Project, identify developing or potential delays, regardless of their cause, and reflect the Design-Builder's best projection of the actual date by which Substantial Completion and Final Completion of the Project will be achieved. The Design-Builder shall also state what must be done to avoid or reduce that delay, changes that have occurred since the last update, including those related to major changes in the Scope of Work, activities modified since the last update, revised projections of durations, progress and completion, revisions to the schedule logic or assumptions, and other relevant changes.

**4.5.3 Use of Prolog.** The Design-Builder shall utilize the Department's Prolog system to submit any and all documentation required to be provided by the Design-Builder, including, but not limited to: (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) invoices/applications for payment (full package including all forms required by the Department); (v) certified payrolls (in addition to upload via LCP Tracker); (vi) drawings and specifications; (vii) punchlist; and (viii) other documents as may be designated by the Department.

#### **4.6 Workhours; Coordination with the Client Agency and Community**

**4.6.1 Workhours.** The Design-Builder shall comply with the Noise Ordinance and neither it nor its subcontractors shall undertake work on the Project site other than at the times and sound

level permitted by the Noise Ordinance. It is anticipated that in order to meet this schedule the Design Builder will be required to work outside normal permitted work hours.

**4.6.2 Parking.** The Design-Builder shall organize its work in such a manner so as to minimize the impact of its operations on the surrounding community. To the extent that the number of workers on the site is likely to have an adverse impact on neighborhood parking, the Design-Builder shall develop a parking plan for those individuals working on the site that is reasonably acceptable to the Department.

**4.6.3 Wheel Washing Stations.** The Design-Builder shall provide wheel washing stations on site to prevent the accumulation of dirt and other refuse on the streets surrounding the Project site.

**4.6.4 Outreach Plan.** The Design-Builder shall keep the Department informed of the construction activities and their potential impact on the community. The Design-Builder shall submit the plan to the Department prior to its implementation and such plan shall be subject to the Department's review and approval.

**4.6.5 Site Office.** Throughout the Project, the Design-Builder shall provide and maintain a fully equipped construction office for the Project site.

**4.6.6 Site Cleanliness.** During the Agreement performance and/or as directed by the Department's Program Manager, as the installation is completed, the Design-Builder shall ensure that the site is clear of all extraneous materials, rubbish, or debris.

## **4.7 Quality Control Plan**

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

**4.7.2 Quality Control Plan.** Within ten (10) days after the Final Design Documents are approved, the Design-Builder shall develop a quality control plan for the Project (the, "Quality Control Plan"). A draft of the Quality Control Plan shall be submitted to the Department and shall be subject to the Department's review and approval. The Quality Control Plan shall be tailored to the specific products/type of construction activities contemplated in the Design Development Documents, and in general, shall include a table of contents, quality control team organization, duties/responsibilities of quality control personnel, submittal procedures, inspection procedures, deficiency correction procedures, documentation process, and a list of any other specific actions or procedures that will be required for key elements of the Work.

**4.7.3 Implementation.** During the Construction Phase, the Design-Builder shall perform regular quality control inspections and create reports based on such inspections pursuant to the Quality Control Plan. These quality control reports shall be provided to the Department electronically on a monthly basis. The Design-Builder shall incorporate a quality control section in the progress meetings to discuss outstanding deficiencies, testing/inspections, and upcoming work. The monthly report shall include a detailed summary of the steps that are being employed to provide quality construction and workmanship. The monthly report should specifically address issues raised during the month and outline the steps that are being used to address such issues. Deficiencies should be corrected in accordance with Department's Standard Contract Provisions (Construction Contracts and Architect and Engineering Contracts).

**4.7.4 Corrective Action Plan.** The Department shall have the right to direct the Design-Builder to revise the Quality Control Plan in accordance with the Agreement.

#### **4.8 Project Close-out**

**4.8.1 Punchlist.** Prior to Substantial Completion, the Design-Builder shall develop a punchlist. Once the punchlist is prepared, the Design-Builder shall inspect the Work along with representatives from the Department. The punchlist shall be revised to reflect additional work items that are discovered during such inspection. The Design-Builder shall correct all punchlist items no later than thirty (30) days after Substantial Completion is achieved.

**4.8.2 Training.** The Design-Builder shall provide training to the Client Agency staff on all of the building systems, as applicable. The Design-Builder shall be required to schedule such training sessions and shall use commercially reasonable efforts to ensure all such training occurs prior to the Final Completion Date.

**4.8.3 Warranties & Manuals.** Subsequent to Substantial Completion Date and no later than fifteen (15) days following the Substantial Completion Date, the Design-Builder shall prepare and submit the following documentation: (i) a complete set of product manuals (O&M), training videos, warranties, etc.; (ii) attic stock; (iii) an equipment schedule; (iv) a proposed schedule of maintenance; (v) environmental, health and safety documents; (vi) all applicable inspection certificates/permits (boiler, elevator, emergency evacuation plans, health inspection, etc.) for the new building; (vii) "as-built" plan of the site including all the modifications performed during construction; and (viii) warranty information on all design requirements. No later than thirty (30) days following the Substantial Completion Date, the Design-Builder shall prepare and submit: (i) a complete set of its Project files; and (ii) a set of record drawings, including BIM model(s).

**4.8.4 Walk Eleven Month Walk.** The Design-Builder shall use commercially reasonable efforts to schedule a joint inspection of the Project during the eleventh month after Substantial Completion is achieved. During such inspection, the Design-Builder and a representative of the Department shall walk the Project to identify any necessary warranty work.

**4.8.5 Support for Initial Heating & Cooling Season.** The Design-Builder and its mechanical subcontractor shall provide support to the Client Agency and the Department during system start-up and in initial operation for the first heating and cooling season after Substantial Completion is achieved.

#### **4.9 Excluded Cost Elements**

It is the Department's intent that the Design-Builder provide a turn-key solution for the implementation of the Project, and the Lump Sum Price has been developed based on such framework. The Design-Builder shall advance the Project in a manner consistent with the Lump Sum Price and the understanding that only the following cost elements are excluded from the Lump Sum Price:

- (a) 3<sup>rd</sup> Party Material Testing;
- (b) Commissioning;
- (c) 3<sup>rd</sup> Party Inspections; and
- (d) 3<sup>rd</sup> Party Plan Review.

#### **4.10 Key Personnel; Diversion**

**4.10.1 Identification of Design-Builder's Key Personnel.** The following individuals shall be considered key personnel ("Key Personnel") of the Design-Builder: (i) the project executive; (ii) the field superintendent; (iii) the project manager who will supervise the design and Work; and (iv) the Safety/Quality Assurance/Quality Control Manager that will manage quality control and interact with the Department's quality control representative. The Key Personnel for the architect/engineer shall include: (i) the design principal-in-charge; (ii) the project designer; (iii) the landscape architect; (iv) the civil engineer; (v) MEP engineer and (vi) the key geotechnical engineer. The Design-Builder will not be permitted to reassign any of its Key Personnel unless the Department approves the proposed reassignment and the proposed replacement.

**4.10.2 Key Personnel Penalty.** If the Design-Builder 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 Design-Builder or any affiliate of the Design-Builder) without the prior written consent of the Department, the Design-Builder shall owe to the Department and be liable for the sum of Twenty Five Thousand Dollars (\$25,000) as a penalty, per occurrence; thus, the Department may deduct Key Personnel Penalties from its final payment to the Design-Builder. In addition, this penalty amount shall not bar recovery of any other damages, costs or expenses other than the Department's internal administrative costs. In addition, the Department shall have the right, to be exercised in its sole discretion, to remove, replace or to reduce the scope of services of the Design-Builder in the event that a member of the key personnel has been removed or replaced by the Design-Builder without the prior written consent of the Department.

**4.10.3** To carry out its duties, the Design-Builder shall provide at least the key personnel described in 4.10.1 and identified in **Exhibit B** to this Agreement (“Key Personnel”), who shall carry out the functions identified in **Exhibit B**. Among other things, the Key Personnel shall include the project managers that will be responsible for managing the Mechanical, Electrical and Plumbing (“MEP”) Work and the design and interior work. It is contemplated that these project managers will work from the design stage, purchasing and throughout the bulk of the field work. The Design-Builder’s obligation to provide adequate staffing is not limited to providing the Key Personnel, but is determined by the needs of the Project. The Design-Builder shall not replace any of the Key Personnel without the Department’s prior written approval, which shall not be unreasonably withheld. If any of the Key Personnel become unavailable to perform services in connection with the Agreement due to death, disability or separation from the employment of the Design-Builder or any affiliate of the Design-Builder, then the Design-Builder shall promptly appoint a replacement acceptable to the Department. The Department shall be entitled to complete information on each such replacement, including a current resume of his or her qualifications and experience.

**4.10.4** Certain members of the Design-Builder’s Key Personnel shall be subject to penalties for their removal or reassignment by the Design-Builder. Those members of the Design-Builder’s Key Personnel subject to a penalty provision in **Section 4.10.2** shall be identified in **Exhibit B**. If there is no delineation in **Exhibit B** of those members of the Design-Builder’s Key Personnel subject to the penalty provision in section 4.10.2, then all of Design-Builder’s Key Personnel shall be subject to the penalty provision in section 4.10.2.

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

#### **4.11 Building Information Modeling (BIM)**

**4.11.1** DGS is implementing Building Information Modeling (BIM) as a standard on the Project (**Exhibit I**). DGS’s BIM plan will facilitate more informed decision making, design-intent communication, project coordination across various phases, enhanced project delivery schedule and budget management, post-construction asset and facility management, building automation. This will be accomplished through the real time collaboration and utilization of a common data environment. A BIM process must be followed for this Project. This process shall include the following additional tasks and deliverables:

- (a) An initial meeting dedicated to reviewing the BIM process and requirements for all parties as well as periodic BIM status meetings.
- (b) BIM (Revit) models created during design that conform to DGS' modeling requirements and Level of Design ("LOD") standards.
- (c) BIM models used during pre-construction to facilitate coordination of trades.
- (d) BIM (Revit) models delivered at the end of construction that conform to DGS' modeling requirements and LOD standards and will allow for efficient transfer of FM data as well as to be used as backgrounds for future renovation work.

**4.11.2** DGS will require the following Autodesk software for the design and construction phase of this project.

- (a) Design Phase – Software Required by the Design / Build Team
  1. Autodesk Revit 2018 or higher
  2. Autodesk's Collaboration for Revit (BIM360 Design)
  3. Autodesk Navisworks Manage 2018 or higher
- (b) Construction Phase - Subscriptions provided by the Design-Builder.
  1. Autodesk Revit 2018 or higher
  2. BIM360 Field
  3. BIM360 Glue
  4. BIM360 Docs

DGS will require five (5) Dell Semi-Tough Tablets for use by the owner's representatives. Accessories should include keyboards (5 total) and stylus pens (5 total).

Purchase of the software can be done on behalf of the agency and added to DGS's master Autodesk contract (provided at the time of purchase). All Autodesk software/subscription ownership rights will be turned over to the agency DGS.

**4.11.3** By following this BIM standard DGS will use industry standard technology from Autodesk. It is DGS' intent to benefit from project data ownership, greater project insight, and design-intent communication, project coordination across various phases, enhanced project delivery schedule and budget management and to realize greater post-construction asset and facility management benefits throughout the lifecycle of the building.

#### **4.12 Deliverable List**

The Design-Builder shall be required to prepare and submit the following, in addition to any other deliverables required:



#### **4.12.1 Design and Preconstruction Phase Deliverables**

- (a) Project Schedule.
- (b) List of Long Lead Items that could adversely impact the Project's schedule and recommendations for purchase.
- (c) Concept Cost Estimate and Concept Designs.
- (d) Schematic Cost Estimate and Schematic Design.
- (e) Design Development Cost Estimate and Design Development Documents.
- (f) Permit Set of Construction Documents Cost Estimate and Permit Set of Construction Documents.
- (g) Permit Set of Construction Documents, including DCRA plan review responses.
- (h) Issued for Construction Documents.
- (i) Report outlining Value Engineering strategies.
- (j) Construction Phase Baseline Schedule.
- (k) Statement of constructability within ten (10) days of the conclusion of the Design and Preconstruction Phase, executed by both the Design-Builder and the Project Architect/Engineer.
- (l) Insurance Certificates
- (m) Payment and Performance Bonds

#### **4.12.2 Construction Deliverables**

- (a) Contingency Balance Update.
- (b) Hazardous Material Abatement Subcontractor Insurance Certificates.
- (c) Hazardous Material Abatement Records.
- (d) Construction Document Packages.
- (e) Progress Meeting Minutes.
- (f) Project Schedule Updates.
- (g) Project Progress Reports.
- (h) OSHA Safety Plan.
- (i) Close out documents (Product Manuals, Warranties, etc.).
- (j) Quality Control Plan.
- (k) Quality Control Inspection Reports.
- (l) Corrective Action Plan.
- (m) Prolog submissions.
- (n) Invoices and Acceptable Application for Payment with Release of Liens and Claims.
- (o) Insurance Certificates.
- (p) Performance and Payment Bonds
- (q) Certificate of Substantial Completion executed by the Project Architect/Engineer

- and submitted Department for review, concurrence and approval
- (r) Documents that may be required by Contracting Officer from time to time.

#### **4.12.3 Close-Out Deliverables**

- (a) A complete set of the Design-Builder's Project files.
- (b) A complete set of product manuals (O&M), training videos, warranties, etc.
- (c) As built record drawings.
- (d) Attic stock and schedule.
- (e) Equipment schedule.
- (f) Proposed schedule of maintenance.
- (g) Environmental, health & safety documents.
- (h) All applicable inspection certificates/permits (boiler, elevator, emergency evacuation plans, health inspection, etc.).

#### **4.13 Licensing, Accreditation and Registration**

The Design-Builder and all of its subcontractors and subconsultants (regardless of tier) shall comply with all applicable District of Columbia, state, and federal licensing, accreditation, and registration requirements and standards necessary for the performance of the Agreement. Without limiting the generality of the foregoing, all drawings shall be signed and sealed by a professional Architect or engineer licensed in the District of Columbia.

#### **4.14 Conformance with Laws**

It shall be the responsibility of the Design-Builder to perform under the Agreement in conformance with the Department's Procurement Regulations and all statutes, laws, codes, ordinances, regulations, rules, requirements, orders, and policies of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Design-Builder to determine the Procurement Regulations, statutes, laws, codes, ordinances, regulations, rules, requirements and orders that apply and their effect on the Design-Builder's obligations thereunder.

#### **4.15 Protection of Existing Elements**

The Design-Builder shall protect all existing features, public utilities, and other existing structures during construction. The Design-Builder shall protect existing, site improvements, trees and shrubs from damage during construction. Protection extends to the root systems of existing vegetation. The Design-Builder shall not store materials or equipment, or drive machinery, within drip line of existing trees and shrubs.

**4.16 Mandatory Subcontract Provisions.** To the extent the Design-Builder intends to subcontract a portion of the Work, any subcontract is excess of Twenty Five Thousand Dollars

(\$25,000) shall include the following provisions:

**4.16.1** that, to the extent of the work or supply within the agreement's scope, the Subcontractor or supplier is bound to the Design-Builder for the performance of all obligations which the Design-Builder owes the Department under the Agreement;

**4.16.2** 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;

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

**4.16.4** that the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Design-Builder is terminated for default;

**4.16.5** that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Design-Builder to suspend or stop work;

**4.16.6** 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;

**4.16.7** that the Subcontractor and Sub-subcontractors, at all tiers, have reviewed the Construction Documents including, but not limited to, all Drawings and Specifications provided by the Architect/Engineer, for accuracy, constructability and completeness and will bring any deficiency to the attention of the Department before the Subcontractor enters into a subcontract with the Design-Builder;

**4.16.8** 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);

**4.16.9** that, if the Department terminates the Agreement for convenience, the Design-Builder may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) days' written notice to the Subcontractor or supplier, and that the Subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in Article 6 of the Standard Contract Provisions (Construction

Contract) and Article 8, Section D of the Standard Contract Provisions (Architectural & Engineering Services Contract);

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

**4.16.11** that the Subcontractor or supplier shall not be entitled to payment for defective or non-conforming work, materials or equipment, and shall be obligated promptly to repair or replace non-conforming work, materials or equipment at its own cost;

**4.16.12** a provision requiring that Subcontractors and suppliers promptly pay Subcontractors and suppliers at lower tiers, imposing upon the Subcontractors and suppliers a duty to pay interest on late payments, and barring reimbursement for interest paid to lower tier Subcontractors or suppliers due to a Subcontractor's or supplier's failure to pay them in timely fashion;

**4.16.13** a provision requiring that all Subcontractors at all tiers comply with the provisions of Article 7 (Economic Inclusion Goals); provided, however, that the Design-Builder may, in its reasonable discretion impose a different LSDBE subcontracting goal on some or all of its Subcontractors; provided, further, however, that nothing in this provision shall be deemed to excuse the Design-Builder from using its best efforts to achieve the LSDBE subcontracting goal on an aggregate basis for the Project;

**4.16.14** a provision which allows the Design-Builder to withhold payment from the Subcontractor if the Subcontractor does not meet the requirements of the Subcontract;

**4.16.15** lien and claim release and waiver provisions substantially identical to those in this Agreement.

**4.16.16** Within seven (7) calendar days of receiving any payment from the Department that includes amounts attributable to Work performed or materials or equipment supplied by a Subcontractor or supplier, the Design-Builder shall either pay the Subcontractor or supplier for its proportionate share of the amount paid to the Design-Builder for the Subcontractor's or supplier's Work or materials or equipment, or notify the Department and the Subcontractor or supplier, in writing, of the Design-Builder's intention to withhold all or part of the payment and state the reason for the withholding. All monies paid to the Design-Builder under the Agreement shall be used first to pay amounts due to Subcontractors or suppliers

supplying labor or materials for the Project and only money remaining after such payments are made may be used for other items such as the Design-Builder's overhead and profit. Monies paid by joint check shall be deemed to have been paid fully to the Subcontractor or supplier named as a joint payee, unless the Department agrees otherwise in writing. Any interest paid to Subcontractors or suppliers because the Design-Builder has failed to pay them in timely fashion shall not entitle the Design-Builder to a Change Order.

**4.16.17** The Design-Builder shall not enter into any profit sharing, rebate, or similar arrangement with any Subcontractor or supplier at any tier with respect to the Project or the Work to be carried out for the Project.

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

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

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

**4.16.21** The Design-Builder shall be required to provide an evaluation of each of its subcontractors' performance by completing and submitting to the Department the Subcontractor Performance Evaluation Form set forth as **Exhibit N**, as follows:

- a. Within ninety (90) days of initiating the Construction Phase; and
- b. Within thirty (30) days after Final Completion of the Project.

#### **4.17 Weekly Progress Meetings & Schedule Updates.**

The Design-Builder shall schedule and conduct, at a minimum, weekly progress meetings at which the Department, the Architect, the Program Manager, the Design-Builder and appropriate Subcontractors can discuss the status of the Work. The Design-Builder shall prepare and promptly distribute meeting minutes. In addition, the Design-Builder shall submit bi-weekly Schedule updates which shall reflect actual conditions of Project progress as of the date of the update. The update shall reflect the actual progress of construction, identify any developing delays, regardless

of their cause, and reflect the Design-Builder's best projection of the actual date by which Substantial Completion and Final Completion of the Project will be achieved. Via a narrative statement (not merely a critical path method schedule), the Design-Builder shall identify the causes of any potential delay and state what, in the Design-Builder's judgment, must be done to avoid or reduce that delay. The Design-Builder shall point out, in its narrative, changes that have occurred since the last update, including those related to major changes in the scope of work, activities modified since the last update, revised projections of durations, progress and completion, revisions to the schedule logic or assumptions, and other relevant changes. Any significant variance from the previous schedule or update shall also be identified in a narrative, together with the reasons for the variance and its impact on Project completion. All Schedule updates shall be in a native format reasonably acceptable to the Department (e.g., Primavera). The Department may make reasonable requests during the Project for changes to the format or for further explanation of information provided. Submission of updates showing that Substantial Completion or Final Completion of the Project will be achieved later than the applicable scheduled completion date shall not constitute requests for extension of time and shall not operate to change the scheduled completion date(s). The Department's receipt of, and lack of objection to, any schedule update showing Substantial Completion or Final Completion later than the dates agreed upon in the Project Schedule shall not be regarded as the Department's agreement that the Design-Builder may have an extension of time, or as a waiver of any of the Department's rights, but merely as the Design-Builder's representation that, as a matter of fact, Substantial Completion or Final Completion of the Project may not be completed by the agreed upon date in the Project Schedule. Changes to the scheduled completion dates may be made only in the circumstances and only by the methods set forth in this Agreement.

#### **4.18 Written Reports.**

The Design-Builder shall provide written reports to the Department on the progress of the entire Work at least monthly from Preconstruction Notice to Proceed until Final Completion of the Project. Such written report shall including the following elements:

**4.18.1 Construction Progress Update.** Each monthly update shall contain a narrative description of the Project progress and a critical path method schedule in Primavera format, including any plans to correct defective or deficient work or for time lost due to delays.

**4.18.2 Economic Inclusion Report.** The monthly report shall include a detailed summary of the Design-Builder's efforts and results with respect to the economic inclusion goals set forth in this Agreement. Such report shall be in a format acceptable to the Department and shall include, at a minimum: (i) the Design-Builder's overall performance with respect to the goals; (ii) a listing of subcontracts and agreements with material suppliers during the month and the percentage of those subcontracts and agreements with material suppliers awarded to LSDBEs; (iii) a listing of subcontracts during the month and the estimated percentage of the labor hours to be worked by District of Columbia residents pursuant to those subcontracts; and (iv) a description of the major subcontracting and

supply opportunities that will be solicited during the next three (3) months and the actions being taken to meet the subcontracting goals.

**4.18.3** The Design-Builder shall also maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, major equipment on the site, Work accomplished, problems encountered and other similar relevant data as the Department may reasonably require. The log shall be available to the Department, the Architect and the Program Manager, and on a monthly basis a copy of the log shall be submitted to the Department.

#### **4.19 Reserved**

#### **4.20 Qualified Personnel/Cooperation.**

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

#### **4.21 Warranty.**

The Design-Builder warrants to the Department that materials and equipment furnished under the Contract Documents will be of good quality and new unless otherwise required or permitted by the Contract Documents, that for the one (1) year period following the Substantial Completion Date the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. The Design-Builder's warranty excludes remedies for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear from normal usage. The Design-Builder shall use commercially reasonable efforts to schedule a joint inspection of the Project during the eleventh month after Substantial Completion is achieved. During such inspection, the Design-Builder and a representative of the Department shall walk the Project to identify any necessary warranty work.

#### **4.22 Claims for Additional Time**

**4.22.1** Time is of the essence of this Agreement. The Project must be Substantially Complete no later than the respective Substantial Completion Date set forth within the Project Information Section above.

**4.22.2** The Design-Builder will perform the Work so that it shall achieve Substantial Completion by the Substantial Completion Date. Unless the failure to achieve

Substantial Completion by the Substantial Completion Date is a result of an Excusable Delay, as defined in Section 4.23.3, the delay shall be deemed Non-Excusable and the Design-Builder shall not be entitled to an extension of time. Without limiting the generality of the foregoing, delays for the following reasons shall be regarded as Non-Excusable and shall not entitle the Design-Builder to an extension of time:

- 4.22.2.1** Delays due to job site labor disputes, work stoppages, or suspensions of work;
- 4.22.2.2** Delays due to adverse weather, unless the Design-Builder establishes that the adverse weather was of a nature and duration in excess of averages established by data from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for the Project locale for the ten (10) years preceding the effective date of the Agreement. For purposes of this clause, weather shall only be deemed “adverse” if the weather in question was more severe than that encountered at the Project site over the last ten (10) years for the month in question. Such determinations shall be made based on the number of rain/snow days or the cumulative precipitation total for the month in question. Notwithstanding the foregoing, named storms shall conclusively be deemed “adverse”;
- 4.22.2.3** Delays due to the failure of the Design-Builder or Subcontractors or material suppliers at any tier to perform in timely or proper fashion, without regard to concepts of negligence or fault; or
- 4.22.2.4** Delays due to Site Conditions whether known or unknown as of the effective date of the Agreement, foreseeable or unforeseeable at that time, naturally occurring or man-made; provided, however, that delays due to differing Site Conditions as permitted by Article 4, Section A of the Standard Contract Provisions (Construction Contract) and Article 7, Section A of the Standard Contract Provisions (Architectural & Engineering Services Contract), or Hazardous Materials Remediation shall be deemed an Excusable Delay.

**4.22.3** The Design-Builder shall be entitled to an adjustment in the Substantial Completion Date due to an Excusable Delay. The term “Excusable Delay” shall mean:

- 4.22.3.1** Delays due to adverse weather other than those that are classified as a Non-Excusable delay in accordance with Section 4.23.2.2 of this Agreement;
- 4.22.3.2** Delays due to acts of God, war, unavoidable casualties, civil unrest, and other similar causes of delay that are beyond the control of the Design-Builder; provided, however,



that in no event shall a Non-Excusable Delay or the action or inaction of the Design-Builder, or any of its employees, agents, Subcontractors or material suppliers be deemed an Excusable Delay; or

**4.22.3.3** Delays caused by differing Site Conditions as permitted by Article 4, Section A of the Standard Contract Provisions (Construction Contract) and Article 7, Section A of the Standard Contract Provisions (Architectural & Engineering Services Contract), or Hazardous Materials Remediation as contemplated in Section 3.2.7.2 of this Agreement;

**4.22.3.4** Delays due to suspensions of work;

**4.22.3.5** Delays caused by the Client Agency or separate contractors of the Client Agency to the extent such delays are not concurrent with delays caused by the Design-Builder or any of its employees, agents, subcontractors or material suppliers; or

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

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

**4.22.5** In no event shall the Design-Builder be entitled to an increase in the Lump Sum Price as a result of either an Excusable or Non-Excusable Delay; provided, however, that to the extent that a delay is: (i) an Excusable Delay; (ii) of unreasonable duration; (iii) caused solely by the Department; and (iv) not concurrent with any other delay, then the Design-Builder shall be entitled to receive its actual costs, including all direct and indirect costs, bonds and insurances resulting from such extended duration. It is understood that the Design-Builder shall not be entitled to any profit or home office overhead, on any amounts to which the Design-Builder may be entitled pursuant to the preceding sentence.

#### **4.23 Close-out & FF&E.**

**4.23.1** A detailed list of FF&E requirements will be developed during the design & preconstruction phase and attached hereto as **Exhibit F**.

**4.23.2 Punchlist.** Promptly after each Phase reaches Substantial Completion, the Design-Builder shall cause the Architect to develop a punchlist. Once the punchlist is prepared, the Design-Builder shall inspect the work along with representatives from the Department. The punchlist shall be revised to reflect additional work items that are discovered during such inspection. The Design-Builder shall correct all punchlist items no later than thirty (30) days after Substantial Completion is achieved.

**4.24.3 Sediment and Erosion Control.**

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

**4.24.4 Acceleration.**

Subject to the terms of this Section, the Department shall have the right to direct the Design-Builder to accelerate the Work if, in the reasonable judgment of Department: (i) the Design-Builder fails to supply a sufficiency of workers or to deliver the materials or equipment with such promptness as to prevent the delay in the progress of the Work; or (ii) the progress of the Work otherwise materially falls behind the projections contained in the currently approved Project Schedule. In the event that the Department or its Program Manager determine that either of the events specified in the preceding sentence have occurred, the Department shall provide the Design-Builder with written notice of such event and the Design-Builder shall be required to provide the Department with a schedule recovery plan ("Recovery Plan") that is reasonably designed to address the concerns raised in such notice within three (3) days after receipt of such notice. If the Department and the Design-Builder are unable to agree on the terms of the Recovery Plan within five (5) days after the issuance of the notice (i.e. within forty eight (48) hours after the receipt of the proposed Recovery Plan), the Department shall have the right to direct such acceleration as the Department, in its reasonable judgment, deems necessary. Provided Department complies with the notice provisions of this Section, the cost of any acceleration directed under this Section shall not justify an adjustment to the Lump Sum Price or the Substantial Completion Date.

Given the nature of the Project and the fact that there is a fixed date upon which the Client Agency plans to occupy the building, the Design-Builder hereby: (i) acknowledges that this provision is a material inducement upon which the Department has relied in entering into this Agreement; and (ii) represents and warrants that it has included sufficient funding in the Lump Sum Price in order to comply with the requirements of this Section.

**4.24.5 Corrective Action Plan.**

Subject to the terms of this Section, the Department shall have the right direct the Design-Builder to revise the provisions of the Quality Control Plan if, in the reasonable judgment of the Department, the craftsmanship of the Work being installed fails to comply with generally applicable industry standards, requirements set forth in the Specifications that are reasonably

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

#### **4.25 Markup on Trade Work.**

The maximum markup for change order work shall be in accordance with Article 12.

## **ARTICLE 5 COMPENSATION**

**5.1 Compensation.** The Design-Builder shall be paid a Lump Sum Price to complete this Project. Such Lump Sum Price shall be a firm, fixed price to fully complete the Project's scope of work in accordance with the terms of the Design-Build Agreement, and shall include, but is not limited to, all design services, labor, materials, equipment, insurance and bonds. The Design-Builder shall be paid its compensation in a series of progress payments and a final payment. Progress payments shall be based on a Schedule of Values (attached as **Exhibit A**) that is agreed upon by the Parties as well as the Program Manager's good faith estimate of the level of completion for each component of the Schedule of Values. Design-Builder shall prepare the Schedule of Values which breaks down the Lump Sum Price for the various parts of the Work. The Schedule of Values shall be maintained in such a manner to provide a breakdown of the Lump Sum Price in enough detail to facilitate continued evaluation of applications for payment and progress reports. Large subcontracts shall be broken into several line items where, in the opinion of the Program Manager, such detail is necessary to properly track the progress of the Work. The proposed schedule of values shall also include separate line items for each part of the Work if so required by the Program Manager. The Design-Builder and the Program Manager shall meet as necessary to maintain the schedule of values for the Project in a manner acceptable to the Program Manager. No progress payments shall be made unless the then current Schedule of Values is acceptable to the Program Manager.

### **5.2 Facilitating Tax Exempt Purchases.**

The Department expects that the Project will qualify as tax-exempt under applicable laws. Upon request, and such tax exemption shall be reflected in the Lump Sum Price.

### **5.3 Schedule of Values.**

The Design-Builder has prepared a preliminary Schedule of Values attached hereto as **Exhibit A** which breaks down the Lump Sum Price for the various parts of the Work. The Schedule of Values shall be updated and submitted to the Department once subcontractor bidding is complete and maintained in such a manner to provide a breakdown of the Lump Sum Price in enough detail to facilitate continued evaluation of applications for payment and progress reports. Large subcontracts shall be broken into several line items where, in the opinion of the Program Manager, such detail is necessary to properly track the progress of the Work. The Schedule of Values shall also include separate line items for each part of the Work if so required by the Program Manager. The Design-Builder and the Program Manager shall meet as necessary to maintain the Schedule of Values for the Project in a manner acceptable to the Program Manager. No progress payments shall be made unless the then current Schedule to Values is acceptable to the Program Manager.

#### **5.4 Retention.**

The Department shall withhold from each progress payment an amount equal to ten percent (10%) of the progress payment. The Department, in its sole and absolute discretion, may elect to reduce the retainage. However, in no event shall the total retainage held by the Department be reduced to an amount that is less than two and one-half percent (2.5%) of the Lump Sum Price.

#### **5.5 Documents Required with Application for Payment.**

Each Application for Payment shall be accompanied by the Design-Builder's job cost ledgers in a form satisfactory to the Department, the Subcontractors' and Suppliers' Applications for Payment on AIA Documents G702 and G703 or other form acceptable to the Department, and such other supporting documentation as the Department may reasonably request. Each Application for Payment shall include detailed documentation of costs as a condition to approving progress payments, but the Design-Builder shall nevertheless maintain complete documentation of the costs. An executed Release of Liens and Claims in the format required by the Contracting Officer must accompany each Application for Payment.

#### **5.6 Stored Materials.**

The Department shall not be required to pay for materials stored at the site or stored at other locations absent prior written authorization to do so, which authorization may be withheld at the Department's sole discretion. If the Department expressly agrees to pay for materials stored at the site but not yet incorporated into the Work, the Application for Payment may also include a request for payment of the cost of such materials, if the materials have been delivered to the site, and suitably stored. Such requests shall be documented by appropriate invoices and bills of sale. Payment for stored materials shall be conditioned also on the Design-Builder's representation that it has inspected the material and found it to be free from defect and otherwise in conformity with this Agreement, and on satisfactory evidence that the materials are insured under the builder's risk policy. Further, if the Design-Builder requests the Department to allow payments for storage of materials offsite, the Design-Builder shall be required, inter alia, to agree to execution of proper documentation to afford the Department a secured interest in the materials upon payment.

#### **5.7 Design-Builder's Certification.**

Each Application for Payment shall be accompanied by the Design-Builder's signed certification that:

**5.7.1.** all amounts paid to the Design-Builder on the previous Application for Payment that were attributable to Subcontractor Work or to materials or equipment being supplied by any supplier have been paid over to the appropriate Subcontractors and suppliers;

**5.7.2.** that all amounts currently sought for Subcontractor Work or supply of materials or equipment are currently due and owing to the Subcontractors and material or equipment suppliers;

**5.7.3.** that all Work, materials or equipment for which payment is sought is, to the best of

the Design-Builder's knowledge, free from defect and meets all of the requirements set forth in the Agreement: and that

**5.7.4.** that the Design-Builder's subcontracts include the clauses required by subparagraphs (1) through (4) of D.C. Official Code §2-221.02(d) (2017).

**5.7.5.** The Design-Builder shall not include in an Application for Payment amounts for Work for which the Design-Builder does not intend to pay.

#### **5.8 Lien Waivers.**

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

#### **5.9 Warranty of Title.**

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

#### **5.10 Submission.**

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

#### **5.11 Right to Withhold Payments.**

The Department will notify the Design-Builder within fifteen (15) days after receiving any

Application for Payment of any defect in the Application for Payment or the Design-Builder's performance which may result in the Department's declining to pay all or a part of the requested amount. The Department may withhold payment from the Design-Builder, in whole or part, as appropriate, if:

- 5.11.1 the Work is defective and such defects have not been remedied; or
- 5.11.2 the Department has determined that the Design-Builder's progress has fallen behind the Project Schedule, and the Design-Builder fails, within ten (10) calendar days of the Department's written demand, to provide the Department with a realistic and acceptable Recovery Plan in accordance with 0.4; or
- 5.11.3 the Design-Builder's monthly schedule update reflects that the Design-Builder has fallen behind the Project Schedule, and the Design-Builder fails to include, in the same monthly report, a realistic and acceptable Recovery Plan in accordance with 0; or
- 5.11.4 the Design-Builder has failed to provide reports in full compliance with 0 of this Agreement; or
- 5.11.5 the Design-Builder has failed to pay Subcontractors or suppliers promptly or has made false or inaccurate certifications that payments to Subcontractors or suppliers are due or have been made; or
- 5.11.6 any mechanic's lien has been filed against the Department, the site or any portion thereof or interest therein, or any improvements on the site, even though the Department has paid all undisputed amounts due to the Design-Builder, and the Design-Builder, upon notice, has failed to remove the lien, by bonding it off or otherwise, within ten (10) calendar days; or
- 5.11.7 the Department has reasonable evidence that the Work will not be completed by the Substantial Completion Date, as required, that the unpaid balance of the Lump Sum Price would not be adequate to cover actual or liquidated damages arising from the anticipated delay; or
- 5.11.8 the Department has reasonable evidence that the Work cannot be completed for the unpaid balance of the Lump Sum Price; or
- 5.11.9 the Design-Builder is otherwise in substantial breach of this Agreement (including, without limitation, failures to comply with LSDBE Utilization requirements.
- 5.11.10 the Application for Payment is incomplete, unsubstantiated and/or does not contain sufficient documentation for evaluation by the Contracting Officer.

#### **5.12 Payment Not Acceptance.**

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

### **5.13 Department Not Obligated to Others.**

The Department shall have no obligation to pay or be responsible in any way for payments to a consultant or subcontractor performing portions of the Work.

### **5.14 Final Payment.**

A final payment (“Final Payment”) shall be made by the Department to the Design-Builder when: (i) Final Completion has been achieved; (ii) all deliverables set forth in 4.23, and **Exhibit E** have been delivered to and are accepted by the Department; (iii) the Design-Builder provides the Department a complete set of product manuals (O&M), training videos, and warranties, as applicable; and (iv) a complete final Application for Payment have been submitted by the Design-Builder and reviewed by the Department and, to the extent the Department determines appropriate, the Department’s accountants. The Department shall make Final Payment not more than thirty (30) days after the Department verifies the amount of the final payment set forth in a complete final Application for Payment.

5.14.1 The amount of the Final Payment shall be calculated as follows:

5.14.1.1 Take the Lump Sum Price.

5.14.1.2 Subtract amounts, if any, for which the Department withholds pursuant to the Agreement.

5.14.1.3 Subtract the aggregate of previous payments made by the Department. (If the aggregate of previous payments made by the Department exceeds the amount due the Design-Builder, the Design-Builder shall promptly reimburse the difference to the Department).

5.14.2 The Department will review and report in writing on the Design-Builder’s final application payment within 30 days after delivery of the final pay application to the Department by the Design-Builder. Based upon Department’s determination of the final Lump Sum Price, and provided the other conditions of Section 5.15 have been met, the Department will, within fifteen (15) days after the Department’s determination, notify the Design-Builder of any amount that the Department will withhold and the reasons therefor. The time periods stated in this Paragraph 9.12 supersede those for typical progress payments.

5.14.3 If the Department determines that the final Lump Sum Price is not that claimed by the Design-Builder, the Design-Builder shall be entitled to proceed in accordance with Article 3 of the Standard Contract Provisions (Construction Contract) or Article 6 of the Standard Contract Provisions (Architectural & Engineering Contract). Pending a final resolution of the disputed amount, the Department shall pay the Design-Builder the amount that the Department determines to be appropriate.



## ARTICLE 6 - INSURANCE REQUIREMENTS

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

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

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

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

**6.1.1 Commercial General Liability Insurance (“CGL”)** - The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. (“ISO”) form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor, including ongoing and completed operations under all subcontracts, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$1,000,000 each occurrence, a \$2,000,000 general aggregate (including a per location or per project aggregate limit endorsement, if applicable) limit, a \$1,000,000 personal and advertising injury limit, and a \$2,000,000 products-completed operations aggregate limit.

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

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

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

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

**6.1.5 Crime Insurance (3rd Party Indemnity)** - The Contractor shall provide a 3<sup>rd</sup> Party Crime policy to cover the dishonest acts of Contractor’s employees which result in a loss to the District. The policy shall provide a limit of \$50,000 per occurrence.

**6.1.6 Cyber Liability Insurance** - The Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, with limits not less than \$2,000,000 per

occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. This insurance requirement will be considered met if the general liability insurance includes an affirmative cyber endorsement for the required amounts and coverages.

**6.1.7 Environmental Liability Insurance** - The Contractor shall provide evidence satisfactory to the CO of pollution legal liability insurance covering losses caused by pollution conditions that arise from the ongoing or completed operations of the Contractor. Completed operations coverage shall remain in effect for at least ten (10) years after completion of the work. Such insurance shall apply to bodily injury, property damage (including loss of use of damaged property or of property that has been physically injured), cleanup costs, liability and cleanup costs while in transit, and defense (including costs and expenses incurred in the investigation, defense and settlement of claims). There shall be neither an exclusion nor a sublimit for mold-related claims. The minimum limits required under this paragraph shall be equal to the greater of (i) the limits set forth in the Contractor's pollution legal liability policy or (ii) \$2,000,000 per occurrence and \$2,000,000 in the annual aggregate. If such coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverages under the policy precedes the Contractor's performance of any work under the Contract and that continuous coverage will be maintained or an extended reporting period will be exercised for at least ten (10) years after completion. The Contractor also must furnish to the Owner certificates of insurance evidencing pollution legal liability insurance maintained by the transportation and disposal site operators(s) used by the Contractor for losses arising from facility(ies) accepting, storing or disposing hazardous materials or other waste as a result of the Contractor's operations. Such coverages must be maintained with limits of at least the amounts set forth above.

**6.1.8 Professional Liability Insurance (Errors & Omissions)** - The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of \$2,000,000 per claim or per occurrence for each wrongful act and \$4,000,000 annual aggregate. The Contractor warrants that any applicable retroactive date precedes the date the Contractor first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services.

**6.1.9 Commercial Umbrella or Excess Liability** - The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits equal to the greater of (i) the limits set forth in the Contractor's umbrella or excess liability policy or (ii) \$15,000,000 per occurrence and \$15,000,000 in the annual aggregate, following the form and in excess of all liability policies. All liability coverages must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.

### **Construction Projects Controlled by the District**

**6.1.10 Railroad Protective Liability Insurance (RPL)** - The Contractor shall provide evidence satisfactory to the Contracting Officer of a RPL policy with respect to activities Contractor, or any of its officers, agents, employees, members, successors and assigns, or subcontractors, perform within fifty (50) feet vertically or horizontally of railroad tracks, but only prior to the initiation of any such activity, Contractor shall provide Railroad Protective Liability Insurance (ISO CG 00 35 or equivalent), in the name of The Government of the District of Columbia. The policy shall have limits of liability of not less than Ten Million Dollars (\$10,000,000.00) per occurrence, combined single limits, for coverage A & B, for losses arising out of injury to or death of any person, and for physical loss or damage to or destruction of property, including the loss of use thereof. A Ten Million Dollar (\$10,000,000.00) annual aggregate may apply. (IF APPLICABLE).

**6.1.11 Builders Risk** – The District shall purchase and maintain, in a company authorized to do business in the jurisdiction in which the project is located, builders risk insurance, written on an "all risk", special causes of loss or equivalent form. Builders risk coverage will include boiler and machinery / equipment breakdown, earthquake and flood perils. Building ordinance and terrorism coverage will be included.

The deductible shall not exceed \$25,000 except for earthquake, flood, windstorm, water damage or other perils at the discretion of the District and as available in the insurance industry.

The Project limit shall equal the replacement value of the structure, including coverage for property in transit and stored off premises.

At the discretion of the District, builders risk coverage will extend to soft costs and delayed completion.

Builders risk insurance shall include the interests of The Government of the District of Columbia, the Contractor, Subcontractors and Sub – subcontractors in the Project.

**6.1.12 Employment Practices Liability** - The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the operations performed to cover the defense of claims arising from employment related wrongful acts including but not limited to: Discrimination, Sexual Harassment, Wrongful Termination, or Workplace Torts, whether between employees of contractor or against third parties. Employment Practices Liability coverage must specifically state Third Party Liability coverage is included. Contractor will indemnify and defend the District of Columbia should it be named co-defendant or be subject to or party of any claim. Coverage shall also extend to Temporary Help Firms and Independent Contractors hired by Contractor. The policy shall provide limits of not less than \$1,000,000 for each wrongful act and \$2,000,000 annual aggregate for each wrongful act.

**6.2 PRIMARY AND NONCONTRIBUTORY INSURANCE**

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

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

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

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

**6.6 MEASURE OF PAYMENT.** The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.

**6.7 NOTIFICATION.** The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The

Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. The Contractor will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract.

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

The Government of the District of Columbia

And mailed to the attention of:  
Franklin Austin  
Contracting Officer  
1250 U Street, 3<sup>rd</sup> Floor  
Washington, DC 20009  
[franklin.austin5@dc.gov](mailto:franklin.austin5@dc.gov)

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

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

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

## **ARTICLE 7 ECONOMIC INCLUSION REQUIREMENTS**

### **7.1 LSDBE Utilization.**

**7.1.1** If the Design-Builder subcontracts any Work, **at least (35%) of the dollar volume of the Agreement shall be subcontracted with certified small business enterprises (SBE.** The Subcontracting Plan form is provided in **Exhibit J.** For subcontracted work, pass through entities will not count toward this goal. In order to count toward the subcontracting requirement, the CBE must perform at least thirty five percent (35%) of the work that is being counted toward the goal with its own forces. The Local, Small and Disadvantaged Business Enterprise (“LSDBE”) certification shall be, in each case, as of the effective date of the applicable subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal. The Design-Builder has developed a Subcontracting Plan that is attached hereto as **Exhibit J.** The Design-Builder shall comply with the terms of the SBE Subcontracting Plan in making purchases and administering its subcontracts and supply agreements.

### **7.1.2 Mandatory Subcontracting Plan and Requirements.**

**7.1.2.1** Unless the Director of the Department of Small and Local Business Development (“DSLBD”) has approved a waiver in writing in accordance with D.C. Official Code § 2-218.51, for all contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted to qualified small business enterprises (“SBE”s).

**7.1.2.2** If there are insufficient SBEs to completely fulfill the requirement of paragraph 7.1.2.1, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises (“CBE”s); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.

**7.1.2.3** 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 s 7.1.2.1 and 7.1.2.2.

**7.1.2.4** Except as provided in 7.1.2.5 and 7.1.2.6, a prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the

contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

**7.1.2.5** A prime contractor that is a certified joint venture and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A certified joint venture prime contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

**7.1.2.6** Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.

**7.1.2.7** A prime contractor that is a CBE and has been granted a proposal 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.

#### **7.1.2.8 Subcontracting Plan**

The Design-Builder shall perform at least 35% of the contracting effort with its own forces, and if such Design-Builder subcontracts any work, 35% of the subcontracted effort must be subcontracted to CBEs in accordance with the provisions of section 7.1.2 of this clause. For subcontracted work, pass through entities will not count toward this goal. In order to count toward the subcontracting requirement, the SBE must perform at least thirty five percent (35%) of the work that is being counted toward the goal with its own forces. The LSDBE certification shall be, in each case, as of the effective date of the subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal. The Design-Builder has developed a Subcontracting Plan that is attached hereto as **Exhibit J**. The Design-Builder shall comply with the terms of the Subcontracting Plan in making purchases and administering its Subcontracts and Supply Agreements.

The Subcontracting Plan shall be submitted as part of the proposal and may only be amended after award 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 after award shall inure to the benefit of the District.

Each subcontracting plan shall include the following:

- (1) The name and address of each subcontractor;
- (2) A current certification number of the small or certified business enterprise;



- (3) The scope of work to be performed by each subcontractor; and
- (4) The price that the prime contractor will pay each subcontractor.

#### **7.1.2.9 Copies of Subcontracts**

Within twenty-one (21) days of the date of award, the Design-Builder shall provide fully executed copies of all subcontracts identified in the subcontracting plan to the Contracting Officer (CO), City Administrator (CA), District of Columbia Auditor and the Director of DSLBD.

#### **7.1.2.10 Subcontracting Plan Compliance Reporting**

**7.1.2.10.1** If the Design-Builder has a subcontracting plan required by law for this contract, the Contractor shall submit a quarterly report to the CO, CA, District of Columbia Auditor and the Director of DSLBD. The quarterly report shall include the following information for each subcontract identified in the subcontracting plan:

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

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

#### **7.1.2.11 Annual Meetings**

Upon at least 30-days written notice provided by DSLBD, the Design-Builder shall meet annually with the CO, CA, District of Columbia Auditor and the Director of DSLBD to provide an update on its subcontracting plan.

#### **7.1.2.12 DSLBD Notices**

The Design-Builder shall provide written notice to the DSLBD and the District of Columbia Auditor upon commencement of the contract and when the contract is completed.

#### **7.1.2.13 Enforcement and Penalties for Breach of Subcontracting Plan**

**7.1.2.13.1** 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.

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

**7.1.2.14** 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 **clause 8 of the SCP, Default**.

**7.1.2.15** Neither the Design-Builder nor a Subcontractor may remove a Subcontractor or tier-Subcontractor if such Subcontractor or tier-Subcontractor is certified as an LSDBE company unless the Department approves of such removal, in writing. The Department may condition its approval upon the Design-Builder developing a plan that is, in the Department's sole and absolute judgment, adequate to maintain the level of LSDBE participation on the Project.

## **7.2 Equal Employment Opportunity and Hiring of District Residents**

**7.2.1** The Design-Builder shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs. In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985, the forms for completion of the Equal Employment Opportunity Information Report are incorporated herein as **Exhibit L**. A contract award cannot be made to any contractor that has not satisfied the equal employment requirements.

**7.2.2** The Design-Builder shall ensure that at least fifty-one percent (51%) of the Design-Builder's team and every subconsultant's and subcontractor's employees hired after the effective date of the Agreement, or after such subconsultant or subcontractor enters into a contract with the Design-Builder, to work on the Project shall be residents of the District of Columbia. This percentage shall be applied in the aggregate, and not trade by trade. In addition, the Design-Builder shall use commercially reasonable best efforts to comply with the workforce percentage goals established by the recently adopted amendments to the First Source Employment Agreement Act of 1984 (D.C. Code §§ 2-219.01 *et seq.*) and any implementing regulations, including, but not limited to the following requirements:

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

**7.2.3** intentionally omitted

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

### **7.3 Economic Inclusion Reporting Requirements**

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

**7.3.2** The Design-Builder and its constituent entities shall comply with subchapter X of Chapter II Title 2, 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 Design-Builder 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.

**7.3.3** The Design-Builder shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

**7.3.4** The Design-Builder shall be responsible for: (i) including the provisions of Section 7.3 in all subcontracts; (ii) collecting the information required in Section 7.3 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in the reports required to be submitted by the Design-Builder pursuant to Section 7.3.

**7.4 Compliance with the Apprenticeship Act.** The Design-Builder agrees to comply with the requirements of the Apprenticeship Act of 1946, D.C. Code §§ 32-1431, *et seq.*, as amended.

## ARTICLE 8 LIQUIDATED DAMAGES

### **8.1 Delay in Submission of Deliverables**

Subject to the terms set forth herein, if the Design-Builder fails to provide any of the deliverables set forth in Exhibit E, the Design-Builder shall pay to the Department liquidated damages in the amount set forth in the Project Information Section of this Agreement for each such deliverable that is not timely submitted.

### **8.2 Delay in Substantial Completion.**

If the Design-Builder fails to achieve Substantial Completion of the Project by the Substantial Completion Date, the Parties acknowledge and agree that the actual damage to the Department for the delay will be impossible to determine, and in lieu thereof, the Design-Builder shall pay to the Department, as fixed, agreed and liquidated delay damages in the amount set forth in the Project Information Section of this Agreement per day for each calendar day of delay for failure to meet the applicable Substantial Completion Date.

The Design-Builder and the Department agree that the liquidated damages set forth in this Article do not constitute, and shall not be deemed, a penalty but represent a reasonable approximation of the damages to the Department associated with a delay in the Project. These damages shall not apply if the delay is the result of force majeure and the Design-Builder otherwise complies with the provisions set forth in the collective Standard Contract Provisions. In the event the Design-Builder fails to meet the Substantial Completion Date for more than thirty (30) days, the Design-Builder consents to a Termination for Default.

**8.3 Early Completion.** In the event the Design-Builder achieves Substantial Completion of the Project prior to the Substantial Completion Date, the Design-Builder shall maintain the completed Project, at its own expense, until such time that the Department agrees to occupy and use the Project for its intended use.

## **ARTICLE 9 MISCELLANEOUS PROVISIONS**

### **9.1 Ownership and Use of Documents.**

The Drawings, Specifications and other documents prepared by the Architect/Engineer and copies thereof furnished to the Design-Builder, are for use solely with respect to this Project. They are not to be used by the Design-Builder, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Department, and the Architect/Engineer. The referenced Drawing, Specifications and other documents shall become the property of the Department.

### **9.2 Assignment.**

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

### **9.3 Buy American Act Provision.**

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

9.3.1 In accordance with the Buy American Act (41 U.S.C. § 10a-10d), and Executive Order 10582, December 17, 1954 (3 CFR, 1954-58 Comp., p. 230), as amended by Executive Order 11051, September 27, 1962 (3 CFR, 1059—63 Comp., p. 635), the Design-Builder agrees that only domestic construction material will be used by the Design-Builder, subcontractors, material men and suppliers in the performance of the Agreement, except for non-domestic material listed in the Agreement.

- a. "Components" as used in this Section, means those articles, materials and supplies incorporated directly into the end products.
  - a. "Domestic end product", as used in this section, means, (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured

in the United States, if the cost of its components mined, produced, or manufactured in the United States, exceeds 50 percent of the cost of all its components.

- b. Components of foreign origin of the same class or kind as the products shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
- c. “End Products”, as used in this Section, means those articles, materials, and supplies to be acquired for public use under this Contract.
- d. The Design- Builder shall deliver only domestic end products, except those:
  - i. For use outside the United States;
  - ii. That the District determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
  - iii. For which the District determines that domestic preference would be inconsistent with the public interest; or
  - iv. For which the District determines the cost to be unreasonable.

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

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

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

#### **9.4 Davis-Bacon Act Provision.**

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

#### **9.5 The Quick Payment Clause**

##### **9.5.1 Interest Penalties to Contractors**

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

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

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

##### **9.5.2 Payments to Subcontractors**

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

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

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

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

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

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

### **9.5.3 Subcontractor Quick Payment Clause Flow-Down Requirements**

**9.5.3.1** The Contractor shall include in each subcontract under this Agreement a provision requiring the subcontractor to include in its contract(s) with any lower-tier subcontractor or supplier the payment and interest clauses required under 9.5.2.1 and 9.5.2.2 hereinabove and paragraphs (1) and (2) of D.C. Official Code §2-221.02(d).

### **9.5.4 Requirements for Change Order payments**

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

- (a) Agrees with the prime contractor and, if applicable, the subcontractor on a price for the additional work;



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

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

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

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

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

**9.7 False Claims Act.** Design-Builder shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to DC government, including the prescriptions set forth in District of Columbia Code §22-2514 and §§2-381.01 et seq. In the event that it is discovered that the Design-Builder has made a false, fraudulent or unsupported

statement or claim to the Department, the Department may terminate this Agreement without liability.

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

1. This Agreement and its Modifications, Change Orders, Change Directives and any Exhibits thereto;
2. The Department's collective Standard Contract Provisions, as amended, and any missing term in this Agreement shall be addressed in accordance with the collective Standard Contract Provisions; and
3. The Construction Documents released or approved by the Department.

**9.9 Independent Contractor.** In carrying out all its obligations under the Agreement, the Design-Builder shall be acting as an independent contractor, and not as an employee or agent of the Department, or Joint Venture or partner with the Department. The Design-Builder shall have exclusive authority to manage, direct, and control the Work, and shall be responsible for all construction means, methods, techniques, sequences, and procedures, as well as for the Project safety.

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

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

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

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

If to the Department:

If to the Design-Builder:

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

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

**9.14 Limitations.** The Design-Builder agrees that any statute of limitations applicable to any claim or suit by the Department arising from this Agreement or its breach shall be controlled by applicable District of Columbia law.

**9.15 Survival.** All agreements warranties, and representations of the Design-Builder contained in the Agreement or in any certificate or document furnished pursuant to the Agreement shall survive termination or expiration of the Agreement.

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

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

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

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

contrary in the Agreement. Notwithstanding the foregoing, nothing herein shall be construed to limit the Department's ability to unilaterally modify the Agreement.

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

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

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

### **9.23 Removal or Replacement of Key Personnel**

Subject to the terms of **Section 4.10**, in each instance where the Design-Builder removes or reassigns one of the key personnel listed in **Exhibit B** as being subject to penalty, other than (a) for reasons where such personnel become unavailable due to death, disability or separation from the employment of the Design-Builder or any affiliate of the Design-Builder or any affiliate of the Design-Builder, or (b) with the prior written consent of the Department, then the Design-Builder shall pay to the Department the amount set forth in Section 4.10.2 of this Agreement as a penalty, to reimburse the Department for its administrative costs arising from the Design-Builder's failure to provide the Key Personnel. The foregoing penalty amount shall not bar recovery of any other damages, costs or expenses other than the Department's internal administrative costs.

## **ARTICLE 10 TERMINATION OR SUSPENSION**

10.1 All terminations or suspensions arising out of or under this Agreement shall be in accordance with the terms of the collective Standard Contract Provisions.

10.2 **Termination for Default.** The Department may terminate the Agreement for default if the Design-Builder fails to perform any of its duties or obligations under the Agreement. In particular, but without limitation, the Department may terminate the Agreement if:

- (a) The Design-Builder fails to perform the Work diligently, in accordance with the Project Schedule or to make such progress in the Work as the Department reasonably believes is necessary to complete the Project within the time required by the Agreement; or
- (b) The Design-Builder fails to perform the Work in a good and workmanlike manner or to correct defects in the Work promptly upon notice by the Department; or
- (c) The Department reasonably determines that the Design-Builder has abandoned the Work, or has failed to pay laborers, mechanics, materialmen, Subcontractors or suppliers when payment is due; or
- (d) The Design Builder becomes insolvent, makes an assignment for the benefit of creditors, files a voluntary petition under any chapter of the Bankruptcy Code or has an involuntary petition filed against it under any chapter of the Bankruptcy Code, or the Design Builder has a receiver appointed, or files for dissolution or otherwise is dissolved; or
- (e) The Design-Builder fails to pay its debts in a timely manner or becomes insolvent, the Department reasonably determines that the Design-Builder does not have the financial ability to carry out its obligations under the Agreement and the Design-Builder fails to give the Department prompt and reasonable assurances of its ability to perform.
- (f) In the event the Design-Builder fails to meet the Substantial Completion Date for more than thirty (30) days, the Design-Builder consents to a Termination for Default.

**10.2.1** The Department shall provide the Design-Builder with written notice of its intent to terminate the Agreement, under this Section 10.2, seven (7) calendar days before actually putting the termination into effect. If the Design-Builder has begun its corrective action and has made progress satisfactory to the Department within the seven days, the Department may

so notify the Design-Builder and the termination will not take effect. Otherwise, the termination shall take effect after seven days without further notice or opportunity to cure.

**10.2.2** If the Department terminates the Agreement for default, the Department will have the right to take over the Work, to accept assignment of some or all Subcontracts or agreements with material suppliers, to take possession of the Project, to take and use all tools, equipment and supplies then being used in connection with the Work, and to finish the Project by whatever method it deems expedient, including accepting assignment of all outstanding Subcontracts and Supply Agreements.

**10.3 Termination for Convenience.** The Department may, upon seven (7) calendar days written notice to the Design- Builder, terminate the Contract in whole or specified part, for its convenience, for any reason whether the Design-Builder is in breach of contract or not. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions. The termination for convenience that arises out of or under this Agreement shall be in accordance with the terms of the collective Standard Contract Provisions.

**10.4 Continued Responsibility After Termination.** If the Design-Builder is terminated, for default, for Convenience or otherwise, the Design-Builder shall remain responsible for defects or non-conformities in all Work performed to the date of the termination.

## **ARTICLE 11 OTHER CONDITIONS AND SERVICES**

This Agreement and the rights and obligations of the Department and Design-Builder herein are subject to the approval of the Council for the District of Columbia.

## **ARTICLE 12 – CHANGES IN THE WORK**

**12.1 Changes Authorized.** In accordance with the collective Standard Contract Provisions, the Department may, without invalidating the Agreement, and without notice to or approval of any surety, order changes in the Work, including additions, deletions or modifications. Any such change must be conveyed by the Department to the Design-Builder via written Change Directive or Change Order.

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

### **12.3 Department-Initiated Changes**

- (a) If the Department wishes to make a change in the Work or to accelerate the Work, it will execute and issue to the Design-Builder a written Change Directive, either directing the Design-Builder to proceed at once with the changed Work or directing it to not to proceed, but to inform the Department, in writing, of the amount, if any, by which the Design-Builder believes that Substantial or Final Completion Dates and/or the Lump Sum Price should be adjusted to take the Change Order or Change Directive into account.
- (b) Within ten (10) days of receiving a Change Directive, the Design-Builder shall provide the Department with a written statement of all changes in the Agreement, including, without limitation, any changes to the Substantial or Final Completion Dates or the Lump Sum Price to which it believes it is entitled as a result of the Change Directive. If additional time is sought, a schedule analysis supporting the requested extension should be included. The schedule analysis should include a written narrative explanation. If a change in the Lump Sum Price is sought (or if the Department has requested a deduct change), the statement should include a breakdown, by line item, of the estimated cost changes attributable to the proposed change. The Department may request, and the Design-Builder shall provide, further cost breakdowns, clarifications, documentation or back-up if the Department reasonably believes such additional information is needed to understand and evaluate the request. The additional information required may include cost and pricing data in accordance with the Department's regulations. Any requested adjustment to the Lump Sum Price shall be limited to increased



Cost of the Work due to the Change Directive. The Design-Builder is not entitled to any markup on any kind of Change Orders except as authorized herein, and if so authorized, any mark-up shall be in accordance with Section 12.10.

- (c) If the Department has not yet directed the Design-Builder to proceed with the change described by a Change Directive, the Department may rescind it. If the Department wishes to proceed, or has already directed the Design-Builder to proceed, the Design-Builder shall immediately proceed with the changed Work and, the Department and the Design-Builder shall use their good faith best efforts to reach an agreement upon the modifications to the Substantial or Final Completion Dates, and/or the Lump Sum Price that are justified by the Change Directive. If the Department and the Design-Builder reach agreement, the agreement shall be set forth in a Change Order and the Design-Builder shall also execute it, at which point it will become binding on both Parties.
- (d) If the parties fail to reach an agreement within sixty (60) days after the Department receives the Design-Builder's detailed statement pursuant to Section 12.3.(b), and such other documentation as the Department may request, the Design-Builder may assert a claim in accordance with the Agreement. In such a case, and subject to adjustment via the claims and disputes process, the Department shall unilaterally grant the Design-Builder such adjustments, if any, to the Substantial or Final Completion Dates, or the Lump Sum Price as the Department has judged to be appropriate.

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

**12.5 Detailed Change Request.** Within twenty (20) days after giving notice of a Change Event, the Design-Builder shall submit a written Change Request to the Department describing, in reasonable detail, all adjustments it seeks to the Substantial or Final Completion Dates or the Lump Sum Price as a result of the Change Event. The Change Request shall include the same information as described in Section 12.3 with respect to any Agreement changes the

Design-Builder seeks due to the Change Event, and the amount of any requested adjustment to the Lump Sum Price shall be limited in accordance with that Section 12.3.

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

- (a) If the Department issues a Change Directive or Change Order that directs the Design-Builder to proceed with work which is beyond the scope of Work included within this Agreement; or
- (b) The Design-Builder encounters Differing Site Conditions or Hazardous Materials not identified in the Preconstruction Phase.

**12.7 Deductive Change Orders.** The Department reserves the right to issue deductive Change Orders (reducing the Lump Sum Price or modifying the Substantial or Final Completion Dates to an earlier date) when changes are effected, by Change Directive or otherwise, which will decrease the cost of completing the Work or the time within which it can be completed.

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

**12.9 Failure to Agree.** If the Design-Builder claims entitlement to a change in the Agreement, 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 Agreement, as it determines are appropriate pursuant to the Agreement. The Design-Builder shall proceed with the Work and the Department's directives, without interruption or delay, and shall make a claim as provided in Article 14 herein. 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.

**12.10 Mark-Up on Trade Work.** The maximum mark up for Change Order work shall be as follows:

- .1 For Work performed by a Subcontractor with its own forces, the Subcontractor shall

be entitled to a mark-up of not more than fifteen percent (15%) (Covering home office overhead, the cost of insurance and bonds, field supervision, general conditions and profit) on the Direct Costs of the Work. For Work that the Department permits the Design-Builder to self-perform, the Design-Builder shall also be entitled to a mark-up of not more than fifteen percent (15%) of the Direct Cost of the Work. With regard to any such Work that is self-performed by the Design-Builder, the markup contemplated in this Section 12.10.1 shall be the Design-Builder's exclusive compensation and it shall not be entitled to the markup contemplated in Section 12.10.3;

- .2 Intervening tier Subcontractors shall be entitled to a mark-up of five percent (5%) (Covering home office overhead, the cost of insurance and bonds, field supervision, general conditions and profit) on Work Performed by lower-tier Subcontractors;
- .3 The Design-Builder shall be entitled to a mark-up of five percent (5%) (covering home office overhead and profit) on work performed by Subcontractors;
- .4 In no event shall the maximum mark-up on the Direct Cost of the Work exceed twenty five percent (25%). Direct Cost of the Work shall mean labor, material and other costs reasonably and necessarily incurred in the proper performance of the Work as approved by the Department and shall include, but not be limited to: (Direct Cost of the Work does not, however, include home office overhead, field supervision, general conditions or profit of either the Subcontractor or the Design-Builder. No personnel above the level of a working foreman shall be considered a Direct Cost of the Work).
  - (a) **Labor.** Payment will be made for direct labor cost plus indirect labor cost such as insurance, taxes, fringe benefits and welfare provided such costs are considered reasonable. Indirect costs shall be itemized and verified by receipted invoices. If verification is not possible, up to eighteen percent (18%) of direct labor costs may be allowed.
  - (b) **Rented Equipment.** Payment for required equipment rented from an outside company that is neither an affiliate of, nor a subsidiary of, the Design-Builder will be based on receipted invoices which shall not exceed rates given in the current edition of the Rental Rate Blue Book for Construction Equipment. If actual rental rates exceed manual rates, written justification shall be furnished to the Contracting Officer for consideration. No additional allowance will be made for overhead and profit. The Design-Builder shall submit written certification to the Contracting Officer that any required rented equipment is neither owned by nor rented from the Design-Builder or an affiliate of or subsidiary of

the Design-Builder.

- (c) **Contractor's Equipment.** Payment for required equipment owned by the Design Builder or an affiliate of the Design-Builder will be based solely on an hourly rate derived by dividing the current appropriate monthly rate by 176 hours. No payment will be made under any circumstances for repair costs, freight and transportation charges, fuel, lubricants, insurance, any other costs and expenses, or overhead and profit. Payment for such equipment made idle by delays attributable to the Government will be based on one-half the derived hourly rate under this subsection.
- (d) **Materials.** Incorporated and unincorporated materials as permitted herein.

## **ARTICLE 13 BONDS**

### **13.1 Performance Bond and Payment Bond.**

The Design-Builder shall, before commencing the Construction Phase, provide to the Department a payment bond and performance bond, each with a penal sum equal to the full value of the Lump Sum Price. In addition to the delivery of the performance and payment bonds, the Design-Builder must deliver to the Contracting Officer a copy of the executed Agreement of Indemnity under which the bonds were issued. Such bond shall remain in full force and effect until Final Completion is achieved and the Department shall be able to draw upon such bond regardless of the amount paid by the Department to the Design-Builder, even if such amount exceeds the penal value of such bond. Unless otherwise directed by the Department, the Design-Builder shall require all Subcontractors whose Subcontract prices exceed One Hundred Thousand Dollars (\$100,000) to provide payment and performance bonds, with a penal sum equal to one hundred percent (100%) of the subcontract price. Further, the Design-Builder must deliver to the Contracting Officer copies of its subcontractor's Agreements of Indemnity. All bonds must be in a form acceptable to the Department, its lenders or bond trustee, and issued by a surety authorized to do business in the District of Columbia and bonding company listed on the United States Department of Treasury's Listing of Approved Sureties. All subcontractors' bonds must include a dual obligee rider, naming the Design-Builder and the Department as dual obligees. If the Lump Sum Price is increased pursuant to the terms of the Agreement, the Department may require that the amount of the bonds be increased in the amount of one hundred percent (100%) of the increase, and the Design-Builder shall promptly comply. The Design-Builder shall furnish a copy of its bonds to any potential beneficiary of the bonds, or permit that person or company to make a copy. If the bonds provided become unacceptable to the Department, the Design-Builder shall promptly provide substitute security acceptable to the Department. If the Design-Builder intends to exercise its rights as dual obligee under any trade Subcontractor's bond, it shall first give the Department twenty (20) days written notice, so that the Department may lodge any objection it may reasonably have to the proposed action.

## **ARTICLE 14 – CLAIMS & DISPUTE RESOLUTION**

All claims or disputes arising out of this Agreement shall be governed by the terms of the collective Standard Contract Provisions.

**IN WITNESS WHEREOF**, the parties have executed this Agreement (DCAM-20-CS-RFP-0005) as of the date written below.

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

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

**[INSERT CONTRACTOR]**

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

**Attachment 9**

**RFP DCAM-20-CS-RFP-0005 Attachment M –  
Form of Notice to Proceed/Letter Contract**



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



Insert Date

Sent via email to [Insert Email address](#)

Insert Contractor

**Reference:** Request for Proposal DCAM-20-CS-RFP-0005

**Subject:** Notice to Proceed and Letter Contract

Dear Insert Name:

We refer to the proposal submitted by Insert Contractor (“Contractor”) in response to Insert Contractor and if this letter is signed by Insert Contractor without modification of any kind, it will serve as a notice to proceed for the work described below. This notice to proceed is subject to the following terms:

1. Letter Contract. This is a letter contract between Insert Contractor and the District of Columbia Government, acting by and through its Department of General Services (“DGS” or the “Department”), and shall govern our relationship until such time as a final contract is entered into for the work described in the above referenced solicitation (the “Definitive Contract”); provided, however, that to the extent an issue is not covered in this Letter Contract, the Request for Proposal shall govern. Once the Definitive Contract is signed, this letter contract shall automatically terminate and merge into the Definitive Contract.
2. Scope of Work. Insert Contractor shall provide design-build services for the development, design and construction of a new, multi-level parking structure to be built on Parcel 6 of St. Elizabeths East Campus as described in the Contractor’s Technical Proposal dated Insert Date and Price Proposal dated Insert Date submitted in response to the subject Request for Proposal.
3. Deliverables. In connection with the services provided pursuant to this Letter Contract, the Contractor shall provide, at a minimum, all deliverables in accordance with the requirements in the RFP and Form of Contract to the Department’s Program Manager and in the referenced instances to the Contracting Officer.

In the event that the Contractor fails to timely submit any such deliverable, the Contractor shall pay to the Department as liquidated damages One Thousand Five Hundred Dollars (\$1,500) per day after receiving written notice from either the COTR or the Contracting Officer of failure to submit each deliverable. This remedy is cumulative and does not limit any other right or remedy of the Department under the Letter Contract or applicable District law.

4. Not to Exceed Amount. The limit of this authorization is up to \$950,000. A Schedule of Values is provided in Exhibit A. In no event shall Insert Contractor be entitled to receive more than that amount under this Letter Contract unless authorized in advance and in writing by a duly authorized Contracting Officer. This not-to-exceed amount includes all costs incurred by Insert Contractor in connection with the work authorized hereby.

5. Insurance. At all times while working under this Letter Contract, the Contractor shall maintain the insurance as described in the RFP. All such policies shall be endorsed to add the District of Columbia, including, but not limited to, its Department of General Services, and the respective agents, employees and offices of each as additional insureds.

6. Duration. This letter contract shall become effective on the date this Letter Contract has been executed by the District. This letter contract will terminate on the earlier to occur of the following: (i) the date the Definitive Contract becomes effective; or (ii) Insert Date. DGS reserves the right to terminate this Letter Contract, in whole or specified part, for convenience in the manner described in the District of Columbia Department of General Services Standard Contract Provisions General Provisions for Construction Contracts (Exhibit B).

7. Billing. All invoices shall be submitted directly to the Department at the address specified in the RFP. Purchase Order numbers should be included in all future invoices and accounting records. Properly prepared invoices with the necessary backup shall be paid within thirty (30) days of receipt. Invoices not paid by that date shall bear interest in accordance with the Quick Payment Act

8. Purchase Orders. The Department's Contracting & Procurement Division will issue a purchase order number within five (5) business days of the date this Letter Contract is effective. The purchase order will be sent in a separate cover. That number should be included in all future invoices and accounting records. In the event that you do not obtain a purchase order number please contact James H. Marshall via [james.marshall@dc.gov](mailto:james.marshall@dc.gov) directly to obtain this number.

9. Prolog. The Contractor shall utilize the Department's Prolog system to submit any and all documentation required to be provided by the Contractor for the Project, including, but not limited to: (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) invoices/applications for payment (full package including all forms required by DGS); (v) certified payrolls (in addition to upload via LCP Tracker); (vi) drawings and specifications; (vii) punchlist; and (viii) other documents as may be designated by the Department. The Contractor also shall require all subcontractors and subconsultants to utilize prolog for the Project.

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

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

12. Entire Agreement; Modification. This Letter Contract, along with the Standard Contract Provisions (Exhibit B – Construction) supersede all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to this Letter Contract shall be effective against the Department and unless made in writing signed by the Department. Notwithstanding the provisions of this Section 12, nothing herein shall limit the Department's ability to unilaterally modify this Letter Contract for administrative purposes.

Assuming the foregoing terms are acceptable, please sign below to indicate your acceptance. Should you have any questions, please feel free to contact James H. Marshall (202) 664-0416.

**DEPARTMENT OF GENERAL SERVICES**

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

**Insert Contractor**

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

**Attachment 10**

Responses to Questions about the Solicitation

DCAM-20-CS-RFP-0005  
 Responses to Questions About the Solicitation  
 Amendment 9 Attachment 10

No.	Question	Response
59	Please provide the desired allowance for plantings, or provide a planting schedule.	The Design Builder shall team shall meet District of Columbia, Department of Energy and Environment landscaping, planting and green area ratio (GAR) requirements. <a href="https://doee.dc.gov/service/gar-design-development-and-submittal">https://doee.dc.gov/service/gar-design-development-and-submittal</a>
60	Please confirm the desired fixture count for the ADA public restrooms.	The Design Builder team to review the concept drawing and determine the fixture count provided that it satisfies American Disabilities Act (ADA) requirements.
61	Please provide details related to any requirements related to SHPO, CFA or other historic preservation conditions.	The Design Builder shall meet SHPO, CFA or other historic preservation requirements which will be required as part of project review and/or approval process.
62	Depending on the final scope of the design and construction requirements, the indicated 5-month design period may not be long enough to finish the design and procure the building permit. May offerors submit a proposed schedule that adjusts the design and construction phases to reflect the schedule that our firm believes will be required to complete the project.	Offerors should propose a schedule in accordance with the RFP requirements. Alternate schedules, if included, should be clearly identified.
63	WMATA Issues-Per the drawings provided with the RFP, the building footprint is directly adjacent to the WMATA Zone of Influence Line, and part of the site area where grading is required is within the ZOI. Please clarify how we should handle potential WMATA cost and schedule impacts in the RFP response, including:	WMATA coordination will be required for grading in ZOI and revisions to access roadways. WMATA shall require garage plans to be reviewed in accordance with JDAC manual. PCN 251907 agreement has been used for plan reviews at St Elizabeths. Costs of all WMATA reviews and impacts are Design Builder responsibility per note on sheet GN-3. The PCN 251907 agreement is provided as Attachment 2 to Amendment 9.
64	Per the prebid meeting, WMATA has not yet been contacted on this specific project	A coordination meeting was held on July 2, 2019 with WMATA and project representatives. The meeting minutes are provided as Attachment 3 to Amendment 9.
65	WMATA reviews/approvals typically take a significant amount of time.	PCN 251907 agreement is in place to expedite funding and reviews. The PCN 251907 agreement is provided as Attachment 2 to Amendment 9.
66	WMATA review/approvals will most likely be a pre-requisite for obtaining a permit to start the work	Only portions within the ZOI will require a WMATA Real Estate permit. But WMATA will need to review all garage plans.

67	The location of the WMATA Zone of Influence line generally is impacted by the foundation design/elevations of the project. The location shown in the RFP documents may or may not be accurate based on the final design of the project.	The Design Builder shall verify and submit plans to WMATA for foundation reviews. See note on sheet GN-3.
68	Deep foundations may be necessary due to WMATA proximity	The Design Builder shall verify and submit plans to WMATA for foundation reviews. See note on sheet GN-3.
69	Concept documents shown earthwork, including fill, within the WMATA ZOI	The Design Builder shall verify and submit plans to WMATA for foundation reviews. See note on sheet GN-3.
70	The new construction interrupts an existing WMATA access road.	Yes, a revised access route will be required. The Design Builder shall verify and submit plans to WMATA for foundation reviews. See note on sheet GN-3.
71	Advise how the potential for contaminated soils, underground tanks, and/or unsuitable soils should be addressed in the RFP response.	See Amendment 9, Attachment 1 Offer Letter (revised) Offeror shall include Unit Pricing for the followings:  1. Fly Ash Removal – Provide unit pricing for the removal of Fly Ash from the project site. For estimating purposes, assume 5000 Cubic Yards to be removed. If final amount removed is less than the budget amount established using the assumption above, the savings is to be returned to the District.  2. Contaminated Soil Removal – Provide unit pricing for the removal of Contaminated Soil from the project site. For estimating purposes, assume 5000 Cubic Yards to be removed. If final amount removed is less than the budget amount established using the assumption above, the savings is to be returned to the District.
72	Utility New Service Fees – Confirm if the proposal amount is to include fees from utility companies for new service for building, including;	The Design Builder shall work with DGS and coordinate with various utilities companies including DC Water, Washington Gas, Pepco, Comcast, Verizon and others as needed regarding their requirements for the permitting fees and approval process. It is the Design Builder responsibility to coordinate with these various entities regarding their pertinent fees to be included in their proposal and also to receive their responses in a timely manner as prescribed in the project schedule.
72a	DC Water- Meter Fees, Availability Fees, Impact Fees, etc.	The Design Builder shall work with DGS and coordinate with various utilities companies including DC Water, Washington Gas, Pepco, Comcast, Verizon and others as needed regarding their requirements for the permitting fees and approval process. It is the Design Builder responsibility to coordinate with these various entities regarding their pertinent fees to be included in their proposal and also to receive their responses in a timely manner as prescribed in the project schedule. The allowance limit: \$50k

72b	Pepco Fees – New service fees, including offsite infrastructure costs	The Design Builder shall work with DGS and coordinate with various utilities companies including DC Water, Washington Gas, Pepco, Comcast, Verizon and others as needed regarding their requirements for the permitting fees and approval process. It is the Design Builder responsibility to coordinate with these various entities regarding their pertinent fees to be included in their proposal and also to receive their responses in a timely manner as prescribed in the project schedule. The allowance limit: \$200k
72c	Verizon/Comcast fees	The Design Builder shall work with DGS and coordinate with various utilities companies including DC Water, Washington Gas, Pepco, Comcast, Verizon and others as needed regarding their requirements for the permitting fees and approval process. It is the Design Builder responsibility to coordinate with these various entities regarding their pertinent fees to be included in their proposal and also to receive their responses in a timely manner as prescribed in the project schedule. The allowance limit: \$75k
72d	Washington Gas Fees	The Design Builder shall work with DGS and coordinate with various utilities companies including DC Water, Washington Gas, Pepco, Comcast, Verizon and others as needed regarding their requirements for the permitting fees and approval process. It is the Design Builder responsibility to coordinate with these various entities regarding their pertinent fees to be included in their proposal and also to receive their responses in a timely manner as prescribed in the project schedule. The allowance limit: \$20k
72e	If we are to include these within our proposal, please provide allowances for each item	The Design Builder shall work with DGS and coordinate with various utilities companies including DC Water, Washington Gas, Pepco, Comcast, Verizon and others as needed regarding their requirements for the permitting fees and approval process. It is the Design Builder responsibility to coordinate with these various entities regarding their pertinent fees to be included in their proposal and also to receive their responses in a timely manner as prescribed in the project schedule.
73	Also, should the above facilities include capacity for the potential requirements for the future residential & commercial areas?	No. Infrastructure for other developments will be provided when 13th St SE is completed. By separate project.
74	Please clarify the required number parking spaces required by the RFP. As follows:	The Design Builder shall provide the construction methodology to maximize the number of parking spaces, ensuring at a minimum 750 parking spaces are provided.
75	RFP page 3 states "a minimum of 800 parking spaces"	
76	RFP Attachment A1, Siting Plan, indicates the following:	

76a	Per note on Page on page 1, at total of 776 parking spaces to be provided. This count appear to be calculated based on a total of Seven (7) parking levels, 6 levels have 112 spaces, and 1 level (ground floor) having 104 spaces, totaling 776 spaces-	
76b	Based on the configuration shown on the "Siting Plan", the above calculation does NOT take into account the fact that one level of parking is effectively lost at the ramps. This condition results in the loss of approximately 66 parking spaces, lowering the total parking count based on the "Siting Plan" to approximated 710 parking spaces	Parking can occur along the ramps when the ramp slope is 5% as shown in the concept plans.
77	Note that the parking layouts shown on the Siting Plan are based on 9' wide parking spaces. This would typically work for a precast parking structure, however, if the project is required to go with a Cast in Place concrete structure (see question below reference future residential on top of the garage) the average net parking spacing would be more like 10', resulting in another loss of about 10% of the parking spaces	Stall dimensions shown are to be used for the parking spaces as typical dimensions. Some compact and ADA spaces will use different dimensions.
78	Note that a CIP concrete structure the average net parking spacing would be more like 10', in lieu of the 9' shown on the Siting Plan, resulting less parking spaces	We do not expect the parking spaces to be wider for CIP. A minimum of 750 spaces is to be provided by the Design Builder.
79	Scales on drawings are incorrect or missing, please provide proper scales or dimensions on drawings in order to determine scales.	Need the specifics. Unaware of any issue in the prepared plans.
80	Please confirm car count of garage. Site Plan indicates 776 total, others areas of RFP indicate 800 cars.	Design Builder to provide construction methodology to maximize the number of parking spaces at or as close to the goal of 750 spaces as possible.
81	Please provide schedule of existing infrastructure work being performed by others that can be used as a basis for the proposal.	Please see Amendment 9, Attachment 4
82	Please advise of other work anticipated to be in progress in adjacent sites that could impact access.	Please see Amendment 9, Attachment 4
83	Part 2 of RFP, section 2.2.1.6, page 13 of 60 references "archeological studies". Please confirm known conditions or requirements related to this requirement.	None known of at this site. Project will be governed by Inadvertent Discovery Plan per Section 106 MOA attached. See Amendment 9 Attachment 5.
84	Part 2 of RFP, section 2.2.1.6, page 13 of 60 references "monitoring historic assets". Please confirm known conditions or requirements related to this requirement.	None known of at this site. Project will be governed by Inadvertent Discovery Plan per Section 106 MOA attached. See Amendment 9 Attachment 5.



85	The deliverables listed in the Design and Preconstruction Phase of the RFP (section 2.2) are written as if this were traditional Design Build GMP project for The Department. Please confirm where this is a Lump Sum contract, estimates/budget updates and Value Engineering will not be required at interim milestones.	This will be a lump sum contract. Estimates/budget updates and Value Engineering, as described in Section 2 are required. Please also see Amendment 9, Attachment 8
86	Specification 012100 Allowances was issued as part of Attachment A5. The schedule of Allowances (section 3.3) does not appear to pertain to this project. Please confirm and issue any allowances specifically desired on this project.	Please see Amendment 9, Item No. 4 and Attachment 1.
87	Section 2.12 of the RFP lists excluded cost elements but does not list the EV charging stations. Please confirm these are to be excluded per section 1.2 in the RFP.	10% of charging stations and all conduits and related accommodations for 100% of the stations are to be included in LS cost.
88	Please confirm one elevator as indicated by plans is adequate, RFP (top of page 4 of 60) states "elevators" in plural.	One location is shown for the elevator(s). The Design Builder shall meet code requirements for this size garage. 2 locations are shown for the stairwells.
89	Please confirm if the Districts third-party EV charging vendor has been identified. See Section 1.2 on Page 3 of 60. Although not listed in Section 2.12 as a cost which is to be excluded, please confirm these EV stations and associated installation are to be excluded from proposal. Only the rough in for the 120 stations is to be included in Design Builders Lump Sum price.	Third Party EV charging vendor has not been identified.
90	Please confirm if the Districts third-party EV charging vendor has been identified. See Section 1.2 on Page 3 of 60. Provide specifics of devices which are to be used for proper rough in.	Third Party EV charging vendor has not been identified.
91	Confirm specific bike storage requirements (racks, lockers, etc.) if any-nothing is referenced.	The number of bike racks for the RED lot shall be at least equal to 5 percent of the number of vehicles parking spaces. Bike racks can be first level or outside garage.
92	Page 11 of 60, Section 2.1 states Design- Builder is to develop a design to consistent with Departments programmatic goals. Please advise where specific goals and program requirements beyond those in RFP are provided.	Please see Amendment 9, Item No. 2.
93	Scales on drawings are incorrect or missing, please provide proper scales or dimensions on drawings in order to determine scales.	Need the specifics. Unaware of any issue in the prepared plans. Could this be a copying issue developed when issuing the RFP?

94	Please confirm specific security requirements See Section 2.2.2.1 b on Page 15 of 60.	Security requirements are in the attached separate insertion language for the RFP. Please see Amendment 9, Item No. 2..
95	Please clarify the number of AutoDesk's Collection of licensed software you are requesting.	The Autodesk products outlined are not available such as "Architecture Industry Collection", "Field", and "Glue". BIM 360 Build and BIM 360 Coordinate will be required in lieu of those previously listed. BIM requirements are provided as Attachment 7 to Amendment 9.
96	Please clarify and or update the names of the collection listed because some of the names have been updated or changed.	The Autodesk products outlined are not available such as "Architecture Industry Collection", "Field", and "Glue". BIM 360 Build and BIM 360 Coordinate will be required in lieu of those previously listed.
97	Please verify the number of individuals that are on the BIM team and if those individuals of the team that will require license.	Please include 30 licenses in your proposal and a unit cost for each additional license.
98	Please clarify the BIM ownership in terms of the language of the GC needing to turn over or transfer the license to DGS.	DGS has ownership and rights to all data and deliverables developed and provided by the Design Builder in accordance with the applicable provisions of the Design Builder contract. These rules extend to Building Information Models and associated data developed for DGS projects. By following BIM 360 Build and BIM 360 Coordinate, DGS and chosen Design Builders will use industry standard technology from Autodesk. Upon project completion, documents and license agreements will be turned over to DGS
99	Specification section 012100 provides quantity and dollar allowances. The specifications are unedited so are we to include the allowances?	No. All Allowances and their amounts are provided in the revised Offer Letter. Please see Amendment 9, Item No. 4 and Attachment 1.
100	Allowance No. 3 in Spec Section 012100 - Allowances references chandeliers for a lobby space. Is an interior lobby space required for the project?	Specs have been checked. There is no lobby in the parking structure and no chandelier required.
101	Ramping. Reference: Attachment A1 – Siting Plan “Ground Level” and “Typical Upper Level” Drawings and Attachment A2 - Conceptual Civil Plans_Part2 GL-1 drawing. Question: Can DGS please confirm that the parking and circulation ramps may be sloped to a max. 6.67% per the 2013 District of Columbia Building Code Section 406.4.4 Ramps and that the length of the ramps may vary from the concept drawings.	Length may vary from concept plans. Design and construction to meet code. 5% slope is recommended. Maximum slope for parking along ramps comfortably is around 5.5% so this should not be exceeded.

102	<p>Dimensions. Reference: Attachment A1 – Siting Plan “Ground Level” and “Typical Upper Level” Drawings and Attachment A2 - Conceptual Civil Plans_Part2 GL-1 drawing Question: Can DGS please confirm that the dimensions indicated are interior clear dimensions.</p>	Interior Dimension for parking spaces and aisles are center line to centerline.
103	<p>Lump Sum Contract; Reference: Sections 1.6, 2.10, and 3.5.6; Questions: The form of contract indicates this project will be a Lump Sum design build contract, with the price provided at the time of bid. However, the following elements of the solicitation seem to suggest a design build GMP approach: The scope of the work for the project will be divided into two phases, design and pre-con; and construction; During design and pre-con, the selected DB team will consult with the Department and a parking management firm to develop the program requirements; The attachments G1 and G2 are a construction contract and AE Services contract, respectively. A design/build lump sum form of contract was not provided with the RFP. In addition to the aforementioned, the timing to develop a design and offer a lump sum price is aggressive. Would the Department consider a design/build GMP form of contract, with the submission of GCs and fee at the time of proposal rather than a lump sum price?</p>	No. The Form of Contract is provided as Attachment 8 to Amendment 9.
104	<p>There is potential for contaminated soils on this site, but they can not be quantified at this time. Please let us know if contaminated soils should be excluded or can DC DGS provide an allowance to all bidders to carry in their price?</p>	Please see Amendment 9, Item 4 and Attachment 1.
105	<p>The RFP states that 10% of the 120 spaces dedicated to electric vehicle charging need to be active at substantial completion. Are the remainder of spaces to be rough in only? Meaning no charging equipment supplied.</p>	Correct. Conduits, etc. ready for wiring at spaces and room in electrical room for necessary equipment and meters.
106	<p>Should pay kiosks be included on every level or just the first level?</p>	This is up to the Design Builder and the operating management firm to make the decision. Please provide cost per floor above entry level for alternate.
107	<p>Will existing survey data, control and topography be provided?</p>	Yes, can be provided in MicroStation V8i. Please see Amendment 9, Attachment 6.

108	Overall, there are many variables and uncertainties, some to be documented below, in that an RFP for GC's and Fee plus GMP may be the better overall route for DGS.	
108a	Siting Plan vs. Concept Civils - Future Plaza to be developed at the Ground Level, per the Siting Plan, overrides driveway and sidewalk elements of the Conceptual Civils, are we to provide an alternate?	Driveway and sidewalks elements are to be incorporated or modified in the future plaza work. Plaza work is not in this contract.
108b	Parking Control Measures - Does not address if we need to provide parking measures such as ticketing, egress arms and anything else required for revenue control facilities (only backup power is stated).	Owner and Operator decision. See performance discussion attached. See Attachment A3
108c	Exterior	
108c i	Would it be prudent for DGS to at least mention that the architectural façade should meet NCPC and CFA requirements on the Campus?	It must meet their requirements.
108c ii	Would the architectural façade only need to be installed along the two public sides and not towards the ravine (other two sides)?	The Design Builder shall ensure architectural façade is installed on all four sides.
108d	Environmental	
108d i	How should we anticipate the costs for tree removal? Exclude them as this is a District Government project?	No. The Design Builder shall remove trees as required.
108d ii	From what we know, the Army Corps (USACE) has designated a wetlands area in the ravine, has any development of an EISF (or determination) occurred that might impact the schedule?	See write-up and previous responses.
108d iii	WMATA Zone of Influence - The project lies along the ZOI for the Green Line but DGS has not discussed with WMATA. If warranted by WMATA, coordination and implementation of concerns into the design may take the entire 158 calendar day milestone for Construction Documents. WMATA has told us to plan for six months of coordination when scheduling a project in the past. These times have been met earlier and some later in our experience. WMATA may postpone document delivery.	See previous response. An agreement (251907) is in place to allow immediate plan reviews by WMATA for the project. Funding is in place with this agreement for WMATA review costs.
109	In regards to Section 2.2.2.1.b of the subject RFP, shown below, please advise on where to obtain the guidelines for design mentioned. If these guidelines cannot be accessed online, please provide them for reference.	Please see Amendment 9, item No.. 2

110	Section 2.2.2.1.b states the following: Obtain and review applicable District standards and guidelines for design (Design Criteria Manual, Unified Development Code, DHR Standards), where applicable, and provide a complete design that meets all applicable District codes. Coordinate security requirements with DC PSPD. Coordinate IT and Telecom requirements with DC OCTO and DC Net. Coordinate with CFA/NCPC for review and approval as necessary.	Please see Amendment 9, Item No.. 2
111	Would it benefit DGS if two options were provided in our proposal, one CIP and the other Precast? Ultimately both options have pros and cons that either meet the budget but exceed schedule and vice versa. At this time we are finding it hard to meet all of the RFP requirements.	Response Question 1 provided in Amendment 3 is restated below: DGS does not have a specific preference between structural precast or a cast-in-place concrete structure. The Offeror will be responsible to obtain all required approval for their selected type from AHJ at no additional cost to the District"
112	Have Trucking routes been determined?	No, these are to be developed by Design Builder team and sent to DDOT for review and approval. No trucking through residential neighborhoods allowed.
113	Have noise levels be determined for this site?	The Design-Builder shall meet current noise ordinances and code requirements. Note: Adjacent hospital and residential uses.
114	Are their additional requirements for construction when working on a hospital campus?	See amendment 9, Item No. 3.
115	Has this project received all entitlements and zoning approvals?	Yes. See St. Elizabeths East Campus Master Plan @ <a href="http://stelizabethseast.com/our-opportunity/master-plan/">http://stelizabethseast.com/our-opportunity/master-plan/</a>
116	Will this project go under historic review?	Yes, HPRB will review at building permit level.
117	Are their construction dust limitations near the WMATA air intake located nearby?	Please refer to WMATA JDAC manual for all requirements within the zone of influence (ZOI) for the green line.
118	Does DOEE need to review for building on an existing waterway/stream/pond?	Yes.
119	Will solar panels be incorporated in this project for car charging?	The level of the plans and design is at conceptual level. Design Builder shall coordinate with DGS and DMPED on requirements and construct in accordance with the approved design.
120	Offsite production need Davis Bacon rates?	Yes.
121	Do truck drivers need to follow Davis Bacon rates?	Yes.
122	It the site utility plan current? Site plan does not show profiles nor surrounding domestic tap connections?	The level of the plans and design is at conceptual level. Design Builder shall coordinate with DGS and DMPED on requirements and construct in accordance with the approved design.
123	What is the time extent for the temporary road? Has DDOT approved the proposed plan?	The temporary road is not located within public space and will not next DDOT approvals. IT will be developed within an A&T lot owned by DMPED and the roadway will be in service until 13th Street SE is constructed within the next 4 to 5 years.

124	Any preference between CIP, Precast, or Steel? There are no precast manufactures that meet DC SEB/CBE requirements. Most precast manufactures are backlogged till Spring 2021.	Response Question 1 provided in Amendment 3 is restated below: DGS does not have a specific preference between structural precast or a cast-in-place concrete structure. The Offeror will be responsible to obtain all required approval for their selected type from AHJ at no additional cost to the District"
125	Landscaping requirements, tree planting requirements ?	The level of the plans and design is at conceptual level. Design Builder shall coordinate with DGS and DMPED on requirements and construct in accordance with the approved design.
126	What are the removal and disposal methods of contaminated soils?	The removal and disposal of contaminated soils, if necessary, shall be determined by the Design-Builder.
127	Are their LEED requirements and DC green building code requirements?	See <a href="https://dcra.dc.gov/page/green-building-compliance">https://dcra.dc.gov/page/green-building-compliance</a> .
128	Are their PLA requirements for this project?	No.
129	Please specify LOD for BIM requirements?	Please see Amendment 9, Attachment 7.
130	What payment/car management system will be utilized for this project?	The level of the plans and design is at conceptual level. Design Builder shall coordinate with DGS and DMPED on requirements and construct in accordance with the approved design.
131	What are the low voltage and security requirements for this project?	The level of the plans and design is at conceptual level. Design Builder shall coordinate with DGS and DMPED on requirements and construct in accordance with the approved design.