

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES

Amendment 02
DCAM-17-CS-0005
REQUEST FOR PROPOSALS

Design-Build Services
MacFarland Middle School

Issued: November 10, 2016

This Amendment No. 02 is being issued and hereby published on the DGS website on November 10, 2016. Except as modified hereby, Request for Proposals DCAM-17-CS-0005 remains unmodified.

Item #1 Form of Letter Contract

Refer to **Exhibit A**

Item #1 Form of Contract

Refer to **Exhibit B**

Item #1 Standard Contract Provisions for Construction, Revised November 2016

Refer to **Exhibit C**

Item #1 Responses to Questions

Refer to **Exhibit D**

Item #2 Marie Reed Swing Space Drawings

Documents can be found at: <https://app.box.com/s/7141wn4294f6pdru67a594pmpkzs5tc2>

Item #3 Project Close-out

Section B.4.1 Punchlist

Delete: The Design-Builder shall correct all punchlist items no later than ninety (90) days after substantial completion is achieved.

Replace with: The Design-Builder shall correct all punchlist items no later than thirty (30) days after substantial completion is achieved.

Item #4 Original Drawings for MacFarland Middle School

Documents can be found at: <https://app.box.com/s/srqtg6ovjxuti8uya03cbn8riilsar4g>

Item #5 Hazmat Drawings

Documents can be found at: <https://app.box.com/s/gsvg3n8559hkyyx7goz0d7nc6mdqj9xg>

Item #6 Proposal Due Date

The proposal due date is amended as follows:

Delete: All references to Proposal Due Date on the cover page, Section A.8 – Procurement Schedule, and Section E.3 – Proposal Organization and Submission.

Replace with: Proposal Due Date: November 17, 2016 at 2:00 pm



Elouise Fripp
Lead Contract Specialist



Date

Exhibit A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



Contracts & Procurement Division

[], 2016

By Electronic Mail

[

_____]

**Reference: RFP for Design-Build Services –
MacFarland Middle School
DCAM-17-CS-0005**

Subject: Notice to Proceed & Letter Contract

Dear [_____]:

We refer to the proposal submitted by _____ (the “Design-Builder”) in response to the above referenced solicitation for the work at MacFarland Middle School located at 4400 Iowa Avenue, N.W., Washington, D.C. 20011 (the “Project”). This Letter Contract will serve as a notice to proceed for the work described herein (the “Work”) upon acknowledgement and execution by the Design-Builder. This Notice to Proceed is subject to the following terms:

1. Letter Contract. This Letter Contract between the Design-Builder and the District of Columbia government, acting by and through its Department of General Services (“DGS” or the “Department”, and collectively with the Design-Builder, the “Parties”) along with the Standard Contract Provisions attached hereto as **Exhibit A** (the “Standard Provisions”) and the Form of Agreement for Design-Build Services issued with the Request for Proposals (the “Form Contract”, and collectively with the Letter Contract and the Standard Provisions, the “Governing Documents”) shall govern our relationship until such time as a final contract is entered into for the work described in the above referenced solicitation (the “Definitized Contract”); provided, however, that to the extent there is ambiguity or inconsistency among the terms of the Governing Documents, then the prevailing terms shall be in the following order of precedence: the Standard

Provisions, the Form Contract, then the Letter Contract. Once the Definitized Contract is signed, this Letter Contract shall automatically merge into the Definitized Contract.

2. Scope of Work. The Design-Builder is hereby authorized to proceed with design and preconstruction services for the Project as contemplated in the Request for Proposals and the Design-Builder Agreement. The Design-Builder shall provide such design and preconstruction services as are required to properly advance the Project. The Design-Builder shall develop a design for the Projects in a manner consistent with the Department's programmatic, budgetary, schedule and quality goals. In addition to other preconstruction services required to advance the Project, the Design-Builder shall conduct cost estimates and constructability reviews as the design progresses to identify any potential issues that may cause cost or schedule issues that conflict with the Department's requirements for the Project.

The Design-Builder shall also solicit bids based on the approved design development documents as is further described in paragraph 5 of this Letter Contract. The Design-Builder shall engage in any value engineering and scoping exercises in an effort to allow the Project to be completed within the most recent budget reported by the Department for the Project. The Design-Builder is not authorized to proceed with the ordering of any long-lead items or early site activities unless and until the Department issues an amendment to this Letter Contract authorizing the Design-Builder to do so.

3. Deliverables. In connection with the services provided pursuant to this Letter Contract, the Design-Builder shall provide, at a minimum, the following deliverables to the Department's Program Manager and in the referenced instances to the Contracting Officer as well:

- a. Baseline Schedule within fourteen (14) days from the date of execution of the Letter Contract in a CPM method (Primavera 6 native format) and be developed in a sufficient level of detail so as to permit the affected parties (i.e. the Department, the Design-Builder, and the Design-Builder's design subconsultants) to properly plan the Project, and shall show: (i) 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 the durations for DGS and DCPS reviews of the interim design submissions. 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 updated by the Design-Builder, at a minimum, on a bi-weekly basis.
- b. Concept design submission no later than 45 calendar days from date of execution of this Letter Contract. Such submission shall include, at a minimum, the following:
 - i. Architectural Concept Development (multiple options);
 - a. Development of final master site plan for multiple options
 - b. Building plan including building rise plans

- c. Preliminary cost estimate
 - d. Project schedule
 - ii. Report on Phase 1 Archeological Survey;
 - iii. Updated property survey, including notations of utilities and all other easements;
 - iv. Results of Hazardous Materials Survey;
 - v. Traffic and parking survey and zoning analysis;
 - vi. Geotechnical Survey;
 - vii. Education specifications survey update ;
 - viii. Flow Test Results;
 - ix. Record of Accepted LEED Strategies;
 - x. Record of Accepted Value Engineering Strategies;
 - xi. EISF Submission;
 - xii. Summary of Required Agency Review, Timetables, including but not limited to: Office of Planning (“OP”), Commission of Fine Arts (“CFA”);
 - xiii. Concept Design Budget Estimate broken down in standard 16 division CSI format within two (2) weeks of the submission of the initial concept design submission; and
 - xiv. Memorandum that addresses the Project’s budget, schedule and key constructability concerns and any long-lead items that could adversely affect the project schedule. Such memorandum shall be submitted to the Department within two (2) weeks of the submission of the initial concept design submission.
- c. Schematic design submission no later than 45 calendar days from date of the Department’s approval of the concept design submission. Such submission shall include, at a minimum, the following:
 - i. Digital site and floor plans (including adjacencies and room locations);
 - ii. Preliminary building elevations and sections;
 - iii. Plan-to-Program Comparison;
 - iv. Preliminary LEED Scorecard;
 - v. Design Narrative;
 - vi. Updated Budget Estimate;
 - vii. Updated Project schedule;
 - viii. Updated Memorandum regarding constructability, sole-source and long-lead items; and
 - ix. Value Engineering Memorandum outlining potential value engineering ideas, to the extent that the Schematic Design Budget Estimate exceeds the available funding or the Design-Builder believes that there a value engineering ideas that could materially reduce the Project’s overall cost without adversely impacting the Project’s intended functionality. Such memorandum shall be submitted to the Department no later than one (1) week after the submission of the Schematic Design Budget Estimate.
- d. All such materials and make such presentations as are necessary to obtain the

- required land use and entitlement approvals from (i) the Office of Zoning; (ii) the Office of Planning; the (iii) the Commission on Fine Arts; and (iv) the Historic Preservation Review Board.
- e. Phasing Plan for the phasing of the construction work and measures necessary to mitigate the impact that the Project will have upon the learning environment which shall outline (i) the manner in which the work required for the Project will be phased in light of the partially occupied facility with site plans, diagrams and timelines; (ii) the measures that will be put in place to ensure safety (e.g., temporary construction, safety barricades); and (iii) the measures that will be put in place to limit impact to the learning environment (i.e. to limit noise, dust, etc., and working hours related to noisy work). The phasing plan must allow for access to the elevator throughout the Project.
 - f. Design development submission no later than 30 calendar days from date of the Department's approval of the schematic design submission. Such submission shall include, at a minimum, the following:
 - i. 35% (minimum progress) documents for all technical disciplines, drawings and specs;
 - ii. 50% design development progress printing;
 - iii. A reconciliation report that addresses issues raised by the Construction Manager as a result of the 50% progress printing;
 - iv. CFA submission materials as well as meetings and presentations to CFA as required;
 - v. Updated Budget Estimate and Schedule;
 - vi. Updated LEED Scorecard;
 - vii. Early release packages: (i) hazardous materials abatement package; (ii) selective demolition package and (ii) long lead items package;
 - viii. Permit application submissions as is necessary to complete the Project; and
 - ix. Within ten (10) days of the conclusion of the Design Development Phase, the Design-Builder shall submit a Statement of Constructability to be delivered to the Contracting Officer.
 - g. A preliminary cost estimate based on the design development documents. The preliminary cost estimate shall be broken down in standard 16 division CSI format. The preliminary cost estimate shall be submitted no later than [_____].
 - h. A preliminary schedule for the Project, including the preconstruction phase activities and the construction phase activities. This schedule shall be prepared in a CPM method and be developed in a sufficient level of detail so as to permit the affected parties (i.e. the Department, DCPS and the Design-Builder) to properly plan the Project, and shall show: (w) key design milestones and bid packages; (x) release

dates for long lead items; (y) release dates for key subcontractors; and (z) substantial and final completion dates. The preliminary schedule must also be submitted in Primavera 6 native format or the latest version of the software. The preliminary schedule shall be submitted no later than [_____] and updated by the Design-Builder, at a minimum, on a bi-weekly basis.

- i. The Design-Builder shall perform design reviews of the schematic design package, design development package and at various other intervals as set forth in the RFP and shall prepare and submit a memorandum that addresses the Project's budget, schedule and key constructability concerns based on the design development documents. Such memorandum shall also identify any long-lead items that could adversely affect the project schedule. Such memorandum shall be submitted to the Department no later than [_____].
- j. The Design-Builder shall meet with the Program Manager on a periodic and ongoing basis, which shall be, at a minimum, on a weekly basis, and the Program Manager shall conduct "over-the-shoulder" design reviews prior to the completion of the permit documents. With regard to each of the "over-the-shoulder" design reviews, the Design-Builder shall be required to submit to the Department and its Program Manager a written memorandum that summarizes the Design-Builder's findings and recommendations with regard to the drawings for each discipline. Such memoranda shall be submitted to the Department no later than two (2) weeks after the permit documents are approximately 50% complete and progress print of such documents are issued by the Design-Builder.
- k. The Design-Builder shall provide to the Department for its review and approval a written submission on the proposed subcontractor bidding procedures for the Department's review and approval. Such procedures shall include: (i) a list of proposed trade packages; (ii) a list of trade subcontractors that will be invited to bid on each such package; and (iii) a narrative description of the process. At least three (3) potential subcontractors shall be identified for each trade package. Such bid procedures shall be submitted within fifteen (15) days after the completion of the schematic design. This deliverable must be submitted by this date to the Contracting Officer as well.
- l. A bid tabulation of the trade bids solicited and copies of all trade bids. The bid tabulation shall include scope assessments and identify required leveling of the trade submitted. In addition, the bid tabulations shall include Local, Small, and Disadvantaged Business Enterprise ("LSDBE") and Workforce utilization information. Such bid tabulations shall be submitted to the Department's Program Manager no later than [_____].
- m. Based on the trade bids received, the Design-Builder shall prepare a written report of suggested value engineering strategies necessary to reconcile the costs of constructing the Project within the Project budget. Such report shall be submitted no later than one week after the submission of the bid tabulations. The Design-Builder shall meet with

the Department's representatives to discuss any value engineering and changes in scope necessary to ensure that the Department's schedule and programmatic requirements are met and that the budget is not exceeded. The Design-Builder shall work with the Department and the Program Manager to implement and to price any approved value engineering strategies.

- n. A GMP Proposal for the Project, including all supporting documentation, no later than [_____]. This deliverable must be submitted by the date provided to the Contracting Officer as well.
- o. Statement of constructability within ten (10) days of the conclusion of the Preconstruction or Design Phases, executed by both the Design-Builder and the Program Manager.

In the event that the Design-Builder fails to timely submit any such deliverable, the Design-Builder shall pay to the Department as liquidated damages Five Thousand Dollars (\$5,000) plus Five Hundred Dollars (\$500) per day after receiving written notice from either the COTR or the Contracting Officer of failure to submit each such deliverable. This remedy is cumulative and does not limit any other right or remedy of the Department under the contract or applicable District law.

4. Basis of GMP; Failure to Agree on GMP. The Department expects that the Design-Builder's proposed GMP will be based on competitive bids from trade subcontractors. Unless otherwise agreed to by the Program Manager in writing, the Design-Builder shall obtain at least three (3) trade bids for each trade package in excess of One Hundred Thousand Dollars (\$100,000). In the event the Design-Builder and the Department fail to agree on a GMP, the Department may terminate this contract without further liability and the Design-Builder must turn over all designs and supporting documents.

5. Not-to-Exceed Amount. The limit of this authorization is [_____] Dollars (\$[_____] (the "Not-To-Exceed Amount"). The Not-To-Exceed Amount includes the portion of the Design-Build Fee allocated to preconstruction activities in the amount of [_____] Dollars (\$[_____] and Design Fee in the amount of [_____] Dollars (\$[_____]). The Parties acknowledge that the portion of the Design-Build Fee allocated to preconstruction activities is to be the Design-Builder's sole compensation for all preconstruction services performed under this Letter Contract as well as the Definitized Contract and that the Design Fee is the upset limit of the cost of the various phases of the design with no mark up. It is understood that the Design-Builder shall not be due any additional compensation from the Department for such preconstruction services. In no event shall the Design-Builder be entitled to receive more than the Not-To-Exceed Amount under this Letter Contract unless authorized in advance and in writing by a duly authorized Contracting Officer.

6. Insurance. At all times while working under this Letter Contract, the Design-Builder shall maintain the following insurance: (i) comprehensive general liability policy having a policy limit of at least Five Million Dollars (\$5,000,000) and including completed operations

coverage; (ii) workers compensation coverage at the statutory limit; (iii) automobile liability, including a hired and non-owned automobile liability policy, of at least One Million Dollars (\$1,000,000); and (iv) pollution liability insurance policy of at least Two Million Dollars (\$2,000,000). 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 officers of each as additional insureds. The Design-Builder shall provide certificates evidencing such insurance prior to commencing any work pursuant to this Letter Contract.

7. Construction Phase Compensation. The Design-Builder understands and agrees that the Department makes no representation or warranty that the Design-Builder shall be entitled to serve as the builder for the Project. If, however, the Department and the Design-Builder agree upon a GMP and schedule for the Project, the Design-Builder agrees that it shall be paid a Design-Build Fee in an amount not to exceed [_____] Dollars (\$[_____]). Sixty percent (60%) of the Design-Build Fee shall be referred to herein as the Base Design-Build Fee. The remaining forty percent (40%) of the Design-Build Fee shall be referred to herein as the At Risk Portion. The Design-Builder shall only be entitled to bill for any earned portion of the Base Design-Build Fee and that the Design-Builder's entitlement to any subset of the At Risk Portion is determined by the Department and shall be conditioned upon the Design-Builder meeting or exceeding the criteria set forth in more detail in the RFP and the Agreement for Design-Build Services issued with the RFP. In addition, the Design-Builder agrees that the Maximum Cost of General Conditions shall be [_____] Dollars (\$[_____]) based on the schedule and budget set forth in the RFP. The Design-Builder further agrees to enter into a design-build agreement that is substantially similar to the Agreement for Design-Build Services issued with the RFP, subject only to such adjustments as were requested by the Design-Builder in its bid and which are agreed to by the Department.

8. Duration. This Letter Contract shall become effective on the date it is signed by the Department and expire on the earlier to occur of the following: (i) the date the Definitized Contract becomes effective; or (ii) December 31, 2017. DGS reserves the right to terminate this Letter Contract, in whole or specified part, for convenience in accordance with the Standard Provisions.

9. Billing. All invoices shall be submitted directly to the Department's Program Manager. 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.

10. Purchase Order Number. The Department will issue a purchase order number within five (5) business days of issuance of this Letter Contract and forward a copy of that number for your records. That number should be included in all future invoices and accounting records. In the event that you do not obtain a purchase order number within five (5) business days, please contact the Contracting Specialist set forth in the RFP to obtain this number.

11. Ownership and Use of Documents. All documents and work product prepared by the Design-Builder and its subcontractors or subconsultants related to the Project shall become the

property of the Department. Without limiting the generality of the foregoing, the Design-Builder agrees that the Department shall be entitled to all such information and that the Department may use such documents as it sees fit (including, but not limited to, reprocurring a builder for this project) in the event the Department and the Design-Builder are unable to agree upon a GMP and schedule.

12. Trade Work/Site Control. Unless otherwise directed by the Department, the Design-Builder 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 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 Design-Builder shall provide the Department's Contracting Officer with certificates evidencing insurance, a payment and performance bond having a penal value equal to the then value of the Letter Contract and the Contractor's agreement of indemnity. In the event the Design-Builder 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.

13. Indemnification. To the fullest extent permitted by law, the Design-Builder shall defend, indemnify and hold harmless the Department and the Department's consultants and agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from its performance of the Work.

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

Assuming the foregoing terms are acceptable, please countersign below to indicate your acceptance. Should you have any questions, please feel free to contact me directly at (202) 727-2800.

Sincerely,

[_____]
Contracting Officer

Copy:

ACCEPTED & AGREED TO
this _____ day of [_____] by
[CONTRACTOR]

By: _____
Name: _____
Title: _____

Exhibit A

Standard Contract Provisions

Exhibit B

AGREEMENT FOR DESIGN-BUILD SERVICES

BY AND BETWEEN

THE DEPARTMENT OF GENERAL SERVICES

AND

[CONTRACTOR NAME]

FOR MACFARLAND MIDDLE SCHOOL

CONTRACT NUMBER: DCAM-17-CS-0005

**DESIGN-BUILD AGREEMENT
FOR MACFARLAND MIDDLE SCHOOL
DCAM-17-CS-0005**

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

WITNESSETH:

WHEREAS, the Department issued a request for proposals dated October 21, 2016 (the “RFP”) to engage a design-builder renovate and potentially expand the existing building located at 4400 Iowa Avenue, N.W., Washington, D.C. 20011;

WHEREAS, the Design-Builder submitted a proposal entitled “Proposal for Design-Build Services for MacFarland Middle School” to provide design-build services for the renovation of MacFarland Middle School;

WHEREAS, the Department wishes to retain the Design-Builder to provide design-build services for the renovation of MacFarland Middle School (the “Project”). The Project is to include Design and Preconstruction Services as well as Construction Services;

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

WHEREAS, the Department has established a budget of \$52 Million for the Project, including all hard costs, loose furnishings, design services, and fees and general conditions of the Design-Builder (such budget, the “Target GMP”);

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

WHEREAS, the Department desires that the work related to the Main Building be completed no later than July 20, 2018 and the work related to the area utilized by the 6th Grade students (the “MacFarland Swing Area”) and all other exterior work be completed no later than August 11, 2018 (each a “Substantial Completion Date”);

WHEREAS, the Department and the Design-Builder entered into a letter contract dated [_____] (the “Letter Contract”) pursuant to which the Design-Builder was

authorized to proceed with certain design and preconstruction services as well as certain early release work in furtherance of the Project; and

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

ARTICLE 1 **GENERAL PROVISIONS**

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

Section 1.2 Project Description. The Project consists of Design, Preconstruction, Selective Demolition and Construction Services necessary to design and to construct the improvements outlined on **Exhibit B** no later than July 20, 2018 for the work related to the Main Building and no later than August 11, 2018 for the work related to the MacFarland Swing Area and all other exterior work to be completed. Ultimately, it is DCPS' goal to reopen MacFarland as a neighborhood middle school to serve a student population of 590 and have approximately 95,500 square feet of space. It is anticipated that a small expansion of the existing footprint may be required in order to accommodate a gymnasium. In addition to renovation of the existing structure, outdoor improvements are also anticipated. Exterior play area(s) and learning space(s) are contemplated, and approximately 60 to 65 parking spaces will be required on the site. In general, this includes developing a design for the renovation through a collaborative design process with the Department and DCPS; engaging in extensive preconstruction efforts to ensure that the design is developed in a manner consistent with the Department's goals for the renovation; soliciting competitive trade bids for the construction work and to develop an acceptable guaranteed maximum price and corresponding scope and schedule for the work; and implementing the requisite construction and other work necessary to achieve Substantial Completion. At a minimum, LEED-Gold certification is required.

Section 1.3 Program Manager. The Department has engaged a Program Manager (or "PM") to provide certain program management functions. Such Program Manager shall, at all times, be acting solely for the benefit of the Department, not the Design-Builder. **The Program Manager shall not be authorized to modify any of the rights or obligations of the**

Department or the Construction Manager pursuant to this Contract, or to issue Change Orders or Change Directives. The Design-Builder hereby acknowledges and agrees that only a duly authorized contracting officer shall have the authority to issue Change Orders or Change Directives on the Department's behalf. As of the date that this Agreement is signed, the Department's duly authorizing contracting officers are Greer Johnson Gillis and George Lewis.

Section 1.4 General Description of Design-Builder's Duties. The Design-Builder shall perform the services described in Articles 2 through 4. The Design-Builder shall supply and furnish at the location where the Work is to be performed all design services, labor, materials, equipment, tools, services, and supervision, and shall bear all items of expense, necessary to complete and satisfactorily perform this Contract, except such items that the Department, in this Contract, specifically agrees to supply or furnish to or for the use of Design-Builder. Any labor, materials, equipment, tools, services or supervision not specifically described in this Contract, but which may be fairly implied as required thereby or necessary to properly complete the Contract Work, shall be deemed within the scope of the Contract Work and shall be provided by Design-Builder at Design-Builder's sole expense.

The services to be provided under Article 2 constitute the design, selective demolition and preconstruction services to be performed by the Design-Builder (the "Design and Preconstruction Phase Services"). Article 3 provides for the process by which the Design-Builder and the Department shall agree upon a Guaranteed Maximum Price ("GMP") for the Project. Article 4 constitutes the construction phase during which the Design-Builder shall carry out the bulk of the construction and manage the completion of the design (the "Construction Phase Services").

Section 1.5 Working with Others. In setting the Project Schedule and prosecuting the construction work, the Contractor shall be responsible to coordinate and cooperate with the Architect, the Department, utility companies and other third parties regarding the Contract work, including, but not limited to, the lead time required for assembling crews, ordering materials, the deployment of its forces, and completion of construction activities, such that the Project reaches Substantial Completion and Final Completion in accordance with the terms of this Agreement. The Contractor may not charge any costs or submit any claims to the Department for inconvenience, inefficiency, hindrance or delay caused by the Architect, utility companies or any other third parties. The Contractor warrants and represents that it has accounted for its coordination efforts in the development of its Baseline Schedule. The Contractor acknowledges and agrees that the Department does not assume any responsibility for work performed by third parties in connection with the Project.

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

Section 2.1 Consultation and Analysis.

Section 2.1.1 Throughout the Design and Preconstruction Phase, the Design-Builder

shall schedule and attend regular meetings with the Department, representatives of DCPS, and the Program Manager. In cooperation with the Department, DCPS and the Program Manager, the Design-Builder shall advance the design, conduct value engineering, constructability reviews, and provide scheduling and cost analysis for each phase of design with the goal of developing a design that meets DCPS's programmatic, functional and aesthetic requirements and that can be built for an amount consistent with the Department's budget for the Project, *i.e.*, designed-to-budget. All design documents shall be prepared by duly licensed architects and engineers (hereinafter, "Architect/Engineer").

Section 2.1.2 The Project's initial Design-to-Budget is \$52 Million. Only the Department's budget representative is authorized to revise the Design-to-Budget and any such revision shall be made in writing and signed by the Department's budget representative. Unless otherwise changed by the Contracting Officer, the Department's budget representative shall be the Deputy Director of the Capital Construction Division.

Section 2.1.3 Without limiting the generality of the Design-Builder's preconstruction obligations, the Design-Builder shall perform the following tasks:

- .1 The Design-Builder shall consult with the Department, DCPS and the Program Manager regarding site improvements, and the selection of materials, building systems and equipment with respect to such issues as maintainability and initial versus life-cycle costs.
- .3 The Design-Builder shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction costs including estimates of alternative designs or materials, preliminary budgets and possible economies.

Section 2.2 Program Verification & Concept Design Phase.

Section 2.2.1 Services & Deliverables. During this phase, the Design-Builder shall be required to develop a concept design that meets the programmatic needs as set forth in the Educational Specifications, attached hereto as **Exhibit B**, is consistent with the Project's Design-to-Budget and that can be constructed by the Substantial Completion Date(s). The concept design shall contain such detail as is typically required for a concept design under the standard AIA contract. In general, the Design-Builder shall be required to undertake the following tasks and submit any required deliverables to the Department:

- .1 Meet with the Department's Project Team to kick-off the project. The purpose of this meeting will be to review the project scope, schedule, goals and objectives, and expectations for the project. The Design-Builder will also collect and present any data available for the Project including, but not limited to previously completed studies, current survey data, aerial photography, GIS data, etc.

Complete a Meeting Summary from this meeting and distribute to meeting attendees for review.

- .2 Conduct meetings with the Chancellor's Office and DGS representatives to confirm instructional program and verify facility requirements on a space-by-space basis.
- .3 Conduct workshops with DGS and DCPS staff, as well as other stakeholders, in order to further clarify the goals, objectives, performance targets, service standards, responsibilities, and key agency actions necessary throughout the Department in order to fully realize the vision for the modernized school. Provide report of findings.
- .4 Conduct life safety/building code analysis to verify compliance of design with most current version of the international building code in effect at the time the NTP is issued.
- .5 Conduct LEED Workshops with design team and DGS representatives to identify sustainable design strategies to be included in the design. It is understood that a minimum of LEED for Schools-Gold certification is expected.
- .6 Participate in Value Engineering workshops with the Chancellor's Office, DCPS and DGS representatives.
- .7 Coordinate with the DC Historic Preservation Office/HPRB and other agencies, commissions, groups, etc. as required to assess and determine historic and/or archeological significance and requirements. Attend meetings and hearings if necessary.
- .8 Prepare and submit EISF.
- .9 Perform a Phase 1 Archeological Survey.
- .10 Request and receive hydrant flow test.
- .11 Perform alternative mechanical systems evaluation and recommend selection.
- .12 Confer with audio-visual and acoustic consultants to establish design requirements for the Project.
- .13 Confer with the Department's IT representatives/consultants to verify technological requirements for the Project.
- .14 Draft Conceptual Design Plans

- a. Based on input obtained through the process outlined in the project scope of work, as well as information provided in the Program of Requirements, Stakeholder Interviews, and Public Workshop, the Design-Builder will work to determine the Concept Design.
- b. Develop up to three (3) conceptual designs and cost estimates for the Project that provide alternatives to addressing the needs identified. The Design-Builder will make any appropriate modifications based on DGS comments prior to presenting the concept(s) to the public.

.15 The Design-Builder will conduct a Community Workshop to present the plan alternatives to the neighborhood.

.16 Draft Final Conceptual Design Plan. The Design-Builder will develop a draft final conceptual plan and cost estimate informed by the comments obtained throughout the program verification and concept design process. Submit the draft final conceptual site plan/response and cost estimate to DGS for review before presenting it to the public. The Design-Builder will make any appropriate modifications prior to presenting the concepts to the public.

Section 2.2.2 Concept Design Submission. The Design-Builder shall prepare the concept design submission for review, comment and approval by DCPS and the Department. Such concept design submission shall include the elements and information listed below.

- .1** Architectural Concept Development (multiple options)
 - i. Development of final master site plan for multiple options
 - ii. Building plan including building rise plans
 - iii. Preliminary cost estimate
 - iv. Project schedule
- .2** Report on Phase 1 Archeological Survey
- .3** Updated property survey, including notations of utilities and all other easements
- .4** Traffic and parking survey and zoning analysis
- .5** Geotechnical Survey
- .6** Education specifications survey update
- .7** Flow Test Results
- .8** Record of Accepted LEED Strategies
- .9** Record of Accepted Value Engineering Strategies
- .10** EISF Submission
- .11** Summary of Required Agency Review, Timetables, including but not limited to: Office of Planning (“OP”), Commission of Fine Arts (“CFA”)

Section 2.2.3 Review and Revisions to Concept Design Submission. The Design-Builder shall submit the concept design submission to DGS for review and comment by DCPS and DGS. Following review of the concept design submission by DCPS and the Department, the Design-Builder shall make revisions to the concept design submission as necessary to incorporate comments, feedback and other direction provided by DCPS 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.

Section 2.2.4 Approved Concept Design Estimate. The Design-Builder shall submit a cost estimate of the preliminary concept design while the concept design submission is under review by DCPS and the Department. With regard to building systems (i.e. roofs, doors, HVAC, security, IT, etc.), the cost 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 Fee, Design-Build Fee, the Cost of General Conditions, and contingencies shall be broken out in separate line items. The primary purpose of such cost estimate is to aid the Department and DCPS in understanding the costs associated with key elements of the Project so as to better prioritize and manage the use of the funding allocated to this Project. The cost estimate shall be submitted within two (2) weeks of the submission of the initial concept design submission. The cost estimate shall be updated to reflect any changes resulting from DGS' and DCPS' review of the initial concept design and incorporated into the approved concept design (such estimate, the "**Approved Concept Design Estimate**").

Section 2.2.5 Constructability/Sole Source/Long-Lead Time Memorandum. Concurrently with the Approved Concept Design Estimate, the Design-Builder shall also prepare and submit a memorandum that identifies key construction concerns related to the Project. Such memorandum shall: (i) assess the constructability issues related to the Project, including site logistics; (ii) identify any items where the design is predicated on a single manufacturer and, if so, identify at least two (2) comparable products; and (iii) 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.

Section 2.2.6 Presentation of Concept Design. Following DCPS and the Department's approval of the concept design, the Design-Builder (if requested by the Department) shall present the approved concept design to various Project stakeholders.

Section 2.3 Schematic Design Phase.

Section 2.3.1 Services & Deliverables. During this phase, based on the approved concept design, the Design-Builder shall be required to develop a schematic design. The schematic design shall contain such detail as is typically required for schematic design under the standard AIA contract. In general, the Design-Builder shall be required to undertake the following tasks and submit to the Department:

- .1 Utilize findings and final concept plans to further develop conceptual plans and incorporate design changes, 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.

- .2 Obtain and review applicable District standards and guidelines for design (Design Criteria Manual, Unified Development Code, DCPS 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.
- .3 Coordinate with the DC Historic Preservation Office and other agencies, commissions, groups, etc. as required to assess and determine historic and/or archeological significance and requirements. Attend meetings and hearings if necessary.
- .4 Attend and participate in community meeting(s) to solicit input and update community regarding the Project.
- .5 Prepare a presentation and provide a minimum of three (3) presentation boards for each community meeting and present/display onsite to communicate design and obtain approval of design direction. Presentation boards shall be in full color and include at least one (1) 3-D rendering.
- .6 LEED Certification work as required.
- .7 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 (30% plan review). Components to include, but are not limited to:
 - a. Site plans, paving layouts, traffic circulation
 - b. Floor plans, building circulation, ADA requirements
 - c. Design Narrative
 - d. Plan-to-Program Comparison
 - e. Exterior elevations, rendering and color palette
 - f. Critical building sections and details
 - g. Relevant right of way information such as easements, building set-backs etc.
 - h. Location of utilities and sizes
 - i. Stormwater management
 - j. Preliminary MEP systems
 - k. Preliminary LEED scorecard
 - l. Copies of all surveys and reports
 - m. Updated schedule and cost estimate
- .8 After receiving schematic design comments, meet and coordinate as necessary with:

- a. Owner, stakeholders, and all relevant regulatory or reviewing agencies as necessary to review project requirements.
 - b. Pepco, DC Water, DDOE and all others as necessary for infrastructure and utility requirements.
 - c. Private utilities and service providers if necessary
- .9 Respond in writing to all District comments on plans.
 - .10 Act as scribe for all design related meetings. Distribute meeting minutes to all attendees.
 - .11 Perform comprehensive Value Engineering effort (VE) utilizing 30% 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.
 - .12 Upload all design documentation and deliverables as required utilizing the online DGS Project Management Information System (Prolog Converge) and guidelines.

Section 2.3.2 Schematic Design Budget Estimate. While the preliminary schematic design submission is under review by DCPS and the Department, the Design-Builder shall update the Approved Concept Design Estimate based on the preliminary schematic design submission (the “**Schematic Design Budget Estimate**”). The Schematic Design Budget Estimate shall be prepared in a format similar to the Approved Concept Design Estimate and shall show variances from the Approved Concept Design Estimate. The Schematic Design Budget Estimate shall be submitted within two (2) weeks of the submission of the initial schematic design submission and shall be updated to reflect any changes resulting from DGS’ and DCPS’ review of the initial schematic design and incorporated into the approved schematic design.

Section 2.3.3 Updated Constructability/Sole Source/Long-Lead Time Memorandum. Concurrently with the Schematic Design Budget Estimate, the Design-Builder shall update the memorandum identifying key construction concerns related to the Project. Such memorandum shall: (i) assess the constructability issues related to the Project, including site logistics; (ii) identify any items where the design is predicated on a single manufacturer and, if so, identify at least two (2) comparable products; and (iii) 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.

Section 2.3.4 Review and Revisions to Schematic Design Submission. The Design-Builder shall submit the schematic design submission to DGS for review and comment by DCPS and DGS. Following review of the schematic design submission by DCPS 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 DCPS 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.

Section 2.3.5 Updated Value Engineering Memorandum. To the extent that the Schematic Design Budget Estimate exceeds the available funding or the Design-Builder believes that there are value engineering ideas that could materially reduce the Project's overall cost without adversely impacting the Project's intended functionality, the Design-Builder shall prepare and submit a memorandum that outlines potential value engineering ideas. Such memorandum shall be submitted to the Department no later than one (1) week after the submission of the Schematic Design Budget Estimate.

The Design-Builder shall meet with the Department and the Architect as necessary to reach agreement on which, if any, of the value engineering options that should be pursued. To the extent the Department directs the Design-Builder to proceed with one or more of the value engineering options, the Design-Builder shall revise its Schematic Design Budget Estimate to reflect the inclusion of such items, and to the extent requested by the Department, the schematic design shall also be revised to reflect such approved value engineering ideas.

Section 2.3.6 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) the Office of Planning; (iii) the Commission on Fine Arts; and (iv) the Historic Preservation Review Board.

Section 2.3.7 Phasing Plan. The Design-Builder shall develop a plan for the phasing of the construction work and measures to mitigate the impact that the Project will have upon the learning environment (the "**Phasing Plan**") to allow the MacFarland Swing Area to be occupied during the 2017/2018 school year, the. At a minimum, the Phasing Plan shall outline (i) the manner in which the work required for the Project will be phased in light of the partially occupied facility with site plans, diagrams and timelines; (ii) the measures that will be put in place to ensure safety (e.g., temporary construction, safety barricades); and (iii) the measures that will be put in place to limit impact to the learning environment (i.e. to limit noise, dust, etc., and working hours related to noisy work). The phasing plan must allow for access to the elevator throughout the Project.

Section 2.4 Design Development Phase.

Section 2.4.1 Services & Deliverables. During this phase, the Design-Builder will be required to progress the approved schematic design into a full set of design development documents. In general, the Design-Builder shall be required to undertake the following tasks and submit to the Department:

- .1 Select and draft specifications for materials, systems, and equipment.

- .2 Develop detailed and dimensioned plans, wall sections, building section, and schedules.
- .3 Perform site visits as necessary and attend/facilitate meetings with District staff as necessary to develop and progress Design Development Documents. Incorporate VE options chosen by DGS.
- .4 Coordinate with the DC Historic Preservation Office and other agencies, commissions, groups, etc. as required to assess and determine historic and/or archeological significance and requirements. Attend meetings and hearings if necessary.
- .5 Complete code compliance analysis and drawing.
- .6 Confirm space-by-space equipment layouts with representatives from the Chancellor's Office and DGS.
- .7 Meet and coordinate with regulatory, reviewing, and stakeholder agencies as necessary.
- .8 Present the design to CFA, NCPC, Office of Planning, and other regulatory agencies as required.
- .9 Progress LEED Certification work as required
- .10 Register the Project with USGBC to obtain LEED certification and pay all registration fees.
- .11 Prepare and submit three (3) hard-copy sets, and one (1) electronic copy in PDF of Design Development Documents including Detailed Specifications, Cost Estimate and schedule to the District staff for review and approval (50% plan review) ("Bid Set" or "Design Development Documents"). Components to include, but are not limited to:
 - i. Site plans, paving layouts, traffic circulation, lighting, signage and utilities
 - ii. Floor plans, Structural, Civil, Architectural, MEP, Fire Protection and landscaping
 - iii. Exterior elevations, rendering and color palette
 - iv. Building sections and details as required
 - v. Interior elevations, casework and millwork elevations as required
 - vi. Playground equipment
 - vii. Stormwater management
 - viii. Food service or other equipment as required
 - ix. LEED Information as appropriate

- .12 Respond in writing to all District comments on plans.
- .13 Coordinate furniture, fixtures, and equipment requirements (“FF&E”).
- .14 Attend and participate in community meeting(s) to update community regarding the Project.
- .15 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.
- .16 Coordinate final utility plans as required.
- .17 Act as scribe for all design related meetings. Distribute meeting minutes to all attendees.
- .18 Upload all design documentation and deliverables as required utilizing the online DGS Project Management Information System (Prolog Converge) and guidelines.
- .19 Updated statement of constructability within ten (10) days of the conclusion of the Design and Preconstruction Phase, executed by both the Design-Builder and the Department and in the event the Department has retained an independent Architect, then by the Architect as well.

Section 2.4.2 Mid-Point Design Development Review. When the design development documents are approximately fifty percent (50%) complete, the Design-Builder shall conduct an “over the shoulder” review of such documents with its design subconsultants. Based on the fifty percent (50%) complete design development documents, the Design-Builder shall prepare a memo that identifies any material deviation from the schematic design. If requested by the Department, the Design-Builder shall also make available a progress print for review by DCPS and the Department.

Section 2.4.3 Review and Revisions to Design Development Documents. The Design-Builder shall submit the design development documents to DGS for review and comment by DCPS and DGS. Following review of the design development documents by DCPS and the Department, the Design-Builder shall make revisions to the design development documents as necessary to incorporate comments, feedback and other direction provided by DCPS 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.

Section 2.4.4 Early Release Packages. The Design-Builder shall also produce early release packages for hazardous materials abatement and selective demolition as well as for long

lead materials. The Department expects to release funding for hazardous materials abatement and long-lead items once the design development documents have been approved. If the Design-Builder believes an earlier release is required for long-lead materials in order to meet the Project Schedule, it shall advise the Department and make a recommendation as to the requested release date. Similarly, if the Design-Builder believes that additional work must be released in advance of the establishment of a GMP for the Project, it shall advise the Department and make a recommendation as to the scope of work to be released as well as to the requested release date. For the avoidance of doubt, the Design-Builder will not be permitted to mobilize and perform work on site before June 16, 2017 given that the school will be occupied by the Marie Reed school population until that date. Further, any decision to authorize an early release shall be made by the Department in its sole and absolute discretion.

Section 2.4.5 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 engage such permit expeditors as the Design-Builder deems necessary or appropriate in light of the project's schedule.

Section 2.4.6 Construction Administration. Prior to the completion of the design development documents, the Design-Builder and the Architect shall agree upon a plan for how construction administration services will be performed (the "Construction Administration Plan"). The Construction Administration Plan shall specifically address: (i) whether the Architect will be required to assign staff on-site; (ii) turn-around time for submittals; and (iii) such other matters as the Architect and the Design-Builder consider relevant to the orderly administration of the Project. The Design-Builder shall submit to the Department a copy of the Construction Administration Plan and shall cause the Architect to counter-sign (or otherwise evidence its agreement with) such memorandum. Throughout the construction administration phase of the Project, the Design-Builder shall cause the Architect to comply with the Construction Administration Plan and shall assume the risk of the Architect's non-compliance.

Section 2.5 Construction Documents Phase.

Section 2.5.1 Services & Deliverables. The Design-Builder shall be required to develop a complete set of documents for construction. In general, the Design-Builder shall be required to undertake the following tasks and submit to the Department:

- .1 Progress design and Design Development documents and prepare Construction Documents.
- .2 Progress LEED Certification work as required.
- .3 Coordinate with the DC Historic Preservation Office and other agencies, commissions, groups, etc. as required to assess and determine historic and/or

archeological significance and requirements. Attend meetings and hearings if necessary.

- .4 Submit three (3) hard-copy and one (1) electronic PDF copy of all Construction Documents and Specifications to the Department for its review and approval.
- .5 Attend follow up meetings and coordinate with regulatory agencies, Fire Marshall, DGS Facilities personnel, and others as necessary.
- .6 Obtain all required signatures on plans.
- .7 Complete Platting and record Plat.
- .8 Complete final coordination with utilities and service providers as necessary.
- .9 Attend and participate in community meeting(s) to update community regarding the Project.
- .10 Prepare a presentation and provide a minimum of three (3) presentation boards for each community meetings and present/display onsite. Presentation boards shall be in full color and include at least one (1) 3-D rendering.
- .12 Submit appropriate number of copies of plans to applicable DC regulatory agencies for permit review.
- .13 Coordinate with all DC regulatory agencies and permit reviewers as necessary.
- .14 An Environmental Impact Screening Form (EISF) will be required and shall be the responsibility of the Design-Builder.
- .15 Correct plans to reflect issues noted by regulatory agencies and permit reviewers as required. Re-submit for additional review and approval as required. Provide three (3) hard-copy sets and one electronic PDF copy of all corrected plans to DGS (100% Construction Documents).
- .16 Act as scribe for all design-related meetings. Distribute meeting minutes to all attendees.
- .17 Upload all design documentation and deliverables as required utilizing the online DGS Project Management Information System (Prolog Converge) and guidelines.
- .18 If Archeological monitoring is required, Design Builder is responsible for hiring a 3rd party Archeological Consultant to monitor and document the project.

Section 2.5.2 Mid-Point Construction Document Review. Based on the approved

design development documents and any approved value engineering, the Design-Builder shall cause the Architect to 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 cause the Architect to prepare a progress printing and shall conduct an “over the shoulder” review with the Architect. Representatives from the Department (or its Program Management team) shall be invited to participate in the “over the shoulder” review. Within one (1) week after completing this review, the Design-Builder shall prepare and submit to the Department a memorandum that outlines the results of the “over the shoulder” review. Such memorandum shall identify items of concern to the Design-Builder that represent departures from the approved scope of the design development documents or that could otherwise adversely impact the Project’s budget or schedule. The Design-Builder should also attempt to identify any conflicts or discrepancies with packages being prepared by other disciplines that are likely to have significant cost or schedule impact.

Section 2.5.3 Construction Document Review & Coordination. The Design-Builder shall complete each of the construction document packages in a manner that addresses the concerns raised by the Design-Builder and the Department during the “over the shoulder” review for such package. The Design-Builder shall issue one or more set of permit documents to the Department for its review and approval. 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, however, the Department disapproves a construction document that is a logical extension of the approved design development documents, such disapproval shall be deemed a change event. In the event the Department does not approve a document within fourteen (14) days after issuance, such document shall be deemed approved unless the Department advises that such document is still under review. In the event the Department’s review takes longer than fourteen (14) days, such additional review shall be deemed a change event.

Section 2.5.4 Code Review. The Design-Builder shall submit the permit set of documents to the Department of Consumer and Regulatory Affairs 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 Architect shall highlight (or bubble) any aspect of the design that represents a material deviation from the permit set documents and shall address in a narrative format the impact, if any, such departure shall have on the Project’s aesthetics, functionality or performance.

Section 2.5.5 Design Changes. If it should become necessary to amend any of the approved construction drawings, the Design-Builder shall cause the Architect to prepare an amendment to the drawings and shall submit such amendment to the Department for its review

and approval. In this submittal, the Architect 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 a 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.

Section 2.6 Project Schedule. The Design-Builder has developed a preliminary schedule for the Project, a copy of which is attached hereto as **Exhibit C.** During the Design and Preconstruction Phase, the Design-Builder shall monitor the Project's progress and promptly notify the Department of any delays, regardless of their cause, the causes of such delays, and the Design-Builder's best projection of the effect of such delays on the Substantial Completion, and Final Completion of the Project. The Department's receipt of, and lack of objection to, any schedule update showing Substantial or Final Completion later than the scheduled Substantial or Final Completion Date shall not be regarded as the Department's agreement that the Design-Builder may have an extension of time, or as a waiver of any of the Department's rights, but merely as the Design-Builder's representation that, as a matter of fact, the Project may not be completed by the applicable Substantial or Final Completion Date. The Project Schedule shall be maintained and continuously updated during the Design and Preconstruction Phase as well as the Construction Phase.

Section 2.7 Trade Bids.

Section 2.7.1 Subcontractors and Suppliers; Bidding Procedures. The Design-Builder shall seek to develop subcontractor interest in the Project. Within fifteen (15) days after the completion of the schematic design, the Design-Builder shall provide to the Department and its Program Manager a written submission on the proposed bidding procedures. Such procedures shall include: (i) a list of proposed trades packages; (ii) a list of at least three (3) trade subcontractors that will be invited to bid on each such package; and (iii) a narrative description of the bidding process.

Section 2.7.2 Bidding. Following the Department's approval of the Bid Set, the Design-Builder shall solicit bids from trade subcontractors and suppliers based on the Bid Set. The Design-Builder shall obtain a minimum of three (3) bids for each trade package unless such package has an expected value of less than One Hundred Thousand Dollars (\$100,000) or the Department approves otherwise. In addition to the information normally required in such bids, the Design-Builder shall also require subcontractors to provide an estimate of the percentage of labor hours performed in completing the subcontracted work which will be performed by District residents.

Section 2.7.3 LSDBE Utilization. The Department requires that (i) District of Columbia residents and (ii) Local, Small and Disadvantaged Business Enterprises ("LSDBEs") participate in this project to the greatest extent possible. To that end, the Design-Builder shall

meet the goal of [_____] Percent (___%) of the Contract Work which must be awarded to entities that are certified as Small Business Enterprises by the District of Columbia Department of Small and Local Business Development. 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 an LSDBE Utilization Plan, attached hereto as **Exhibit H**. The Design-Builder shall comply with the terms of the LSDBE Utilization Plan in making purchases and administering its Subcontracts and Supply Agreements.

Section 2.7.4 Bid Tab. The Design-Builder shall provide to the Department tabulations of the trade bids received. Such bid tabulations shall include, in addition to pricing information, LSDBE Utilization information, as defined in Section 2.7.3. The Design-Builder represents and warrants that the bid tabs so submitted shall fairly represent the results of the subcontractor bidding process and that the Design-Builder shall not misrepresent any such data to the Department or its Program Manager. The Design-Builder shall be subject to the Liquidated Damages set forth in Section 2.10 in the event it fails to solicit bids or provide bid tabulations as set forth in this Section 2.7.

Section 2.8 Value Engineering. Based on the trade bids received, the Design-Builder shall prepare a written report of suggested value engineering strategies necessary to reconcile the costs of constructing the Project with the Design-to-Budget. The Design-Builder shall meet with the Department's representatives to discuss any value engineering and changes in scope necessary to ensure that the programmatic requirements and performance specifications are met and that the Design-to-Budget is not exceeded. Based on these discussions, the Architect/Engineer shall complete any revisions to the design documents and prepare any additional drawings, without increase to the Design Fee, necessary to complete the Project.

Section 2.9 Design and Preconstruction Services. The Design-Builder shall provide such preconstruction services as are necessary to properly advance the Project. These services shall include, but are not necessarily limited to, scheduling, cost estimating, shop-drawings, and, if authorized, ordering of long-lead materials.

The following deliverables are required during the Design and Preconstruction Phase. The Design-Builder acknowledges that the Department is engaging the Design-Builder to provide an extensive level of preconstruction support services so as 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 reports required under this Section 2.9 are key to realizing the value of such services. In the event that the Design-Builder fails to provide any deliverable listed below, the Design-Builder shall be subject to liquidated damages in an amount of Five Thousand Dollars (\$5,000) plus Five Hundred Dollars (\$500) per day after receiving written notice from either the COTR or the Contracting Officer of failure to submit such report.

- .1 Baseline Schedule
- .2 Concept Design Submission
- .3 Concept Design Budget Estimate
- .4 Constructability/Sole Source/Long-Lead Time Memorandum

- .5 Schematic Design Submission
- .6 Schematic Design Budget Estimate
- .7 Updated Constructability/Sole Source/Long Lead Time Memorandum
- .8 Value Engineering Memorandum
- .9 Phasing Plan
- .10 50% Design Document Progress Print
- .11 100% Design Documents
- .12 Mid-Point Design Development Review Memorandum
- .13 Hazardous Materials and Selective Demolition Early Release Package
- .14 Long Lead Item Early Release Package
- .15 Trading/Bidding Procedures Submission
- .16 Trade Bid Tabulations
- .17 GMP Proposal

If the Department so determines, it may direct the Design-Builder to purchase certain long lead items prior to commencement of the Construction Phase. In the event the Department issues any such directive, the Design-Builder shall make such purchases as the agent for the Department and any such subcontracts or purchase orders shall be assignable to the Department in the event the Department terminates this Agreement or the parties are unable to agree upon a GMP. Upon the Department's acceptance of the Design-Builder's Guaranteed Maximum Price Proposal, all then existing contracts for such items shall be assigned by the Department to the Design-Builder, who shall accept responsibility for such items as if procured by the Design-Builder.

Section 2.10 Conformance with Laws. It shall be the responsibility of the Design-Builder to perform the Contract in conformance with the Department's Procurement Regulations (5 DCMR § 3900 *et seq.*) and all statutes, laws, codes, ordinances, regulations, rules, requirements and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the 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. This Section 2.10 shall apply during the Design and Preconstruction Phase and the Construction Phase.

Section 2.11 Warranties and Representations

Section 2.11.1 All disclosures, representations, warranties, and certifications the Design-Builder makes in its proposal in response to the RFP shall remain binding and in effect throughout the term of the Contract. The Design-Builder reaffirms that all such disclosures, representations, warranties, and certifications are true and correct.

Section 2.11.2 If any disclosure, representation, warranty or certification the Design-Builder has made or makes pursuant to the RFP or the Contract, including, without limitation, representations concerning the Design-Builder's construction or design experience and qualifications, claims or litigation history or financial condition, is materially inaccurate, that

shall constitute a material breach of the Contract, entitling the Department to all available remedies.

Section 2.11.3 The terms and conditions of this Section 2.11 shall apply during the Design and Preconstruction Phase and the Construction Phase.

Section 2.12 Responsibility for Agents and Contractors. At all times and during the [Design, Selective Demolition and] 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.

Section 2.13 Letter Contract. The Parties acknowledge that certain of the [design and] preconstruction activities described in Article 2 of this Agreement were performed pursuant to the Letter Contract between the parties dated [_____]. It is understood and agreed that certain of the activities described in this Agreement were performed while the Letter Contract was in place, and that upon execution of this Agreement, the terms of the Letter Contract shall merge into and be superseded by this Agreement. For avoidance of doubt, any services provided or work performed pursuant to the Letter Contract and prior to the date that this Agreement is effective shall be governed by the terms and conditions of this Agreement.

ARTICLE 3 **FORMATION OF GMP PROPOSAL**

Section 3.1 General. The Design-Builder's Guaranteed Maximum Price for construction the Project will be based on the Design Development Documents, as approved by the Department during the Design and Preconstruction Phase (such Drawings and Specifications are referred to herein as the "GMP Drawings & Specifications"). Based upon the GMP Drawings & Specifications, the Design-Builder shall propose a Guaranteed Maximum Price (referred to as the "GMP Proposal") which shall be submitted in accordance with this Article. The GMP Proposal shall include: (i) a line item construction budget; (ii) a detailed CPM schedule; (iii) a listing of the drawings upon which the GMP is based; and (iv) an LSDBE utilization plan. The GMP Proposal will include an agreed upon protocol for the manner in which construction administration services will be provided. The Design-Builder acknowledges and understands that the GMP Drawings & Specifications will be based on the Bid Set together with any approved value engineering strategies or other scope modifications. The Guaranteed Maximum Price proposed in the Design-Builder's GMP Proposal shall be intended to represent the Design-Builder's offer to Fully Complete the Project. As part of the GMP Amendment, the Design-Builder shall certify that the GMP established thereby (i) contains sufficient amounts to perform all Work necessary to Fully Complete the Project; and (ii) contains sufficient amounts to provide and construct any items or facilities that are not contained in the GMP Drawings & Specifications but which are necessary for a fully functioning facility that meets the programmatic requirements established for the Project. The Design-Builder will further covenant and agree in the GMP Amendment that it will perform all of the construction work necessary to

Fully Complete the Project, including, without limitation, aspects of the Work that are not shown on the GMP Drawings and Specifications but which are a logical development of the design intent reflected in the GMP Drawings and Specifications, for an amount not to exceed the Guaranteed Maximum Price.

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

Section 3.3 Contingency. The Cost of the Work shall include a Contingency, a sum established by the Department and the Design-Builder to cover, among other things costs necessary to address scope expansion that is a logical development of the design, issues arising under Section 3.2 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order, such as costs that were not reasonably foreseeable as of the effective date of this Agreement, including such items as emergencies, unforeseeable changes in market conditions for materials or labor, or subsurface, soils or site conditions that were neither known nor reasonably discoverable as of the effective date of the Contract. If the Design-Builder draws on the Contingency, it shall provide written notice to the Department, identifying the amount requested and the reason for the draw. Such notice shall be provided prior to any such draw and shall update the Department regarding use of the contingency on a weekly basis. The Design-Builder shall, in subsequent required reports, show an increase in the relevant line item by the amount drawn and a decrease in the line item for the Contingency. The Design-Builder shall keep records reasonably acceptable to the Department reflecting all draws against the Contingency.

Section 3.4 Basis of Guaranteed Maximum Price. The Design-Builder shall include with the GMP Proposal a written statement of its basis, which shall include:

- .1 A list of the Drawings and Specifications, including all addenda thereto, which were used in preparation of the GMP Proposal.
- .2 A list of allowances and a statement of their basis; provided, however, that only such allowances as are agreed to by the Department shall be included.
- .3 A list of the clarifications and assumptions made by the Design-Builder in the preparation of the GMP Proposal to supplement the information contained in the Drawings and Specifications. These clarifications will include specific reference to any exclusions from the building components, systems, and furniture, fixtures & equipment (“FF&E”) required by the Project Program. Any such clarification or assumption that materially alters the functionality or aesthetics of the Work

reflected in the GMP Drawings and Specification shall be brought to the attention of the Program Manager and the Department prior to submission of the proposal in sufficient time for any discrepancies to be reconciled.

- .4 The proposed Guaranteed Maximum Price, including a statement of the detailed cost estimate organized by trade categories, allowances, Contingency, and other items and the fee that comprise the Guaranteed Maximum Price.
- .5 An agreed upon design schedule that the Design-Builder has negotiated with its Architect/Engineer.
- .6 A proposed Construction Phase Schedule which shall include, but not be limited to, the Substantial and Final Completion Dates.
- .7 An LSDBE Utilization Plan setting for the estimated dollar volume of the work that will be performed by small, local and disadvantaged business enterprises, as certified by the Department of Small and Local Business Development, upon which the GMP is based.

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

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

Section 3.7 GMP Amendment. Upon acceptance by the Department of the GMP Proposal, the Guaranteed Maximum Price and its basis shall be set forth in the Guaranteed Maximum Price Amendment (“GMP Amendment”). The GMP Amendment shall be in substantially the form of **Exhibit A** hereto. In the event an acceptable Guaranteed Maximum Price Proposal is not developed, the Contract will be terminated and the provision of Section 3.12 shall apply. In such event, the Design-Builder shall forfeit Fifty Percent of the portion of the Base Design-Build Fee allocated to the Design and Preconstruction Phase, as set forth in more detail in Section 6.1.1 of this Agreement. In the event the Contract is terminated pursuant to this Section 3.7, the Department shall be free to use any of the information developed during the Design and Preconstruction Phase to retain a new contractor to complete the Project.

Section 3.8 Tax Exempt Status. The Department expects that the Project will qualify as tax-exempt under the applicable laws, and such tax exemption shall be reflected in the Guaranteed Maximum Price.

Section 3.9 Certification. As part of the Guaranteed Maximum Price Proposal submitted in accordance with Article 3 of this Agreement, the Design-Builder agrees to specifically acknowledge and declare that the Contract Documents are sufficiently complete to have enabled the Design-Builder to determine the Cost of the Work therein in order to enter into the GMP Amendment and to enable the Design-Builder to agree to construct the Work outlined therein in accordance with applicable laws, statutes, building codes and regulations to the best of Design-Builder's knowledge, and otherwise to fulfill all its obligations hereunder. The Design-Builder shall further acknowledge that it has visited the site, examined all conditions affecting the Work, is fully familiar with all of the conditions thereon and affecting the same, and, has carefully examined all drawings and specifications provided to it.

Section 3.10 Extent of Responsibility and Site Conditions

Section 3.10.1 The Design-Builder does not warrant or guarantee estimates and schedules except those that are included as part of the Guaranteed Maximum Price Amendment. The recommendations and advice of the Design-Builder concerning design alternatives shall be subject to the review and approval of the Department and the Department's professional consultants.

Section 3.10.2 During the Design and Preconstruction Phase, the Design-Builder shall carefully examine all information the Department has provided concerning site conditions, including, but not limited to, soils and subsurface conditions, and shall carry out any further examinations, investigations, tests, borings, analyses and/or other studies of site conditions (including, but not limited to, surface, water, subsurface and soils conditions) that the Design-Builder deems necessary.

Section 3.10.3 The Design-Builder will be held to have satisfied itself as to transportation, facilities, the kind of facilities required before and during construction of the Project, access, working space and to have become acquainted with the labor conditions, the ecological and environmental conditions to be followed in performing this Contract.

Section 3.10.4 The Department expressly disclaims any representation or warranty that any information it has provided about the site is either accurate or complete. This disclaimer applies, without limitation, to any boring logs, geotechnical studies, or other data relating to site conditions, including, without limitation, soils or subsurface conditions. The Design-Builder, by entering into the Contract, agrees to assume all risks arising from site conditions, at or above the surface, foreseeable or unforeseeable, naturally occurring or man-made. The Design-Builder, however, shall be entitled to an equitable adjustment to Differing Site Conditions and Hazardous Materials Remediation Costs in accordance with Section 3.11 of the Agreement. (The terms "Differing Site Conditions" and "Hazardous Materials Remediation Costs" are defined in Article 16 of this Agreement.) Except as regards Differing Site Conditions and Hazardous Materials Remediation Costs, the Design-Builder shall not be entitled to adjustments to the Substantial or Final Completion Date, the Guaranteed Maximum Price, the Design Fee, or the Design-Build Fee due to site condition of any kind, whether known or

unknown at the time the GMP Amendment is entered into, and whether foreseeable at that time or not.

Section 3.11 Unsafe Materials and Hazardous Materials

Section 3.11.1 The Design-Builder shall not bring, spill or release onto the site asbestos, PCBs, or any other Hazardous Material that is not customarily used in a facility of the type and similar to the Project, and shall bring to the Department's attention any specification of such Hazardous Materials in the design documents. If the Design-Builder believes that anything in the Contract would require that it use or bring onto the site asbestos, PCBs, or any Hazardous Material that is not customarily used in a facility of the type and similar to the Project, it shall immediately inform the Department and seek direction before proceeding.

Section 3.11.2 If the Design-Builder discovers Hazardous Materials on the site, it shall immediately notify the Department, in writing, and shall promptly coordinate with separate contractors engaged by the Department to remove, treat, encapsulate, passivate, and/or dispose of the Hazardous Materials. 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. **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.**

Section 3.11.3 The Design-Builder shall be entitled to submit a Change Request in accordance with Article 4 of the Standard Contract Provisions in the event the Design Builder encounters Hazardous Materials beyond those contemplated in the Contract Documents.

Section 3.11.4 The Design-Builder shall keep detailed records documenting Work done so that the Department may independently verify compliance with all laws, the number of units actually removed, treated, and/or disposed of, and the appropriate unit price(s) applicable to the Work.

Section 3.12 Assignment Upon Failure to Reach GMP. In the event that the Department and the Design-Builder are unable to agree upon a GMP, the Department shall have the right to terminate this Agreement, and if requested by the Department, the Design-Builder shall assign any trade Subcontracts and its agreement with the Architect/Engineer to the Department upon such terms and conditions and at the time requested by the Department.

Section 3.13 Reduction in Fees. In the event that either the Department and the Design-Builder are unable to agree upon a GMP or the GMP exceeds the Design-to-Budget established at the end of the Design Development phase, the Design-Builder shall forfeit fifty percent (50%) of the portion of the Base Design-Build Fee allocated to the Design and Preconstruction Phase.

ARTICLE 4 CONSTRUCTION PHASE

Section 4.1 General. The Construction Phase shall commence when the GMP Amendment is executed by the Department and the Design-Builder or the Department otherwise issues a Notice to Proceed for Construction Phase Services. The Design-Builder shall, through Subcontractors or, with the written consent of the Department, with its own forces, perform all of the Work necessary to construct the Project so that it is complete, safe, and properly built in strict accordance with the Contract Documents and the other requirements of this Contract. Without limitation, the Design-Builder shall provide all of the labor, materials, tools, equipment, temporary services, and facilities necessary to complete the construction and installation of the Project. The Work shall be carried out in a good and workmanlike, first-class manner, and in timely fashion. All materials and equipment to be incorporated into the Project shall be new and previously unused, unless otherwise specified, and shall be free of manufacturing or other defects. The Design-Builder further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects. The Design-Builder warrants that it will use the highest quality of materials and equipment that the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. If required by the Department, the Design-Builder shall furnish satisfactory evidence as to the type, grade and quality of materials and equipment.

Section 4.1.1 Unrenovated Portions of the Structure. In constructing the Project, the Design-Builder shall ensure that the unrenovated portions of the existing structures, if any, including, but not limited to, building systems are not adversely affected. All unrenovated portions of the structures should function, at a minimum, at the level of functionality that existed immediately prior to the construction of the Project. If any unrenovated portion of the Project functions at a lower level of functionality as a result of the Design-Builder's construction of the Project, the Design-Builder shall be back-charged the costs incurred by the Department in addressing the decreased functionality.

Section 4.1.2 Supervision & Coordination. The Design-Builder will be required to properly supervise and coordinate its work. At a minimum, it is envisioned that the Design-

Builder will be required to undertake the following tasks:

- .1 Participate and assist in Project/Planning meetings;
- .2 Maintain full-time on-site construction supervision and provide daily inspections, quality control, monitoring, coordination of various trades, record drawings, and daily work log;
- .3 Provide and maintain a fully equipped office on-site to perform all required Design-Builder duties;
- .4 Conduct weekly progress meetings following a contractor generated agenda with the Program Manager and all trades;
- .5 Provide general safety and signage and posting for the project and see that each subcontractor prepares and submits adequate safety program and monitoring throughout the project;
- .6 Provide a written monthly report that includes (i) an updated schedule analysis, (ii) an updated cost report, and (iii) a monthly review of cash flow
- .7 Prepare payment requests, verify accuracy and forward to Department for approval and payment;
- .8 Manage the change order process with the trade subcontractors to verify validity, purpose, and cost;
- .9 Assemble close-out documents required; and
- .10 Provide assistance to the Department and end users through all applicable warranty periods.

Section 4.1.3 Mobilization. The Design-Builder will be required to undertake the tasks:

- .1 Take control of the site and install the necessary construction fences and other devices to properly secure the site;
- .2 Abate any additional hazardous materials in the existing facility, in accordance with EPA and all jurisdictional agencies;
- .3 The Design-Builder shall be responsible for all interior and exterior demolition necessary to complete the Project;
- .4 The Design-Builder shall be responsible for salvaging and storing all items as identified by the Department;
- .5 The Design-Builder shall be responsible for paying all permits and fees associated with the abatement, demolition, utilities abandonment, and utility relocation. The Department shall be responsible for the building permit fees, but the Design-Builder shall be responsible for obtaining the building permit and for paying all trade Design-Builder permit fees.
- .6 The Design-Builder shall be responsible for all performance and payment bonds and general liability insurance; and
- .7 The Design-Builder shall be responsible for removing the balance of construction debris off site.

Section 4.2 Construction Phase Design Services.

The Design-Builder is required to complete the design of the Project so that it reflects a logical progression of the design intent contained in the GMP Drawings and Specifications. The Design-Builder shall be required to forward copies of all construction document packages and any material change thereto to the Department. The Department shall be given a reasonable period of time, in light of the Project Schedule and the needs of the Project, to review such documents. In all cases other than time sensitive changes arising from field conditions, the Department shall be provided with at least five (5) business days to review such documents and the Design-Builder shall not proceed with Work that is objected to by the Department until such Work is approved by the Department. The Department can disapprove the design construction document packages for any reason; provided, however, the Design-Builder shall be entitled to an adjustment to the GMP and/or the Contract Time if the Department disapproves a package unless such a package departs from the Scope of Work fairly reflected in the GMP Drawings and Specifications and in such an event the Design-Builder shall be required to prepare a revised design that complies with the GMP Drawings and Specifications and without any entitlement to an increase in the GMP or an adjustment of the Contract Time.

Section 4.2.3 The Department will hire third party contractors for plan review and for testing and material inspections. The Design-Builder shall coordinate and work with the Project Manager and third party plan reviewer during the building permit process.

Section 4.3 Subcontracting and Administration

Section 4.3.1 It is contemplated that all or substantially all of the construction of the Project will be carried out by trade Subcontractors and that those trade subcontracts will be awarded through the competitive bid process contemplated in Section 2.7. The trade subcontractors will be under written contract with the Design-Builder. All subcontracts and agreements for the supply of equipment or materials awarded for the Project shall be fixed-price contracts unless otherwise expressly authorized by the Department, in writing. It is understood and agreed, however, that certain trade packages (such as the mechanical and electrical packages) may be awarded on a design-assist or design-build basis and that such trade packages may be awarded on such other basis subject to the Department's consent as to the bidding procedures and economic structure with regard to those packages. The Design-Builder and its affiliates may not carry out trade work with its own forces without the Department's written permission, which permission may be withheld or conditioned by the Department in its sole and absolute judgment.

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

Section 4.3.3 The Design-Builder shall develop a purchasing strategy to address the expedited schedule and conditions of this Project and shall include appropriate provisions in the subcontracts to minimize the cost impact associated with such conditions. Such strategies may include, but are not limited to (i) obtaining from subcontractors unit price quotes for typical

coordination items; (ii) setting aside allowances for coordination work; and (iii) such other techniques as may be employed by the Design-Builder.

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

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

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

Section 4.3.7 The Department must approve all Subcontractors and suppliers. In the event the Department does not approve a subcontractor or supplier, the Design-Builder shall obtain new or revised bids or proposals. The Department may elect to review the form of any such subcontract or agreement with a material supplier to insure that such contract incorporates the contractual provisions required by this Agreement.

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

- .1 that, to the extent of the Work or supply within the agreement's scope, the Subcontractor or supplier is bound to the Design-Builder for the performance of all obligations which the Design-Builder owes the Department under the Contract;
- .2 that the Subcontractor or supplier is not in privity with the Department and shall not seek compensation directly from the Department on any third-party beneficiary, quantum meruit, or unjust enrichment claim, or otherwise, except as may be permitted by any applicable mechanic's lien law;

- .3 that the Department is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit;
- .4 that the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Design-Builder is terminated for default;
- .5 that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Design-Builder to suspend or stop work;
- .6 that the Subcontractor or supplier shall maintain records of all Work it is requested or authorized to do on a time and material or cost-plus basis, or with respect to claims that it has asserted on a time and materials or cost-plus basis, during the Project and for a period of time as specified in the Standard Contract Provisions and requiring the Subcontractor or supplier to make those records available for review or audit by the Department during that time;
- .7 that the Subcontractor shall obtain and maintain, throughout the Project, workers' compensation insurance in accordance with the laws of the District of Columbia (This provision is not applicable to supply agreements.);
- .8 that, if the Department terminates the Contract for convenience, the Design-Builder may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) days' written notice to the Subcontractor or supplier, and that the Subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in the Termination for Convenience provisions of the Standard Contract Provisions;
- .9 that the Department shall have the right to enter into a contract with the Subcontractor or supplier for the same price as its subcontract or supply agreement price less amounts already paid, if the Design-Builder files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;
- .10 that, 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 problem, the Department may make payments to the Subcontractor or supplier and Design-Builder by joint check;
- .11 that the Subcontractor or supplier shall not be entitled to payment for defective or non-conforming work, materials or equipment, and shall be obligated promptly to repair or replace non-conforming work, materials or equipment at its own cost;
- .12 a provision substantially similar to Section 4.3.8 of this Agreement, requiring that Subcontractors and suppliers promptly pay Subcontractors and suppliers at lower

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

- .13 a provision requiring that all Subcontractors at all tiers comply with the provisions of Article 11 (Economic Inclusion Goals); provided, however, that the Design-Builder may, in its reasonable discretion impose a different LSDBE subcontracting goal on some or all of its Subcontractors; provided, further, however, that nothing in this provision shall be deemed to excuse the Design-Builder from using its best efforts to achieve the LSDBE subcontracting goal on an aggregate basis for the Project;
- .14 a provision which allows the Design-Builder to withhold payment from the Subcontractor if the Subcontractor does not meet the requirements of the Subcontract;
- .15 lien and claim release and waiver provisions substantially identical to those in this Agreement.

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

Section 4.3.10 The Design-Builder shall not enter into any profit sharing, rebate, or similar arrangement with any Subcontractor or supplier at any tier with respect to the Project or the Work to be carried out for the Project.

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

Section 4.3.12 The Department has the right to contact Subcontractors or suppliers at all tiers, or material or equipment suppliers directly to confirm amounts due and owing to them or amounts paid to them for Work on the Project, and to ascertain from the Subcontractors or

suppliers at all tiers their projections of the cost to complete their Work or to supply their material or equipment, or the existence of any claims or disputes. In doing so the Department shall not issue any directions to Subcontractors or Suppliers at any tier.

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

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

- .1 Construction Progress Update.** Each monthly update shall contain, but not limited to, a baseline schedule and schedule updates with a narrative description of the project progress and demonstrating the critical path of the Project in the latest version of Primavera format.

- .2 **Cost Update.** The monthly update shall reflect, by Guaranteed Maximum Price line item, the original line item amount, approved, pending, and projected Change Order amounts, the cost incurred to date, the projected cost to complete the Work of the line item, and any variance between the actually approved budgeted balance of the line item and the projected cost to complete. A clear distinction must be made between approved Change Orders and those merely requested or anticipated. The report shall explain all variances including “buy-outs” or final actual costs including those below their respective Guaranteed Maximum Price line item. In addition, the report must disclose any instances in which the Design-Builder has transferred amounts from one line item to another, or from the Contingency to any other line item. Neither submission of, nor the Department's failure to reject, an update reflecting that the projected cost to complete the Project will exceed the Guaranteed Maximum Price will operate to increase the Guaranteed Maximum Price or waive the Department's right to enforce the Guaranteed Maximum Price. If the report reflects budget overruns, it must also include a recovery plan.
- .3 **Economic Inclusion Report.** The monthly report shall include a detailed summary of the Design-Builder's efforts and results with respect to the economic inclusion goals set forth in this Agreement. Such report shall be in a format acceptable to the Department and shall include, at a minimum (i) the Design-Builder's overall performance with respect to the goals; (ii) a listing of subcontracts and agreements with material suppliers let by the Design-Builder and its Subcontractors during the month and the percentage of those subcontracts and agreements with material suppliers awarded to LSDBEs; (iii) a listing of subcontracts let by the Design-Builder and its Subcontractors during the month and the estimated percentage of the labor hours to be worked by District of Columbia residents pursuant to those subcontracts; and (iv) a description of the major subcontracting and supply opportunities that will be solicited during the next three (3) months and the actions being undertaken to meet the subcontracting goals.
- .4 **Cash Flow Update.** If there have been any changes to the anticipated cash flow for the Project, they shall be disclosed and explained in the monthly report. If there are no such changes, the report shall so state.
- .5 **Quality Assurance Report.** The monthly report shall include a detailed summary of the steps that are being employed in order to ensure quality construction and workmanship. Each report should specifically address issues that were raised by the Department and/or its Program Manager during the prior month and outline the steps that are being taken to address such issues.
- .6 **Progress Photos.** The monthly report shall include updated progress photos that shall detail changes in the Work during the month.

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

Section 4.6 Cost Control System. The Design-Builder shall maintain accurate records of the Cost of the Work and shall identify variances between actual and estimated costs and report the variances to the Department and the Program Manager at regular intervals.

Section 4.7 Key Personnel.

Section 4.7.1 To carry out its duties, the Design-Builder shall provide at least the key personnel identified in **Exhibit D** to this Agreement, who shall carry out the functions identified in the Exhibit. Among other things, the Key Personnel shall include the project managers that will be responsible for managing the Work related to the Project's structural, mechanical, electrical and special systems. It is contemplated that these project managers will work from the design stage, purchasing and throughout the bulk of the field work. The Design-Builder's obligation to provide adequate staffing is not limited to providing the key personnel, but is determined by the needs of the Project. The Design-Builder shall not replace any of the key personnel without the Department's prior written approval, which shall not be unreasonably withheld. If any of the key personnel become unavailable to perform services in connection with the Contract due to death, illness, discharge or resignation, then the Design-Builder shall promptly appoint a replacement acceptable to the Department. The Department shall be entitled to complete information on each such replacement, including a current resume of his or her qualifications and experience.

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

In each instance where the Design-Builder removes or reassigns one of the key personnel listed in **Exhibit D** as being subject to liquidated damages, other than (a) for reasons where such personnel become unavailable due to death, disability or separation from the employment of the Design-Builder or any affiliate of the Design-Builder or any affiliate of the Design-Builder, or (b) with the prior written consent of the Owner's Designated Representative, then the Design-Builder shall pay to the Department the sum of Twenty Five Thousand Dollars (\$25,000) as liquidated damages and not a penalty, to reimburse the Department for its administrative costs arising from the Design-Builder's failure to provide the Key Personnel. The foregoing liquidated

damage amount shall not bar recovery of any other damages, costs or expenses other than the Department's internal administrative costs.

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

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

Section 4.9 Application for Substantial Completion Certificate. The Design-Builder shall apply to the Architect for a Certificate of Substantial Completion upon meeting the criteria set forth in Section 16.22 of this Agreement. Upon application by the Design-Builder, the Architect shall verify that the Design-Builder has achieved Substantial Completion, within the meaning of Section 16.22 of this Agreement, upon which event the Architect shall execute such Substantial Completion Certificate, certifying to the Contracting Officer that Substantial Completion has been achieved. Upon receipt of the executed Substantial Completion Certificate from the Architect, the Design-Builder shall cause the Architect to submit such Substantial Completion Certificate to the Contracting Officer for review and approval.

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

Section 4.11 Claims for Additional Time

Section 4.11.1 Time is of the essence for this Contract. The [Bid Set must be submitted no later than [_____], and the work related to the Main Building must be Substantially Complete no later than July 20, 2018 and the work related to the MacFarland Swing Area and all other exterior work be Substantially Complete no later than August 11, 2018.

Section 4.11.2 The Design-Builder will perform the Work so that it shall achieve Substantial Completion by the Substantial Completion Date. Unless the failure to achieve Substantial Completion by the Substantial Completion Date is a result of an Excusable Delay, as defined in Section 4.11.3, the delay shall be deemed Non-Excusable and the Design-Builder shall not be entitled to an extension of time. Without limiting the generality of the foregoing, delays due, but not limited to the following reasons shall be regarded as Non-Excusable and shall not entitle the Design-Builder to an extension of time:

- .1 Delays due to job site labor disputes, work stoppages, or suspensions of work;
- .2 Delays due to adverse weather, unless the Design-Builder establishes that the adverse weather was of a nature and duration in excess of averages established by data from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for the Project locale for the ten (10) years preceding the effective date of the Contract;
- .3 Delays due to the failure of the Design-Builder or Subcontractors or material suppliers at any tier to perform in timely or proper fashion, without regard to concepts of negligence or fault; or
- .4 Delays due to Site conditions whether known or unknown as of the effective date of the Contract, foreseeable or unforeseeable at that time, naturally occurring or man-made; provided, however, that delays due to differing site conditions as permitted by Article 4, Section A of the Standard Contract Provisions or Hazardous Materials Remediation shall be deemed an Excusable Delay.

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

- .1 Delays due to adverse weather other than those that are classified as a Non-Excusable delay in accordance with Section 4.11.2.2 of this Agreement;
- .2 Delays due to acts of God, war, unavoidable casualties, civil unrest, and other similar causes of delay that are beyond the control of the Design-Builder; provided, however, that in no event shall a Non-Excusable delay or the action of the Design-Builder, or any of its employees, agents, Subcontractors or material suppliers be deemed an Excusable Delay; or
- .3 Delays caused by Differing Site Conditions as permitted by Article 4, Section A of the Standard Contract Provisions or Hazardous Materials Remediation as contemplated in Section 3.11.3 of this Agreement.
- .4 Delays due to suspensions of work;

- .5 Delays caused by the Owner or separate contractors of the Owner to the extent such delays are not concurrent with delays caused by the Contractor; 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 of a duration of not less than three (3) days; (iv) is on Project's critical path; and (v) is in addition to any time contingency periods set forth in the critical path.

Section 4.11.4 If the Design-Builder wishes to make a request for an increase in the Contract time, written notice as provided herein shall be given. The Design-Builder's written notice and request to the Department 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 request is necessary. The information set forth in the Design-Builder's request, including, but not limited to any additional costs, shall be for the Department's consideration in determining whether to grant the Design-Builder's request for an increase in the Contract time and shall not be construed to entitle the Design-Builder to additional compensation or reimbursement of additional costs.

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

Section 4.11.6 Administrative Term. The Contract shall have an administrative term that runs from the effective date of the Notice to Proceed through the earlier of the following of: (i) December 31, 2018; or (ii) the date the Contractor executes and submits a Final Release of Liens and Claims in the form and format required by the Contracting Officer. The Administrative Term is established for the sole purpose of permitting the 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; and, limit the Department's ability to assess liquidated damages thereon.

Section 4.12 Site Safety and Clean-Up.

Section 4.12.1 The Design-Builder will be required to provide a safe and efficient site, with controlled access. The Design-Builder shall submit to the Department for its review and approval prior to the start of the Construction Phase a safety plan for Construction Phase. In the event the Design-Builder fails to provide such a plan, the Design-Builder will not be permitted to commence the Construction Phase until such a plan is submitted and in no event shall any

resulting delay constitute an Excusable Delay.

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

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

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

Section 4.13 Close-out & FF&E.

Section 4.13.1 The Design-Builder shall be responsible for purchasing and providing, or, at the Department's request, coordinating the delivery and installation of FF&E. A detailed list of FF&E requirements will be developed during the Design and Preconstruction Phase.

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

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

Section 4.13.4 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 ninety (90) days after substantial completion is achieved.

Section 4.13.5 Training. The Design-Builder shall provide training to DCPS staff on all of the building systems. 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 August 15, 2018.

Section 4.13.6 Warranties & Manuals. Subsequent to Substantial Completion and no later than August 15, 2018, 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 for the renovated building; (v) environmental, health and safety documents for the renovated building; and (vi) all applicable inspection certificates/permits (boiler, elevator, emergency evacuation plans, health inspection, etc.) for the renovated building. No later than September 15, 2018, the Design-Builder shall prepare and submit: (x) a complete set of its Project files; and (y) a set of record drawings.

Section 4.13.7 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.

Section 4.13.8 Support for Initial Heating & Cooling Season. The Design-Builder and its mechanical subcontractor shall provide support to DCPS and the Department during system start-up and in initial operation for the first heating and cooling season after Substantial Completion is achieved.

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

Section 4.15 Salvaged and Stored Items. The Design-Builder shall be responsible for salvaging and storing all items as identified by the Department in accordance with all applicable District laws and regulations, after notifying the Department and receiving the Department's permission to proceed.

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

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

The Design-Builder shall implement a Quality Control Plan for the Project. A draft of such plan shall be submitted to the Department no later than three (3) weeks after Notice to Proceed, and a final plan shall be agreed upon and approved by the Department's Program Manager within forty five (45) days after the Design Development Documents are approved and prior to commencing of the Work in the field. The Quality Control Plan shall be tailored to the specific products/type of construction activities contemplated by the GMP Basis Documents, and

in general, shall include a table of contents, quality control team organization, duties/responsibilities of quality control personnel, submittal procedures, inspection procedures, deficiency correction procedures, documentation process, and a list of any other specific actions or procedures that will be required for key elements of the Work.

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

Section 4.18 Acceleration. Subject to the terms of this Section 4.18, the Department shall have the right to direct the Design-Builder to accelerate the Work if, in the reasonable judgment of Department, the Design-Builder fails to: (i) supply a sufficiency of workers or to deliver the materials or equipment with such promptness as to prevent the delay in the progress of the Work; or (ii) the progress of the Work materially falls behind the projections contained in the then currently approved Project Schedule. In the event that the Department or its Program Manager determine that either of the events specified in the preceding sentence have occurred, the Department shall provide the Design-Builder with written notice of such event and the Design-Builder shall be required to provide the Department with a corrective action plan that is reasonably designed to address the concerns raised in such notice within three (3) days after receipt of such notice. If the Department and the Design-Builder are unable to agree on the terms of such corrective action plan within five (5) days after the issuance of the notice (i.e. with forty eight (48) hours after the receipt of the proposed corrective action plan), the Department shall have the right to direct such acceleration as the Department, in its reasonable judgment, deems necessary. Provided the notice provisions of this Section are complied with, the cost of any acceleration directed under this Section shall not justify an adjustment to the GMP on the Substantial Completion Date.

Given the nature of the Project and the fact that there is a fixed date upon which the Department intends to occupy the premises, 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 will include sufficient funding in its GMP in order to comply with the requirements of this Section.

Section 4.19 Corrective Action Plan. Subject to the terms of this Section 4.19, the Department shall have the right direct the Design-Builder to revise the provisions of its Quality Control Plan if, in the reasonable judgment of the Department, the craftsmanship of the Work being installed fails to comply with generally applicable industry standards, requirements set forth in the Specifications that are reasonably related to the quality of craftsmanship quality, or any provisions set forth in this Agreement. In the event that the Department or its Program Manager determine that any of the events specified in the preceding sentence have occurred, the

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

Section 4.20 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.

Section 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 construction work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. The Design-Build and a representative of the Department shall walk the Project together eleven (11) months after the Substantial Completion Date to identify any necessary warranty work.

ARTICLE 5 **DEPARTMENT'S RESPONSIBILITIES**

Section 5.1 Information and Services

Section 5.1.1 The Department shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Department's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

Section 5.2 Department's Designated Representative. The Department designates the individual(s) identified in **Exhibit E** as its representative with express authority to bind the Department with respect to all matters requiring the Department's approval or authorization;

provided, however, a duly authorized contracting officer shall have the express authority to bind the Department for matters that are administrative in nature or of a value no greater than One Hundred Thousand Dollars (\$100,000). Subject to the limitations on their authority specified in **Exhibit E**, these representative(s) shall have the exclusive authority to make decisions on behalf of the Department concerning estimates and schedules, construction budgets, changes in the Work, and execution of Change Orders or Change Directives, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Design-Builder. In order for the Department to effectively manage the Project and assure that the Design-Builder does not receive conflicting instructions regarding the Work, the Design-Builder shall promptly notify the Department's representative upon receiving any instructions or other communication in connection with the Design-Builder's Work from any employee of the Department or other purported agent of the Department other than the Department's representative.

Section 5.3 Design-Builder's Designated Representative. The Design-Builder designates the individual(s) identified in **Exhibit F** as its representative with express authority to bind the Design-Builder with respect to all matters requiring the Design-Builder's approval or authorization. In addition, the Department retains the right to approve candidates for key on-site personnel in accordance with their experience with similar projects and local marketplace conditions. Once approved, individuals cannot be changed without the Department's prior approval. During the entire term, it is agreed that the Design-Builder's designated representative will devote his time exclusively to the Project, unless the Department consents to a reduction in time. All services provided by the Design-Builder shall be performed in accordance with the highest professional standards recognized and adhered to by Design-Builders that construct schools in large urban areas.

ARTICLE 6
**COMPENSATION AND PAYMENTS FOR DESIGN AND PRECONSTRUCTION
PHASE SERVICES**

Section 6.1 Compensation

Section 6.1.1 The Department shall compensate and make payments to the Design-Builder for Preconstruction Services in accordance with this Article 6 and Article 9. Fifteen percent (15%) of the Base Design-Build Fee, as defined in Section 7.1.1 of this Agreement, shall be allocated to the Design-Builder's compensation for Preconstruction Services. Such percentage of the Base Design-Build Fee, in addition to the Design Fee set forth in Section 6.1.2 below, shall be the Design-Builder's sole compensation for Design and Preconstruction Phase Services. Such amounts shall include, but not be limited to, amounts necessary to compensate the Design-Builder for:

- Profit
- Home Office Overhead
- Cost of preconstruction staff

- Fringe Benefits associated with staff costs
- Payroll taxes associated with staff costs
- Staff costs associated with obtaining permits and approvals during the Preconstruction Phase
- Out-of-house consultants
- Travel, Living and Relocation expenses
- Job vehicles
- Office equipment including but not limited to:
 - Computer hardware and software
 - Fax machines
 - Copying machines
- Office supplies
- Telephone
- Local delivery and overnight delivery costs

Section 6.1.2 The Department shall compensate and make payments to the Design-Builder for design services and costs, without mark up, in accordance with this Article 6, Article 7 and Article 9. For design services, the Design-Builder’s compensation shall not exceed \$[_____] (the “Design Fee”).

Section 6.2 Payments

Section 6.2.1 Payments for Design and Preconstruction Phase Services shall be made monthly following presentation of the Design-Builder’s acceptable invoice and shall be in proportion to services performed. In no event, however, will the aggregate of the Design-Builder’s monthly invoices for Design and Preconstruction Phase Services exceed the sum of the Design Fee and fifteen percent (15%) of the Base Design-Build Fee.

Section 6.2.2 Payments are due and payable in accordance with Article 9 of this Agreement. Amounts unpaid after the date of which payments due shall bear interest in accordance with the Quick Payment Act.

ARTICLE 7
COMPENSATION FOR CONSTRUCTION PHASE SERVICES

Section 7.1 Compensation

Section 7.1.1 The Department shall compensate and make payments to the Design-Builder for Construction Phase Services in accordance with this Article 7 and Article 9. For Design-Build Phase Services, the Design-Builder’s compensation shall be in an amount not to exceed \$[_____] (the “Design-Build Fee”). Sixty percent (60%) of the Design-Build Fee shall be referred to herein as the Base Design-Build Fee. The remaining forty percent (40%) of the Design-Build Fee shall be referred to herein as the At Risk Portion, as further defined in Section 7.1.3 of this Agreement.

Section 7.1.2 [Intentionally Omitted].

Section 7.1.3 Award Fee. The Design-Builder acknowledges and agrees that forty percent (40%) of the Design-Build Fee (the “At Risk Portion”) is at risk, and the Design-Builder shall only be entitled to the At Risk Portion as set forth in Section 7.1.4. Unless and until the Design-Builder’s entitlement to any subset of the At Risk Portion is determined by the Department, the Design-Builder shall only be entitled to bill for the portion of the Design-Build Fee that is not at risk. The portion that is not at risk shall be billed in accordance with Article 9.

Section 7.1.4 The Design-Builder may earn the At Risk Portion of the Design Build Fee as follows: be eligible to earn the At-Risk Portion based on its performance regarding the goals outlined below:

- .1 If a GMP that does not exceed the Approved Concept Design Estimate is agreed upon by the Design-Builder and the Department on or before August 31, 2017, the Design-Builder shall earn twenty five percent (25%) of the At Risk Portion. In the event this milestone is achieved, then this portion of the At Risk Portion shall be paid on a monthly basis in equal month installments over the then-remaining life of the Project through Substantial Completion.
- .2 If (i) the Design-Builder achieves Substantial Completion (a) of the Main Building renovation on or before July 20, 2018, and (b) of the remainder of the Project on or before August 11, 2018; and (ii) the final amount due to the Design-Builder, inclusive of the earned portions of the Design-Build Fee, the Design Fee and the Cost of General Conditions, is less than One Hundred Three percent (103%) of the Target GMP, the Design-Builder shall earn twenty five percent (25%) of the At Risk Portion. In determining whether this objective has been met, the Department will evaluate whether the stated objective has, in fact, been achieved. This decision shall be made regardless of the reason why the objective has or has not been met, and the Design-Builder acknowledges and agrees that the Design-Builder shall lose entitlement to such portion of the Design-Build Fee even if objective is not met due to the fault of the Department, the Architect/Engineer, the Code Official, events of force majeure or otherwise. In the event this milestone is achieved, then this portion of the At Risk Portion shall be paid in the first progress payment that is due after Substantial Completion of the Project occurs;
- .3 The Design-Builder shall be eligible to earn up to twenty five percent (25%) of the At Risk Portion based on the level of design quality of the Project as delivered (such amount the “Design Quality Incentive”). The Design-Builder and the Department agree that this portion of the At Risk Portion shall be awarded by an award fee panel that consists of: (i) the Department’s Deputy Director for Capital Construction; (ii) the Principal of the School and (iii) a senior member of the Program Management team that was not involved in the day-to-day management

of this Project that is acceptable to both Parties (the “Panel”). Upon Substantial Completion, the Panel shall meet and determine the degree to which the Project as delivered complied with the design intent (both as to functionality, look and feel of the interior spaces, and its external appearance) of the design as reflected in the GMP Basis Documents. In making this determination, the Panel shall endeavor to reach a consensus among its members and ascribe one of the following four words to the overall success of the design intent: poor, fair, good or excellent.

If the Panel determines that the overall level of success was poor, then the Panel shall award Zero Dollars (\$0); if the Panel determines that the overall level of success was fair, then the Panel shall award one third (1/3) of the Design Quality Incentive; if the Panel determines that the overall level of success was good, then the Panel shall two thirds (2/3) of the Design Quality Incentive; and if the Panel determines that the overall level of success was excellent, then the Panel shall award all of the Design Quality Incentive. In the event the Panel cannot reach consensus, then each member of the Panel shall make a determination and the three such determinations shall be averaged with poor equating to 0% of the Design Quality Incentive, fair equating to 33% of the Design Quality Incentive, good equating to 67% of the Design Quality Incentive, and excellent equating to 100% of the Design Quality Incentive. Both the Design-Builder and the Department agree that the determination of the Panel shall be final and binding upon all Parties.

Any portion of the Design Quality Incentive to which it is determined that the Design-Builder is entitled shall be paid in the first progress payment that is due after Substantial Completion of the Project occurs;

- .4** The Design-Builder shall be eligible to earn up to twenty five percent (25%) of the At Risk Portion of the Design-Build Fee based on the level of construction quality of the Project as (such amount the “Construction Quality Incentive”). The Panel established by Section 7.1.4.3 of this Agreement shall determine entitlement to the Construction Quality Incentive. Upon Final Completion of the Project, the Panel shall meet and determine the degree to which the workmanship and construction quality of the Project is appropriate for a first-class building, giving consideration to the intended uses of the various spaces. In making this determination, the Panel shall endeavor to reach a consensus among its members and ascribe one of the following four words to the overall success of the construction quality: poor, fair, good or excellent.

If the Panel determines that the overall level of success was poor, then the Panel shall award Zero Dollars (\$0); if the Panel determines that the overall level of success was fair, then the Panel shall award one third (1/3) of the Construction Quality Incentive; if the Panel determines that the overall level of success was good, then the Panel shall two thirds (2/3) of the Construction Quality Incentive; and if the Panel determines that the overall level of success was excellent, then

the Panel shall award all of the Construction Quality Incentive. In the event the Panel cannot reach consensus, then each member of the Panel shall make a determination and the three such determinations shall be averaged with poor equating to 0% of the Construction Quality Incentive, fair equating to 33% of the Construction Quality Incentive, good equating to 67% of the Construction Quality Incentive, and excellent equating to 100% of the Construction Quality Incentive. Both the Design-Builder and the Department agree that the determination of the Panel shall be final and binding upon all Parties.

Any portion of the Design Quality Incentive to which it is determined that the Design-Builder is entitled shall be paid in the first progress payment that is due after Final Completion of the Project occurs;

Section 7.2 The Design-Build Fee, as adjusted in accordance with Section 7.1.4, shall be the Design-Builder's sole compensation for Construction Services. The Design-Build Fee shall include, but not be limited to, amounts necessary to compensate the Design-Builder for profit, home office overhead and home office staff.

Section 7.3 Maximum Cost of General Conditions. The Design-Builder shall not be entitled to recover more than \$[_____] for the Cost of General Conditions (such amount, the "Maximum Cost of General Conditions"). The Design-Builder understands and agrees that the Maximum Cost of General Conditions shall not be increased or decreased as a result of Change Orders or Change Directive unless such Changes (i) extend the duration for the Construction Phase for the Main Building beyond Labor Day 2018; and (ii) the Design-Builder can demonstrate to the satisfaction of the Department that such additional Cost of General Conditions are unavoidable. In the event of Excusable Delay, the Design-Builder may request an increase to the Maximum Cost of General Conditions and the Department may grant an increase for such reasonable amounts to which the Design-Builder can demonstrate entitlement. To the extent the Design-Builder incurs General Conditions costs in excess of the Maximum Cost of General Conditions, the Design-Builder shall not be entitled to reimbursement for such amounts. Nonetheless, in such an event, the Design-Builder exceeds the Maximum Cost of General Conditions, the Design-Builder shall be required to adequately staff the Project.

Section 7.3 Target GMP. The Department has established a budget of _____ Dollars (\$[_____]) for the Project (such budget, the "Target GMP"). Unless and until the GMP Amendment is executed and approved by the Council for the District of Columbia, this Contract has a not-to-exceed amount equal to the Target GMP. In no event shall the Design-Builder be entitled to recover more than such amount unless the Design-Builder is authorized to exceed such amount by the Department in advance and in writing. Prior to expending or committing any portion of the Target GMP, the Contractor shall obtain the Department's written approval of such expenditure or commitment.

Section 7.4 Changes in The Work.

Section 7.4.1 Changes Authorized. The Department may, without invalidating the Contract, and without notice to or approval of any surety, order changes in the Work, including additions, deletions or modifications. Any such change must be conveyed by the Department to the Design-Builder via written Change Directive or Change Order.

Section 7.4.2 Executed Change Directive/Change Order Required. Only a written Change Directive or Change Order, executed by the Department, may make changes to the Contract. In particular, but without limitation, a written Change Directive or Change Order executed by the Department is the only means by which changes may be made to the Substantial or Final Completion Date, the Design Fee, the Design-Build Fee, or the Guaranteed Maximum Price.

Section 7.4.3 Department-Initiated Changes

- .1 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 Date and/or the Guaranteed Maximum Price should be adjusted to take the Change Order or Change Directive into account.
- .2 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 Contract, including, without limitation, any changes to the Substantial or Final Completion Date or the Guaranteed Maximum 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 Guaranteed Maximum 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 Guaranteed Maximum 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 in Section 7.4.8, and if so authorized, any mark-up shall be in accordance with Section 7.4.11.
- .3 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 Date, and/or the Guaranteed Maximum 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.

- .4 If the parties fail to reach an agreement within sixty (60) days after the Department receives the Design-Builder's detailed statement pursuant to Subparagraph 7.4.3.2, and such other documentation as the Department may request, the Design-Builder may assert a claim in accordance with this Agreement. In such a case, and subject to adjustment via the claims and disputes process, the Department shall unilaterally grant the Design-Builder such adjustments, if any, to the Substantial or Final Completion Date, the Guaranteed Maximum Price, and/or the Design Fee or Design-Build Fee as the Department has judged to be appropriate.

Section 7.4.4 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 Contract 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 Date, or the Guaranteed Maximum 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 Date, or the Guaranteed Maximum Price arising from the Change Event.

Section 7.4.5 Detailed Change Request. Within twenty (20) days after giving notice of a change event, the Design-Builder shall submit a written change request describing, in reasonable detail, all adjustments it seeks to the Substantial or Final Completion Date or the Guaranteed Maximum Price as a result of the Change Event. The change request shall include the same information as described in Subparagraph 7.4.3 with respect to any Contract changes the Design-Builder seeks due to the Change Event, and the amount of any requested adjustment to the Guaranteed Maximum Price shall be limited in accordance with that Subparagraph.

Section 7.4.6 Changes to GMP. 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 Guaranteed Maximum Price in the following cases:

- .1 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 the Guaranteed Maximum Price Amendment; or

- .2 The Design-Builder encounters Differing Site Conditions or Hazardous Materials not identified in the Preconstruction Phase.

Section 7.4.7 Deductive Change Orders. The Department is likewise entitled to issue deductive Change Orders (reducing the Guaranteed Maximum Price or the Substantial or Final Completion 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.

Section 7.4.8 No Adjustments to Fee. The Design-Builder understands and agrees that the Design Fee and Design-Build Fee shall not be increased or decreased as a result of any Change Orders or Change Directive. In furtherance of this understanding, the Design-Builder agrees that it shall not be entitled to an increase in the Design Fee, Maximum Cost of General Conditions, or the Design-Build Fee by virtue of changes authorized by the Department unless such changes fall outside the general scope of work contemplated by this Agreement. The term general scope of work shall mean a state-of-the-art school that is consistent with the Department's program of requirements and incorporates sustainable design initiatives. Without limiting the generality of the foregoing, it is understood and agreed that the Design-Builder shall not be entitled to any additional fees or general conditions unless (i) the Department makes additions to the scope provided for in the GMP Amendment that cause the GMP, either individually or in the aggregate, to increase by more than ten percent (10%); or (ii) the Department makes additions to the scope provided for herein which (other than for punchlist or warranty work) require the Design-Builder's services for the Project to extend beyond Labor Day 2018; provided, however, that in the event that the GMP exceeds the Target GMP by more than ten percent (10%), the Department may authorize an increase to the Maximum cost of General Conditions if the Design-Builder can demonstrate to the satisfaction of the Department that such additional general conditions costs are reasonable and necessary.

Section 7.4.9 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. Although the Parties anticipate that most Change Orders will not require an adjustment to the Cost of General Conditions, if the Work described in a Change Order requires an increase or decrease in the Maximum Cost of General Conditions (i.e. because such a Change requires additional field staff or other equipment that would be classified as General Conditions Costs), the Change Order shall contain an increase to the Design-Build Fee adjusting such amount. The cost of processing a Change Order shall not be considered an event that will require an increase in the Maximum Cost of General Conditions.

Section 7.4.10 Failure to Agree. If the Design-Builder claims entitlement to a change in the Contract, and the Department does not agree that any action or event has occurred to justify

any change in time or compensation, or if the parties fail to agree upon the appropriate amount of the adjustment in time or compensation, the Department will unilaterally make such changes, if any, to the Contract, as it determines are appropriate pursuant to the Contract. The 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 12. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Contract and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

Section 7.4.11 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 Owner 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 7.4.11.1 shall be the Design-Builder's exclusive compensation and it shall not be entitled to the markup contemplated in Section 7.4.11.3;
- .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 To the extent permitted by Section 7.4.8, the Design-Builder shall be entitled to an increase in its Design-Build Fee at a rate of 2.9% on work performed by Subcontractors. Such markup shall cover the same cost elements that were included in the Design-Build Fee;
- .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:

- (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 Construction Manager will be based on receipted invoices which shall not exceed rates given in the current edition of the Rental Rate Blue Book for Construction Equipment published by Data Quest. If actual rental rates exceed manual rates, written justification shall be furnished to the Contracting Officer for consideration. No additional allowance will be made for overhead and profit. The Construction Manager shall submit written certification to the Contracting Officer that any required rented equipment is neither owned by nor rented from the Construction Manager or an affiliate of or subsidiary of the Construction Manager.
- (c) **Contractor's Equipment.** Payment for required equipment owned by the Construction Manager or an affiliate of the Construction Manager 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 under Section 8.1.

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.

ARTICLE 8 **COST OF THE WORK FOR CONSTRUCTION PHASE**

Section 8.1 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 Payments made by the Design-Builder to Subcontractors and suppliers, but only in accordance with the subcontracts and supply agreements ("Subcontractor Costs");
- .2 The cost of the Architect/Engineer's contract reimbursed at cost and without markup; provided, however, that such costs shall not exceed the Design Fee set forth in Article 6 of this Agreement. Any amounts in excess of the Design Fee shall not be reimbursable as a Cost of the Work;

- .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 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.
- .4 Royalty and license fees paid for use of a design, process or product, if its use is required by this Contract or has been approved in advance by the Department;
- .5 Fees for obtaining all required approvals or permits associated with the abatement, demolition, utilities abandonment, and utility relocation (including utility connection fees), as well as all trade permit fees. The Design-Builder shall be responsible for obtaining the building permit, and the building permit fees shall be paid from an allowance in the GMP;
- .6 All performance and payment bonds, builder's risk insurance, and general liability insurance.
- .7 All fees and other costs necessarily incurred to carry out testing and inspection required by the Contract 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 be within Cost of the Work unless the additional testing establishes that the Work tested was defective or otherwise failed to satisfy Contract

requirements, in which case the Design-Builder shall pay the costs, without reimbursement;

- .8 All bonds to jurisdictional agencies (utilities, storm water management, land disturbance, and grading);
- .9 The Cost of General Conditions, subject however to the Maximum Cost of General Conditions;
- .10 Costs of repairing or correcting damaged or nonconforming Work executed by the Architect/Engineer, or Contractor'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 Contractor, and only to the extent that the cost of repair or correction is not recoverable by the Contractor 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; and
- .11 The cost of premiums for subcontractor default insurance associated with the Project; provided, however, that the Contractor may only use subcontractor default insurance if such is approved by the Department in advance and after being presented with a cost benefit analysis of such use.

Section 8.2 Cost of General Conditions. Items included in the Cost of General Conditions are all items necessary to perform Construction Phase Services described herein including, but not limited to:

- .1 Cost of construction staff (only staff stationed in the field is reimbursable; however, exceptions will be made for scheduling, cost estimating and accounting services if such functions are normally provided by the Design-Builder's regional and/or home office personnel)
- .2 Fringe Benefits associated with field staff costs
- .3 Payroll taxes and payroll insurance associated with field staff costs
- .4 Staff costs associated with obtaining permits and approvals
- .5 Out-of-house consultants
- .6 Field office for CM including but not limited to: (i) trailer purchase and/or rent; (ii) field office installation, relocation and removal; (iii) utility connections and charges during the Construction Services Phase; (iv) furniture; (v) office supplies;

- .7 Office equipment including but not limited to: (i) computer hardware and software; (ii) fax machines; (iii) copying machines; (iv) telephone installation, system and use charges; (v) job radios
- .8 Local delivery and overnight delivery costs
- .9 Field computer network
- .10 First aid facility
- .11 Progress photos

Section 8.3 Costs Not to Be Reimbursed. All costs not specifically listed in Paragraph 8.1 as being within the Cost of the Work are excluded from the Cost of the Work. In particular, but without limitation, the Cost of the Work does not include any of the following:

- .1 Any personnel or labor costs other than those set forth in Section 8.1.3(a) or Section 8.2.1 of this Agreement
- .2 Fees for any permits or licenses the Design-Builder requires to conduct its general business operations
- .3 Capital expenses and interest on capital employed for the Work
- .4 Direct or indirect costs of any kind, except those expressly included in Section 8.1
- .5 Sales or use taxes, unless the Design-Builder establishes that applicable law required payment of such taxes
- .6 Costs due to the errors or omissions of the Design-Builder or its Subcontractors or suppliers at all tiers, negligent or otherwise
- .7 Costs dues to breach of Contract by the Design-Builder or its Subcontractors or material suppliers at all tiers, including, without limitation, costs arising from defective or damaged Work or its correction, disposal of materials or equipment erroneously supplied, and repairs to property damaged by the Design-Builder or its Subcontractors or material suppliers at all tiers
- .8 Any costs incurred in performing work of any kind before Notice to Proceed, unless specifically authorized by a duly authorized Contracting Officer of the Department in advance and in writing
- .9 Costs of third party material testing
- .10 Costs relating to commissioning

- .11 Costs of third party inspections
- .12 Costs of active OCTO equipment
- .13 Costs relating to third party plan review
- .14 Costs relating to public art acquisition

Section 8.4 Discounts, Rebates And Refunds

Section 8.4.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Department if (i) before making the payment, the Design-Builder included them in an Application for Payment and received payment therefor from the Department, or (ii) the Department has deposited funds with the Design-Builder with which to make payments; other cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Department, and the Design-Builder shall make provisions so that they can be secured.

Section 8.4.2 Amounts that accrue to the Department in accordance with the provisions of Subsection 8.4.1 shall be credited to the Department as a deduction from the Cost of the Work.

Section 8.5 Facilitating Tax Exempt Purchases. The Department expects that the Project will qualify as tax-exempt under applicable laws. The Department will provide the Design-Builder with the necessary information relating to the tax exemption. In the event any savings are attributable to the tax-exempt status of the Project, the Design-Builder shall not be entitled to share in such savings.

Section 8.6 Accounting Records. The Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract, the accounting and control systems shall be satisfactory to the Department. The Department, its representatives, and the Department's accountants shall be afforded access to the Design-Builder's records, books, correspondence, instruction, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Design-Builder shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 9
CONSTRUCTION PHASE PAYMENTS

Section 9.1 Progress Payments. The Design-Builder shall be paid its compensation in a series of progress payments and a final payment, for Work completed in accordance with the Contract, and for which proper Applications for Payment have been submitted and approved. The amount of each progress payment shall be as follows:

The Costs of Work Completed to Date

- Plus Cost of Work for Pay Period x portion of Design-Build Fee not at risk
- Current approved estimated Cost of Work through completion
- Plus Any subset of the At Risk Portion of the Design-Build Fee to which the Department has determined the Design-Builder to be entitled
- Minus Applicable Retainage
- Minus Amounts previously paid by the Department

Section 9.2 Retention. The Department shall withhold from each progress payment an amount equal to ten percent (10%) of the payment related to: (i) each Subcontract and supply agreement, (ii) the Design Fee, (iii) Design-Build Fee, (iv) the Cost of General Conditions; and (v) the Cost of the Work related to each item of Self-Performed Work, until such time as fifty percent (50%) of the then currently budgeted cost associated with each such an item has been invoiced at which point the Department may cease retaining against such item. The Department may elect to increase the retention on any trade subcontractor up to ten percent (10%) in the event the Department determines that the situation so warrants. The Department, in its sole and absolute discretion, may elect to reduce the retainage relating to a particular trade Subcontractor, or the Cost of the Work related to a specific item of Self-Performed Work to zero upon: (x) satisfactory completion of such Work; (y) submission of all required warranties, certifications, and operating or maintenance instructions with respect to that Work; and (z) execution of appropriate waivers of lien and releases of claims. 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 GMP.

Section 9.3 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.

Section 9.4 Stored Materials. The Department shall not be required to pay for materials stored at the site or stored at other locations, absent its express agreement to do so, which 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 Contract, 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.

Section 9.5 Design-Builder's Certification. Each Application for Payment shall be accompanied by the Design-Builder's signed certification that 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 has been paid over to the appropriate Subcontractors and suppliers; that all amounts currently sought for Subcontractor Work or supply of materials or equipment are currently due and owing to the Subcontractors and material or equipment suppliers; and that all Work, materials or equipment for which payment is sought is, to the best of the Design-Builder's knowledge, free from defect and meets all of the Contract requirements. The Design-Builder shall not include in an Application Payment amounts for Work for which the Design-Builder does not intend to pay.

Section 9.6 Lien Waivers. Each Application for Payment shall be accompanied by written waivers of the right to file a mechanic's lien and all other claims, in a form substantially similar to **Exhibit G** 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 Contract, and providing final release of such liens.

Section 9.7 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.

Section 9.8 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.

Section 9.9 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:

- .1 the Work is defective and such defects have not been remedied; or
- .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 plan to recover the delays; or
- .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 plan to recover the delays; or
- .4 the Design-Builder has failed to provide the monthly reports in full compliance with Section 4.7 of this Agreement; or
- .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
- .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
- .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 Guaranteed Maximum Price would not be adequate to cover actual or liquidated damages arising from the anticipated delay; or
- .8 the Department has reasonable evidence that the Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price;
- .9 the Design-Builder is otherwise in substantial breach of this Contract (including, without limitation, failures to comply with LSDBE Utilization requirements in Article 11); or

- .10 the Application for Payment is incomplete, unsubstantiated and/or does not contain sufficient documentation for evaluation by the Contracting Officer.

Section 9.10 Payment Not Acceptance. Payment of any progress payment or final payment shall not constitute acceptance of Work that is defective or otherwise fails to conform to the Contract, or a waiver of any rights or remedies the Department may have with respect to defective or nonconforming Work.

Section 9.11 Department Not Obligated to Others. The Department shall have no obligation to pay or be responsible in any way for payments to a consultant or subcontractor performing portions of the Work. The Department shall have no obligation, after assignment of the Design Contract to the Design-Builder, to pay or be responsible in any way for payments to the Architect/Engineer.

Section 9.12 Final Payment. Final payment shall be made by the Department to the Design-Builder when (i) Final Completion has been achieved; (ii) a certification by the Design-Builder that except for requested final payment, all subcontractors and suppliers have been paid in full and that appropriate partial lien releases have been obtained from such subcontractors and suppliers documenting such payments; and (iii) a complete and final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Design-Builder and reviewed by the Department and, to the extent the Department determines appropriate, its accountants. The Department shall make such final payment not more than thirty (30) days after the Department receives such report and verifies the amount of the final payment set forth in a complete final Application for Payment. The Department may, if it so elects, require that copies of all lien releases be provided as a condition precedent to making final payment.

Section 9.12.1 The amount of the final payment shall be calculated as follows:

- .1 Take the sum of the Cost of the Work substantiated by the Design-Builder's final accounting and the Design Fee and the Design-Build Fee as adjusted to reflect whether the goals established in Section 7.1.2 have been met; but not more than the Guaranteed Maximum Price.
- .2 Subtract amounts, if any, for which the Department withholds pursuant to the Contract.
- .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.
- .4 The final payment shall take into account any savings accruing to the Department or the Design-Builder.

Section 9.12.2 The Department will review and report in writing on the Design-Builder's final accounting within 30 days after delivery of the final accounting to the Department by the Design-Builder. Based upon the Department's determination of the Cost of the Work, and provided the other conditions of Subsection 9.12.1 have been met, the Department will, within fifteen (15) days after receipt of 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.

Section 9.12.3 If the Department determines that the Cost of the Work is other than that claimed by the Design-Builder, the Design-Builder shall be entitled to proceed in accordance with Article 3 of the Standard Contract Provisions. Pending a final resolution of the disputed amount, the Department shall pay the Design-Builder the amount that the Department determines to be appropriate.

Section 9.13 Liquidated Damages. If the Design-Builder fails to achieve Substantial Completion by the Substantial Completion Date, the parties acknowledge and agree that the actual damage to the Department for the delay will be impossible to determine, and in lieu thereof, the Design-Builder shall pay to the Department, as fixed, agreed and liquidated delay damages in the amount of Five Thousand Dollars (\$5,000) per day for each calendar day of delay for failure to meet the Substantial Completion Date. The Design-Builder and the Department agree that the liquidated damages set forth in this Section 9.13 do not constitute, and shall not be deemed, a penalty but represent a reasonable approximation of the damages to the Department associated with a delay in the Project.

Section 9.14 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 10 **INSURANCE AND BONDS**

Section 10.1 Insurance Required by the Project

Section 10.1.1 The Design-Builder will be required to maintain the following types of insurance throughout the life of the Project unless otherwise indicated below. In the event that a claim for or related to the Project is made on any such policy or any other policy, the Design-Builder shall be responsible for the payment of any applicable deductible and shall not be entitled to an increase in the GMP for the costs of paying such deductible.

- .1** Commercial general public liability insurance ("Liability Insurance") against liability for bodily injury and death and property damage, such Liability Insurance to be in an amount not less than Five Million Dollars (\$5,000,000) for liability for bodily injury, death and property damage arising from any one occurrence and Five Million Dollars (\$5,000,000) from the aggregate of all occurrences within

each policy year. The Design-Builder shall ensure that such coverage remains in place for the duration of the Project as well as three (3) years after Substantial Completion of the Project is achieved.

- .2 Workers' Compensation and Employers Liability coverage providing statutory benefits for all persons employed by the Design-Builder, or its contractors and subcontractors at or in connection with the Work.
- .3 Automobile Liability, including Hired and Non-Owned Auto Liability in the amount of at least One Million Dollars (\$1,000,000) for each occurrence for bodily injury and property damage.
- .4 Excess umbrella liability coverage (on at least a follow form basis) having an aggregate limit of at least Ten Million dollars (\$10,000,000).
- .5 With respect to the Architect/Engineer, errors and omissions coverage written on a claims made basis and having an aggregate policy limit of at least Five Million Dollars (\$5,000,000).
- .6 Contractor's Pollution Legal Liability insurance coverage in the amount of at least Two Million Dollars (\$2,000,000) for each occurrence. Such coverage shall be maintained for the duration of the Project as well as three (3) years after Substantial Completion of the Project is achieved
- .7 Builder's risk insurance written on an "all risk" basis and covering the value of the improvements being constructed. This coverage does not need to be maintained until such time as construction operations begin.

In addition, the Design-Builder shall ensure that any subcontractors involved in the abatement and/or disposal of hazardous materials maintain a contractor's pollution legal liability insurance policy of at least Two Million Dollars (\$2,000,000) for the duration of the Project and a period of three (3) years after Substantial Completion of the Project, and that any disposal site to which hazardous materials are taken carries environmental impairment liability insurance for the duration of the Project and a period of three (3) years after Substantial Completion of the Project.

Section 10.1.2 Each insurance policy shall be issued in the name of the Design-Builder and shall name as additional insured parties the Department and the District of Columbia, and the officers, agents and employees of each. Such insurance shall not be cancelable or reduced without thirty (30) days prior written notice to the Department.

Section 10.1.3 All such insurance shall contain a waiver of subrogation against the Department and the District of Columbia, and their respective agents.

Section 10.1.4 All such insurance policies shall be written by a company that is rated at

least A- by A.M. Best and having a surplus size rating of at least XV and is licensed/approved to do business in the District of Columbia.

Section 10.2 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 GMP. 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 Guaranteed Maximum Price is increased pursuant to the terms of the Contract, the Department may require that the amount of the bonds be increased in the amount of one hundred percent (100%) of the increase, and the 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. If the Design-Builder fails to furnish evidence of such payment and performance bonds, agreements of indemnity or such additional security as set forth in this Section 10.2, within ten (10) days after written notice so to do, all payments under this Agreement will be withheld and work under this Agreement will be stopped until evidence of such bonds, additional security or agreements of indemnity is furnished.

ARTICLE 11 **ECONOMIC INCLUSION REQUIREMENTS**

Section 11.1 LSDBE Utilization.

Section 11.1.1 The Design-Builder shall ensure that Local, Small and Disadvantaged Business Enterprises will participate in at least [fifty percent (50%)] of the Contract Work called for by this Agreement. Thirty-five percent (35%) of the Contract Work must be awarded to entities that are certified as either Small or Disadvantaged Business Enterprises by the District of Columbia Department of Small and Local Business Development and twenty percent (20%) of the Contract Work must be awarded to entities that are certified as Disadvantaged Business

Enterprises. 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.

Section 11.1.2 The Design-Builder has developed a LSDBE Utilization Plan that is attached hereto as **Exhibit H**. The Design-Builder shall comply with the terms of the LSDBE Utilization Plan in making purchases and administering its Subcontractors and Supply Agreements.

Section 11.1.3 Neither the Design-Builder or a Subcontractor may remove a Subcontractor or tier-Subcontractor if such Subcontractor or tier-Subcontractor is certified as an LSDBE company unless the Department approves of such removal. The Department may condition its approval upon the 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.

Section 11.2 Equal Employment Opportunity and Hiring of District Residents

Section 11.2.1 The Design-Builder shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

Section 11.2.2 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 Contract, 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.

Section 11.2.3 [intentionally omitted]

Section 11.2.4 Thirty five percent (35%) of all apprentice hours worked on the Project shall be worked by District residents.

Section 11.3 Economic Inclusion Reporting Requirements

Section 11.3.1 Upon execution of the Contract, 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 Contract, the date they were hired and whether or not they live in the District of Columbia.

Section 11.3.2 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.

Section 11.3.3 The Design-Builder shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

Section 11.3.4 The Design-Builder shall be responsible for: (i) including the provisions of Section 11.3 in all subcontracts; (ii) collecting the information required in Section 11.3 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 11.3.

Section 11.4 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.*

ARTICLE 12
CLAIMS & DISPUTE RESOLUTION

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

ARTICLE 13
MISCELLANEOUS PROVISIONS

Section 13.1 Extent of Contract. The Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Department and Design-Builder and supersedes all prior negotiations representations or agreements, either written or oral. The Contract may be amended only by written instrument signed by both the Department and Design-Builder. If anything in any

document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

Section 13.2 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 design documents and other documents prepared by the Architect/Engineer shall become the property of the Department.

Section 13.3 Governing Law. The Contract shall be governed by and construed in accordance with the laws of the District of Columbia, without regard to its conflict of laws principles.

Section 13.4 Binding Effect; 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 Contract Documents. The Design-Builder shall not assign its rights under the Contract, including the right to all or a portion of its compensation, without the Department's prior written consent. Any delegation or assignment made contrary to the provisions of this Section shall be null and void.

Section 13.5 Retention of Records and Inspections and Audits

Section 13.5.1 The Design-Builder shall maintain books, records, documents and other evidence directly pertinent to performance under the Contract in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Contract.

Section 13.5.2 The Design-Builder shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Department and the required cost submissions in effect on the date of execution of the Department.

Section 13.5.3 The Department, the District of Columbia government, the District of Columbia Financial Responsibility and Management Assistance Office, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Design-Builder for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Design-Builder. The Design-Builder shall provide proper facilities for such access and inspection.

Section 13.5.4 The Design-Builder agrees to include the wording of this Section in all its subcontracts in excess of five thousand dollars (\$5,000) that directly relate to Project performance.

Section 13.5.5 Audits conducted pursuant to this Section will be in accordance with generally acceptable auditing principles and established procedures and guidelines of the applicable reviewing or audit agency.

Section 13.5.6 The Design-Builder agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Design-Builder, the auditing agency will afford the Design-Builder an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

Section 13.5.7 The Design-Builder shall preserve all records described herein from the effective date of the Contract completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

Section 13.6 Inspection For Supplies And Services

Section 13.6.1 To the extent applicable or appropriate, the Department may, in its sole discretion, enter the place of business of the Design-Builder or the place of business of any Subcontractor in order to inspect or test supplies or services for acceptance by the Department. If inspections and tests are performed at the place of business of the Design-Builder or any Subcontractor, the inspections and tests shall be performed in a manner so as to not unduly delay the Work. Inspections and tests by the Department shall not relieve the Design-Builder or any Subcontractor of responsibility for defects or other failures to meet Contract requirements, and shall not constitute or imply acceptance.

Section 13.6.2 Notwithstanding the Department's acceptance of or payment for any product or service delivered by Design-Builder, the Design-Builder shall remain liable for deficient work, defective work, latent defects, fraud, gross mistakes amounting to fraud and the Department's rights under any warranty or guarantee. In no event shall the Department be required to pay for defective work, deficient work, and work not in compliance with the Contract.

Section 13.6.3 The Department shall have the right to enter the place of business of the Design-Builder or the place of business of any Subcontractor in order to investigate any contractor or offeror with respect to a debarment or suspension of the Design-Builder or any such Subcontractor.

Section 13.7 Laws And Regulations Incorporated by Reference. All federal and District of Columbia laws and regulations, and all Department procedures and standard provisions now or hereafter in effect, whether or not expressly provided for or referred to in the Contract, are incorporated by reference herein and shall be binding upon the Design-Builder and the Department. It shall be the responsibility of the Design-Builder to perform the Contract in conformance with the Department's procurement regulations and all statutes, laws, codes, ordinances, regulations, rules, requirements, and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the 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.

Section 13.8 Tax Exemption Provision. Any tax exemptions applicable to the District of Columbia, including the gross receipts sales tax exemption for the sale of tangible personal property to the District, codified in D.C. Code § 47-2005, shall apply to the performance of the Contract.

Section 13.9 Anti-Competitive Practices and Anti-Kickback Provisions

Section 13.9.1 The Design-Builder recognizes the need for markets to operate competitively and shall observe and shall comply with all applicable law, rules, and regulations prohibiting anti-competitive practices. The Design-Builder shall not engage, directly or indirectly, in collusion or other anti-competitive practices that reduces or eliminates competition or restrains trade. In the event that it is discovered that the Design-Builder has engaged in such conduct, the Department may terminate this Contract without liability. The Department shall report to the appropriate authority any activity that evidences a violation of the antitrust laws, and take such other further action to which it is entitled or obligated under the law.

Section 13.9.2 The Design-Builder shall observe and comply with all applicable law, rules, and regulations prohibiting kickbacks and, without limiting the foregoing, Design-Builder shall not (i) provide or attempt to provide or offer to provide any kickback; (ii) solicit, accept, or attempt to accept any kickback; or (iii) include, directly or indirectly, the amount of any kickback in the contract price charged by Design-Builder or a Subcontractor of the Design-Builder to the Department. The Design-Builder shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in this subparagraph in its own operations and direct business relationships. The Department may take any recourse available to it under the law for violations of this anti-kickback provision.

Section 13.9.3 The Design-Builder represents and warrants that it did not, directly or indirectly, engage in any collusive or other anti-competitive behavior in connection with the bid, negotiation or award of the Contract. In the event that it is discovered that the Design-Builder has engaged in such conduct, the Department may terminate this Contract without liability.

Section 13.10 Ethical Standards For Department's Employees And Former Employees. The Department expects the Design-Builder to observe the highest ethical standards

and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Design-Builder, nor any person associated with the Design-Builder, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Design-Builder shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed under the Contract. The Design-Builder may not assign to any former Department or District employee or agent who has joined the Design-Builder's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Design-Builder may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Design-Builder shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Subcontractor or vendor.

Section 13.11 Gratuities and Officers Not to Benefit Provisions

Section 13.11.1 If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Design-Builder, or any agent or representative of the Design-Builder, to any official, employee or agent of the Department or the District with a view toward securing the Contract or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the Design-Builder, terminate the right of the Design-Builder to proceed under the Contract and may pursue such other rights and remedies provided by law and under the Contract.

Section 13.11.2 In the event the Contract is terminated as provided in Section 13.11.1, the Department shall be entitled:

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

Section 13.11.3 No member of, nor delegate to Congress, Mayor or City Council Member, nor officer nor employee of the District, nor officer nor employee of the Department shall be admitted to any share or part of the Contract or to any benefit that may arise therefrom, and all agreements entered into by the authorized representative of the Department in which he or any officer or employee of the Department shall be personally interested as well as all agreements made by the Department in which the Mayor or City Council Member or officer or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department or by any officer thereof; but this provision shall

not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or officer or employee of the District is de minimus.

Section 13.12 Covenant Against Contingent Fees Provisions. The Design-Builder warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a Commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Design-Builder for the purpose of securing business. For breach or violation of this warranty, the Department shall have the right to terminate the Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the Department, percentage, brokerage of contingent fee.

Section 13.13 Non-Discrimination in Employment Provisions

Section 13.13.1 The Design-Builder agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. The affirmative action shall include, but not be limited to, the following:

- .1 Employment, upgrading, or transfer;
- .2 Recruitment or recruitment advertising;
- .3 Demotion, layoff, or termination;
- .4 Rates of pay, or other forms of compensation; and
- .5 Selection for training and apprenticeship.

Section 13.13.2 Unless otherwise permitted by law and directed by the Department, the Design-Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Department setting forth the provisions of this Section concerning non-discrimination and affirmative action.

Section 13.13.3 The Design-Builder shall, in all solicitations or advertisements for employees placed by or on behalf of the Design-Builder, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in this Section.

Section 13.13.4 The Design-Builder agrees to send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Department, advising each labor union or workers' representative of the Design-Builder's commitments under this Section, and shall post

copies of the notice in conspicuous places available to employees and applicants for employment.

Section 13.13.5 The Design-Builder agrees to permit access by the Department to all books, records and accounts pertaining to its employment practices for purposes of investigation to ascertain compliance with this Section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

Section 13.13.6 The Design-Builder shall include in every subcontract the equal opportunity clauses of this Section so that such provisions shall be binding upon each Subcontractor or vendor.

Section 13.13.7 The Design-Builder shall take such action with respect to any Subcontractor as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for non-compliance.

Section 13.14 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.

Section 13.14.1 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 Contract, except for non-domestic material listed in the Contract.

Section 13.14.2 Domestic Construction Material. “Construction material” means any article, material or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a “domestic construction material” if it has been mined or produced in the United States. A manufactured construction material is a “domestic construction material” if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. “Component” means any article, material, or supply directly incorporated in a construction material.

Section 13.14.3 Domestic Component. A component shall be considered to have been “mined, produced, or manufactured in the United States” regardless of its source, in fact, if the article, material or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

Section 13.14.4 Foreign Material. When steel materials are used in a project a minimal use of foreign steel is permitted. The cost of such materials cannot exceed one-tenth of one percent of the total project cost, or \$2,500,000, whichever is greater.

Section 13.15 Contract Work Hours And Safety Standards Act Provision. The Design-Builder agrees that the construction work performed under this Contract shall be subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333).

Section 13.16 Davis-Bacon Act Provision. The Design-Builder agrees that the construction work performed under this Contract shall be subject to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-7). The wage rates applicable to this Project are attached as **Exhibit I**. 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.

Section 13.17 False Claims Act. Design-Builder shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in District of Columbia Code §22-2514 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 Contract without liability.

Section 13.18 Interpretation of Contract. All of the documents comprising the Contract should be read as complementary, so that what is called for by one is called for by all. Ambiguities should be construed in favor of a broader scope of work for the Design-Builder, as the intent of the Contract 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 Contract, the order of precedence among them is as follows, with the first listed document having the highest priority: this Agreement and its Exhibits, and the Construction Documents released by the Department, and the GMP Amendment. Any Change Order issued and executed by the Department shall supersede those portions of earlier dated contract documents to which it pertains.

Section 13.19 Independent Contractor. In carrying out all its obligations under the Contract, the Design-Builder shall be acting as an independent contractor, and not as an employee or agent of the Department, or joint venturer or partner with the Department. The 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 Project safety.

Section 13.20 Confidential Information. In the course of the Design-Builder's performance of the Work, the Department may make available to the Design-Builder information that the Department designates as trade secrets or other confidential engineering, technical and business information. As long as, and to the extent that, such information remains confidential and available to others only with the consent of the Department, or is not generally available to

the public from other sources, the Design-Builder shall maintain such information in strict confidence and shall not disclose any such information to others (including its employees or Subcontractors), except to the extent necessary to enable the Design-Builder to carry out the Project. The Design-Builder shall similarly obligate any and all persons to whom such information is necessarily disclosed to maintain the information in strict confidence. The Design-Builder agrees that, in the event of any breach of this confidentiality obligation, the Department shall be entitled to equitable relief, including injunctive relief or specific performance, in addition to all other rights or remedies otherwise available.

Section 13.21 No Third-Party Beneficiary Rights. Nothing in this Agreement shall be construed as creating third-party beneficiary rights in any person or entity, except as otherwise expressly provided in this Agreement.

Section 13.22 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.

Section 13.23 Construction. This Agreement shall be construed fairly as to all parties and not in favor of or against any party, regardless of which party prepared the Agreement.

Section 13.24 Notices. All notices or communications required or permitted under the Contract shall be in writing and shall be hand delivered or sent by telecopier or by recognized overnight carrier to the intended recipient at the address stated below, or to such other address as the recipient may have designated in writing. Any such notice or communication shall be deemed delivered as follows: if hand delivered, on the day so delivered, if sent by telecopier, on confirmation of successful transmission, and if sent by recognized overnight carrier, the next business day.

If to the Department:

Greer John Gillis, PE
Interim Director
Department of General Services
2000 14th Street, NW

Washington, DC 20009

If to the Design-Builder:

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

Section 13.25 Limitations. The Design-Builder agrees that any statute of limitations applicable to any claim or suit by the Department arising from this Contract or its breach shall be controlled by applicable District of Columbia law.

Section 13.26 Survival. All agreements warranties, and representations of the Design-Builder contained in the Contract or in any certificate or document furnished pursuant to the Contract shall survive termination or expiration of the Contract.

Section 13.27 No Waiver. If the Department waives any power, right, or remedy arising from the Contract or any applicable law, the waiver shall not be deemed to be a waiver of the power, right, or remedy on the later recurrence of any similar events. No act, delay, or course of conduct by the Department shall be deemed to constitute the Department's waiver, which may be effected only by an express written waiver signed by the Department.

Section 13.28 Remedies Cumulative. Unless specifically provided to the contrary in the Contract, all remedies set forth in the Contract are cumulative and not exclusive of any other remedy the Department may have, including, without limitation, at law or in equity. The Department's rights and remedies will be exercised at its sole discretion, and shall not be regarded as conferring any obligation on the Department's to exercise those rights or remedies for the benefit of the Design-Builder or any other person or entity.

Section 13.29 Headings/Captions. The headings or captions used in this Agreement or its table of contents are for convenience only and shall not be deemed to constitute a part of the Contract, nor shall they be used in interpreting the Contract.

Section 13.30 Entire Agreement; Modification. The Contract supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to the Contract shall be effective 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 Contract. Notwithstanding the foregoing, nothing herein shall be construed to limit the Department's ability to unilaterally modify the Contract.

Section 13.31 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable; each part of this Agreement is intended to be severable.

Section 13.32 Anti-Deficiency Act. The Department's obligations and responsibilities under the terms of the Contract and the Contract Documents are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) the D.C. Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act. Neither the Contract nor any of the Contract Documents shall constitute an indebtedness of the Department, nor shall it constitute an

obligation for which the Department is obligated to levy or pledge any form of taxation, or for which the Department has levied or pledged any form of taxation. **IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE CONTRACT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.**

ARTICLE 14 **TERMINATION OR SUSPENSION**

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

ARTICLE 15 **OTHER CONDITIONS AND SERVICES**

This Contract 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 16 **DEFINITIONS**

Section 16.1 Agreement. The term Agreement shall mean this Agreement, the Standard Contract Provisions, and the exhibits attached hereto or any document incorporated by reference.

Section 16.2 Change Directive. A written direction signed and issued by the Department ordering the Design-Builder either to provide pricing and schedule impact information for a described change to the Work or to proceed with a described change and provide pricing and schedule impact information after beginning the changed Work.

Section 16.3 Change Event. Any condition, event, act, omission or breach, other than the issuance of a Change Directive, which the Design-Builder believes entitles it to a change in the Guaranteed Maximum Price, the Design Fee, Design-Build Fee, the Maximum Cost of General Conditions, or the Substantial or Final Completion Date.

Section 16.4 Change Order. A written document, executed by the Department and the Design-Builder, setting forth the agreed terms upon which a change to the Contract has been made.

Section 16.5 Construction Documents. The final Drawings and Specifications, as prepared, sealed by the Architect/Engineer's design professional in accordance with the law, and

issued by the Design-Builder for the purpose of obtaining bids from potential trade Subcontractors and material suppliers for use in constructing the Project.

Section 16.6 Cost of General Conditions. The Cost of General Conditions shall have the meaning set forth in Section 8.2 of this Agreement.

Section 16.7 Contract. The entire, integrated agreement between the Department and the Design-Builder with respect to the Project, consisting of this Agreement and the Exhibits to the Agreement, the Construction Documents released for the Design-Builder's use and any Change Directives or Change Orders that have been executed by the Department.

Section 16.8 Contract Documents. The Contract Documents consist of 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 16.9 Differing Site Conditions. The term Differing Site Conditions shall mean subsurface conditions on or adjacent to the Project site which differ materially from those indicated in the geotechnical reports prepared by the Architect/Engineer and its subconsultants. It shall be the responsibility of the Design-Builder to work with the Architect/Engineer during the Design, Selective Demolition and Preconstruction Phase to review the reports prepared by the Architect/Engineer. The GMP Amendment shall identify the geotechnical reports upon which it is based. The term Differing Site Conditions shall also include unknown physical conditions at the site of an unusual nature which differ materially from those ordinarily encountered and generally recognized as inhering to work of the character provided for in this Contract. During the Design, Selective Demolition and Preconstruction Phase, the Design-Builder shall be required to conduct a thorough review of the Project site and the surrounding area and shall document its findings. In the event the Design-Builder fails to undertake and document such a thorough review, the Design-Builder shall be deemed to have known of those conditions which a thorough review would have detected.

Section 16.10 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 16.11 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 received by the Department.

Section 16.12 Final Completion Date. The date established in the GMP Amendment 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 16.13 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 Contract.

Section 16.14 Guaranteed Maximum Price or GMP. The maximum amount, including, but not limited to, the Design Fee, the Design-Build Fee and the Cost of the Work, that will be paid the Design-Builder to Fully Complete the Project. The GMP may be modified only by Change Order or Change Directive in accordance with the Agreement. The GMP shall be established in the GMP Amendment.

Section 16.15 Hazardous Material. Any toxic substance or hazardous chemical defined or regulated pursuant to federal, state or local laws relating to pollution, treatment, storage or disposal of waste, or protection of human health or the environment. Such laws include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act and laws relating to emission, spills, leaks, discharges, releases or threatened releases of toxic material. The term Hazardous Materials shall also include petroleum and petroleum bi-products. The Term "**Hazardous Material Remediation Costs**" shall mean the cost of the Work to actually remove, treat, and/or dispose of, Hazardous Material and the appropriate unit price(s) applicable to the Work.

Section 16.16 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.

Section 16.17 Project Schedule. The schedule for the project agreed to by the Department and the Design-Builder as part of the GMP Amendment. Such schedule shall not be changed except by a Change Order or Change Directive issued by the Department. The schedule shall be in a form and contain such detail as may be agreed upon by the parties.

Section 16.18 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 16.19 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 16.20 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 J** and incorporated herein.

Section 16.21 Subcontractor. Any person, natural or legal, to whom the Design-Builder delegates performance of any portion of the Work required by the Contract. The term "Subcontractor," used without a qualifier, shall mean a subcontractor in direct privity with the 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, sub-sub-subcontracts, 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 Contract, except that references to "trade Subcontractors" shall exclude design professionals.

Section 16.22 Substantial Completion. Substantial Completion shall mean that all of the following have occurred: (1) the construction and installation work have been completed with only minor punch list items remaining to be completed; (2) a permanent certificate of occupancy and all other required permits or approvals have been obtained; (3) all operating and maintenance manuals, training videotapes and warranties required by the Contract have been delivered to the Department; (4) any supplemental training session required by the Contract for operating or maintenance personnel have been completed; (5) all clean-up required by the Contract has been completed; (6) the Project is ready for the Department 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 sixty (60) days without interfering with the Department's normal use of the Project.

Section 16.23 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 or Change Directive in accordance with the Agreement.

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

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

By: _____

Name: _____
Title: _____
Date: _____

[CONTRACTOR]

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

Exhibit A

Form of GMP Amendment

Exhibit B

Program of Requirements

Exhibit C

Preliminary Schedule

Exhibit D

Key Personnel

Exhibit E

Department's Designated Representatives

Exhibit F

Design-Builder's Designated Representatives

Exhibit G

Form of Lien Waiver

Exhibit H

Preliminary LSDBE Utilization Plan

Exhibit I

Davis-Bacon Wage Determination

Exhibit J

Standard Contract Provisions

Exhibit C

District of Columbia Department of General Services Standard Contract Provisions

GENERAL PROVISIONS (Construction Contract)

ARTICLE 1. DEFINITIONS

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

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

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

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

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

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

ARTICLE 3. CHANGES

- A. DESIGNATED CHANGE ORDERS**—The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract, including but not limited to changes
1. In the Contract drawings and specifications;
 2. In the method or manner of performance of the work;
 3. In the Government furnished facilities, equipment, materials or services; or
 4. Directing acceleration in the performance of the work.

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

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

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

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

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

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

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

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

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

E. CHANGES BEYOND THE ORIGINAL SCOPE OF WORK

1. The Government or a prime contractor shall be 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 Government-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;

2. A prime contractor shall include in all its subcontracts a clause that requires the prime contractor to:

- (a) Within 5 business days of receipt of the notice required under subparagraph (1)(d) 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 Government; 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

3. The Government, a prime contractor, or a subcontractor shall be 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.

ARTICLE 4. EQUITABLE ADJUSTMENT OF CONTRACT TERMS

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

A. DIFFERING SITE CONDITIONS:

1. During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the Contractor, upon discovering such conditions, shall promptly notify the Contracting Officer in writing of the specific differing conditions before they are disturbed and before the affected work is performed.

2. Upon written notification, the Contracting Officer will investigate the conditions, and if he/she determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding loss of anticipated profits, will be made and the contract modified in writing accordingly. The Contracting Officer will notify the Contractor of his/her determination whether or not an adjustment of the contract is warranted.
3. No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice; a failure to notify the Contracting Officer of the changed conditions prior to work being disturbed by said conditions shall constitute a permanent waiver of all right to compensation related to the changed conditions by the Contractor.
4. No contract adjustment will be allowed under this clause for any effects caused on unchanged work.

B. SUSPENSION OF WORK ORDERED BY THE CONTRACTING OFFICER:

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

C. SIGNIFICANT CHANGES IN THE CHARACTER OF WORK:

1. The Contracting Officer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the Contractor agrees to perform the work as altered.
2. If the alterations or changes in quantities significantly change the character of the work under the contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot

be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Contracting Officer may determine to be fair and reasonable.

3. If the alterations or changes in quantities significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.
4. The term "significant change" shall be construed to apply only to the following circumstances:
 - a. When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
 - b. When an item of work is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in the case of a decrease below 75 percent, to the actual amount of work performed.

ARTICLE 5. TERMINATION

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

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

A termination for default is a final decision of a Contracting Officer. In order to contest a termination for default, the Contractor must submit a certified request to convert the termination for default to a termination for convenience with all documents supporting such conversion and comply with all contract provisions and laws relating to terminations for convenience, including the submission of a certified termination for convenience settlement proposal. The submission of the certified request for conversion to a termination for convenience and certified termination settlement proposal to the Contracting Officer must occur prior to 90 days from the date of the Contracting Officer's final decision.

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

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

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

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

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

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

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

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

ARTICLE 6. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

- A. The performance of work under the Contract may be terminated by the Government in accordance with this Article in whole, or in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.
- B. After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:
 1. Stop work under the Contract on the date and to the extent specified in the Notice of Termination.

2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract as is not terminated.
3. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.
4. Assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
5. Settle all outstanding liabilities and all claims arising out of such termination of orders or subcontracts, with the approval or ratification of the Contracting Officer to the extent he may require, which approval or ratification shall be final for all purposes of this Article.
6. Transfer title to the Government and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer
 - a. The fabricated or unfabricated parts, work in progress, completed work, supplies, and other material procured as a part of, or acquired in connection with, the performance of the work terminated by the Notice of Termination, and
 - b. The completed, or partially completed plans, drawings information and other property which, if the Contract had been completed, would have been required to be furnished to the Government.
7. Use his best efforts to sell, in the manner, at the terms, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in 6 above provided, however, that the Contractor:
 - a. Shall not be required to extend credit to any purchaser, and
 - b. May acquire any property under the conditions prescribed and at a price or prices approved by the Contracting Officer, and
 - c. Provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under the Contract or shall otherwise be credited to the price or cost of the work covered by the Contract or paid in such other manner as the Contracting Officer may direct.
8. Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.
9. Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.
10. The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the cost, or any item of reimbursable cost, under this Article.
11. "Plant clearance period" means, for each particular property classification (such as

raw materials, purchased parts and work in progress) at any one plant or location, a period beginning with the effective date of the termination for convenience and ending 90 days after receipt by the Contracting Officer of acceptable inventory schedules covering all items of that particular property classification in the termination inventory at that plant or location, or ending on such later date as may be agreed to by the Contracting Officer and the Contractor. Final phase of a plant clearance period means that part of a plant clearance period which occurs after the receipt of acceptable inventory schedules covering all items of the particular property classification at the plant or location.

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

- C. After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than 90 days from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such 90 day period or authorized extension thereof. In the event the Contractor was terminated for default and it asserts that it is entitled to a termination for convenience, its certified request for the conversion of the default termination to one for convenience and its certified termination settlement proposal must be submitted to the Contracting Officer prior to the expiration of 90 days from the date of the default termination. With respect to a termination for convenience, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 90 day period or extension thereof. Nothing herein shall be construed to extend the time for the submission of a claim hereunder for a defaulted Contractor beyond 90 days from the date of the default termination. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the Government's procedures in effect as of the date of execution of the Contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.
- D. Subject to the provisions of C above, and subject to any review required by the Government's procedures in effect as of the date of execution of the Contract, the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this Article, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in E below prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Article, shall be deemed to limit, restrict or otherwise determine or effect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.

- E.** In the event of the failure of the Contractor and the Contracting Officer to agree as provided in D above upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Article, the Contracting Officer shall, subject to any review required by the Government's procedures in effect as of the date of execution of the Contract, determine, on the basis of information available to him, the amount, if any, due the Contractor by reason of the termination and shall pay to the Contractor the amounts determined by the Contracting Officer, as follows, but without duplication of any amounts agreed upon in accordance with D above:
1. With respect to all Contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:
 - a. The cost of such work;
 - b. The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in B 5. above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under the Contract, which amounts shall be included in the cost on account of which payment is made under E1.a. above; and
 - c. A sum, as profit on E.1.a. above, determined by the Contracting Officer to be fair and reasonable; provided however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subparagraph and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and provided further that profit shall be allowed only on preparations made and work done by the Contractor for the terminated portion of the Contract but may not be allowed on the Contractor's settlement expenses. Anticipatory profits and consequential damages will not be allowed. Any reasonable method may be used to arrive at a fair profit, separately or as part of the whole settlement.
 2. The reasonable cost of the preservation and protection of property incurred pursuant to B.9; and any other reasonable cost incidental to termination of work under the Contract including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under the Contract.
- F.** The total sum to be paid to me Contractor under E.1. above shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under E.1. above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Government, or to a buyer pursuant to B.7 above.
- G.** The Contractor shall have the right of appeal, under Article 7 herein, from any determination made by the Contracting Officer under C. or E. above, except that, if the Contractor has failed to submit his claim within the time provided in C above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under C. or E. above, the Government shall pay to the Contractor the following:

1. If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or
 2. If an appeal had been taken, the amount finally determined on such appeal.
- H. In arriving at the amount due the Contractor under this Article there shall be deducted:
1. all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of the Contract;
 2. any claim which the Government may have against the Contractor in connection with the Contract; and
 3. the agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by the Contractor or sold, pursuant to the provisions of this Article and not otherwise recovered by or credited to the Government.
- I. If the termination hereunder be partial, prior to the settlement of the terminated portion of the Contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made at such price or prices; however, nothing contained herein shall limit the right of the Government and the Contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the continued portion of the Contract when said Contract does not contain an established Contract price for such continued portion.
- J. The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of the Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Article, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum for the period from the date such excess is received by the Contractor to the date on which such excess is repaid to the Government; provided however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.
- K. Unless otherwise provided in the Contract or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under the Contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor, but without direct charge to the Government, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under the Contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs and other authentic reproductions thereof.

ARTICLE 7. DISPUTES

- A. All disputes arising under or relating to this contract shall be resolved as provided herein.
- B. Claims by a Contractor against the Government.
- (1) Claim, as used in Section B of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract

terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

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

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

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

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

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

C. Claims by the Government against a Contractor

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

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

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

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

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

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

ARTICLE 8. PAYMENTS TO CONTRACTOR—Unless otherwise provided in the Contract, the Government will pay the contract price or prices as hereinafter provided in accordance with Government regulations.

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

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

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

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

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

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

ARTICLE 10. MATERIAL AND WORKMANSHIP

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

If the Contractor desires to use a method or type of tool or equipment other than specified in the Contract, he shall request approval to do so; the request shall be in writing and shall include a full description of proposed methods, tools and equipment and reason for the change or substitution. Approval of substitutions and changed methods will be on condition that the Contractor will be fully responsible for producing work meeting Contract requirements. If after trial use of the substituted methods, tools and equipment, the Contracting Officer determines that work produced

does not meet Contract requirements, the Contractor shall complete remaining work with specified methods, tools and equipment.

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

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

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

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

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

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

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

The Contractor shall furnish promptly, without additional cost to the Government, all facilities, labor and material reasonably needed for performing such safe and convenient inspection and test as may be required by the Contracting Officer. All inspections and tests by the Government shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and

performance tests shall be performed as described in the Contract. The Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready for inspection at the time specified by the Contractor.

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

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

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

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

ARTICLE 14. INDEMNIFICATION—

- A. The Contractor shall indemnify and save harmless the Government and all of its officers, agents and servants against any and all claims or liability arising from or based on, or as a consequence or result of, any act, omission or default of the Contractor, his employees, or his subcontractors, in the performance of, or in connection with, any work required, contemplated or performed under the Contract.
- B. Disputes between the Contractor and any subcontractors, material suppliers, or any other third parties over payments allegedly owed by the Contractor to a third party shall be resolved exclusively between the Contractor and the third party; the Contractor shall permit no pass-through suits to be brought against the Government by a third party in the Contractor's name. However, nothing herein shall be construed to prevent the Contractor from paying a subcontractor's claim and seeking a timely equitable adjustment hereunder.

ARTICLE 15. PROTECTION AGAINST TRESPASS—Except as otherwise expressly provided in the Contract, the Contractor is authorized to refuse admission either to the premises or to the working space covered by the Contract to any person whose admission is not specifically authorized in writing by the Contracting Officer.

ARTICLE 16. CONDITIONS AFFECTING THE WORK

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

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

In case of damage to utilities by the Contractor, either above or below ground, the Contractor shall restore such utilities to a condition equivalent to that which existed prior to the damage by repairing, rebuilding or otherwise restoring as may be directed, at the Contractor's sole expense. Damaged utilities shall be repaired by the Contractor or, when directed by the Contracting Officer, the utility owner will make needed repairs at the Contractor's expense.

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

- F. SITE MAINTENANCE**—The Contractor shall maintain the project site in a neat and presentable manner throughout the course of all operations, and shall be responsible for such maintenance until final acceptance by the Government. Trash containers shall be furnished, maintained and emptied by the Contractor to the satisfaction of the Contracting Officer. Excavated earthwork,

stripped forms and all other materials and debris not scheduled for reuse in the project shall be promptly removed from the site.

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

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

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

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

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

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

ARTICLE 19. ADDITIONAL BOND SECURITY—If any surety upon any bond furnished in connection with the Contract becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by the Contract. Provided that upon the failure of the Contractor to furnish such additional security within ten (10) days after written notice so to do, all payments under the Contract will be withheld until such additional security is furnished.

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

consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

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

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

ARTICLE 22. GRATUITIES AND GOVERNMENT EMPLOYEES NOT TO BENEFIT

- A. If it is found by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any official, employee or agent of the District with a view toward securing the Contract or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract without liability and may pursue such other rights and remedies provided by law and under the Contract.
- B. In the event the Contract is terminated as provided above, the Department shall be entitled:
 - 1. to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor; and
 - 2. as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Department) which shall be not less than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.
- C. Unless a determination is made as provided herein, no officer or employee of the Government will be admitted to any share or part of this contract or to any benefit that may arise therefrom, and any contract made by the Contracting Officer or any Government employee authorized to execute contracts in which they or an employee of the Government will be personally interested shall be void, and no payment shall be made thereon by the Government or any officer thereof, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. A Government employee shall not be a party to a contract with the Government and will not knowingly cause or allow a business concern or other organization owned or substantially owned or controlled by the employee to be a party to such a contract, unless a written determination has been made by the head of the procuring agency that there is a compelling reason for contracting with the employee, such as when the Government's needs cannot reasonably otherwise be met. [DC Procurement Practices Act of 1985, D.C. Law 6-85, D.C. Official Code, section 2-310.01, and Chapter 18 of the DC Personnel Regulations] (Or relevant local law). The Contractor represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants not to employ any person having such known interests in the performance of the contract.

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

ARTICLE 24. BUY AMERICAN.

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

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

ARTICLE 25. TAXES

- A. FEDERAL EXCISE**—Materials, supplies and equipment are not subject to the Federal Manufacturer’s Excise Tax, if they are furnished or used in connection with the Contract provided that title to such materials, supplies and equipment passes to the Government under the Contract. The Contractor shall in such cases furnish his subcontractors and suppliers with a purchaser’s certificate in the form prescribed by the U.S. Internal Revenue Service.
- B. SALES AND USE TAXES**—Materials which are physically incorporated as a permanent part of real property are not subject to Government Sales and Use Tax. The Contractor shall, when purchasing such materials, furnish his suppliers with a Contractor’s Exempt Purchase Certificate in the form prescribed in the Sales and Use Tax Regulations of the Government. Where the Contractor, subcontractor or material man has already paid the Sales and Use Tax on material, as prescribed above, the Sales and Use Tax Regulations of the Government permit the Contractor, subcontractor or material man to deduct the sales or use tax on the purchase price of

the same on his next monthly return as an adjustment. However, the Contractor, subcontractor or material man must satisfy the Chief Financial Officer for the Government that no sum in reimbursement of such tax was included in the Contract or else that the Government has received a credit under the Contract in an amount equal to such tax.

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

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

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

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

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

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

No claim under this Article shall be allowed:

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

ARTICLE 27. SAFETY PROGRAM

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

the latest edition of "Manual of Uniform Traffic Control Devices" issued by the Federal Highway Administration.

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

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

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

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

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

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

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

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

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

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

ARTICLE 30. ADMINISTRATIVE LIQUIDATED DAMAGES---In addition to any other liquidated damages provided for in the Contract, the Contractor hereby agrees that the Government may assess administrative liquidated damages for the Contractor's failure to submit when due any deliverable required by the Contract. Unless otherwise prescribed by the Contracting Officer, the rate of the administrative liquidated damages shall be \$250 per day until the required deliverable is received and

accepted by the Government. The Government's remedies for failure to comply with the Contract terms and conditions are cumulative and not exclusive. Nothing herein shall be construed to limit the Government's ability to terminate the Contractor for the failure to submit Contract deliverables when due.

ARTICLE 31. ANTI-COMPETITIVE PRACTICES AND ANTI-KICKBACK PROVISIONS.

- A.** The Contractor recognizes the need for markets to operate competitively and shall observe and shall comply with all applicable law, rules, and regulations prohibiting anti-competitive practices. The Contractor shall not engage, directly or indirectly, in collusion or other anti-competitive practices that reduces or eliminates competition or restrains trade. The Department shall report to the appropriate authority any activity that evidences a violation of the antitrust laws, and take such other further action to which it is entitled or obligated under the law.
- B.** The Contractor shall observe and comply with all applicable law, rules, and regulations prohibiting kickbacks and, without limiting the foregoing, Contractor shall not (i) provide or attempt to provide or offer to provide any kickback; (ii) solicit, accept, or attempt to accept any kickback; or (iii) include, directly or indirectly, the amount of any kickback in the contract price charged by Contractor or a Subcontractor of the Construction Manager to the Department. The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in this subparagraph in its own operations and direct business relationships. The Department may take any recourse available to it under the law for violations of this anti-kickback provision.
- C.** The Contractor represents and warrants that it did not, directly or indirectly, engage in any collusive or other anti-competitive behavior in connection with the bid, negotiation or award of the Contract. Further, the Contractor represents and warrants that it will not either directly or indirectly, engage in any collusive or other anti-competitive behavior in connection with the performance and administration of the Contract. In the event the Department determines that there has been a violation of these provisions, it may terminate the contract without liability.

ARTICLE 32. NON-DISCRIMINATION IN EMPLOYMENT PROVISIONS.

- A.** The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. The affirmative action shall include, but not be limited to, the following:
 - 1. Employment, upgrading, or transfer;
 - 2. Recruitment or recruitment advertising;
 - 3. Demotion, layoff, or termination;
 - 4. Rates of pay, or other forms of compensation; and
 - 5. Selection for training and apprenticeship.
- B.** Unless otherwise permitted by law and directed by the Department, the Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Department setting forth the provisions of this Section concerning non-discrimination and affirmative action.
- C.** The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in this Section.

- D. The Contractor agrees to send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Department, advising each labor union or workers' representative of the Contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor agrees to permit access by the Department to all books, records and accounts pertaining to its employment practices for purposes of investigation to ascertain compliance with this Section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.
- F. The Contractor shall include in every subcontract the equal opportunity clauses of this Section so that such provisions shall be binding upon each Subcontractor or vendor.
- G. The Contractor shall take such action with respect to any Subcontractor as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for non-compliance.

ARTICLE 33. ETHICAL STANDARDS FOR DEPARTMENT'S EMPLOYEES AND FORMER EMPLOYEES

The Department expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed under the Contract. The Contractor may not assign to any former Department or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Subcontractor or vendor.

ARTICLE 34. CONSTRUCTION. The Contract shall be construed fairly as to all parties and not in favor of or against any party, regardless of which party prepared the Contract.

ARTICLE 35. SURVIVAL. All agreements warranties, and representations of the Contractor contained in the Contract or in any certificate or document furnished pursuant to the Contract shall survive termination or expiration of the Contract.

ARTICLE 36. REMEDIES CUMULATIVE. Unless specifically provided to the contrary in the Contract, all remedies set forth in the Contract are cumulative and not exclusive of any other remedy the Government may have, including, without limitation, at law or in equity. The Government's rights and remedies will be exercised at its sole discretion, and shall not be regarded as conferring any obligation on the Government's to exercise those rights or remedies for the benefit of the Contractor or any other person or entity.

ARTICLE 37. ENTIRE AGREEMENT; MODIFICATION. The Contract supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to the Contract shall be effective against the Department unless made in writing signed by both the Department and the Contractor, unless otherwise expressly provided to the contrary in the Contract. Nothing herein shall be construed to limit the Department's right to issue unilateral modifications to the contract.

ARTICLE 38. SEVERABILITY. In the event any one or more of the provisions contained in this Contract 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 Contract, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Contract 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 Contract is intended to be severable.

ARTICLE 39. FORCE MAJEURE---If the Contractor, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Contract, the Contractor may be excused from whatever performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations under this Contract by reason of Force Majeure, within 72 hours of the occurrence or event, the Contractor must provide the Contracting Officer written notice of its inability to perform as well as a description of the force majeure and its effect on Contract performance. The Contracting Officer will have the right to cause the inspection of the work site to determine the validity of the Contractor's assertion of its inability to perform. If the Contracting Officer agrees that the Contractor is wholly or partly unable to perform its obligations under the Contract a decision will be issued indicating the extent to which the Contractor is excused from its performance obligations. In no event will the Contractor be entitled to money damages from the Government due to force majeure.

Exhibit D

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 Questions/Clarifications

No.	Questions	Responses
1.	<p>The selection criteria asks for “Relevant Experience & Capabilities of the Builder (10 points)” and “Relevant Experience & Capabilities of the Architect (10 points)”.</p> <p>E.4.1.3 calls for “no more than eight (8) projects”</p> <p>Please confirm whether this is (8) projects for the Builder plus (8) projects for the Architect OR (8) projects total.</p>	<p>Confirmed, eight (8) projects total is sufficient.</p>
2.	<p>Please confirm the number of classrooms required for the students and staff remaining on campus during construction. Please confirm total number of students remaining on campus.</p>	<p>Refer to the response to Question No. 11 for the number of classrooms; the anticipated number of students is 150; the anticipated number of staff is between 15 – 17.</p>
3.	<p>Please confirm if the cafeteria and gym will need to remain in operation during construction.</p>	<p>The middle school students will require kitchen, cafeteria, and gymnasium space during construction. The design builder can provide a plan that would allow use of existing kitchen, cafeteria, and gym space during construction, or provide a solution for these spaces using temporary structures (trailers etc.) during construction.</p>
4.	<p>Please confirm the size and requirements of the main office for the staff remaining on campus during construction.</p>	<p>The main office staff are currently located in the middle school area designated by the color blue in the second image included within the Executive Summary of the RFP. If the staff is to be relocated during construction, they will require similar size, and number of offices they are currently utilizing.</p>
5.	<p>Please confirm if the students are to remain in the swing space (indicated on page 3 of the RFP) or if they can be located in the gym/cafeteria wing during construction.</p>	<p>The middle school students, administration/staff, and teachers can be relocated to the cafeteria/gym wing during construction. However, the design-builder will be responsible to ensure that the cafeteria/gym wing provides adequate space. The design-builder will also be responsible for managing the logistics for the move, any required modification to the cafeteria wing, schedule challenges associated with having to modernize the cafeteria wing over summer of 2018, and maintaining the project budget.</p>
6.	<p>Was there any work done at the MacFarland site for the Marie Reed Swing Space? If so, are there any drawings available?</p>	<p>Documents can be found at: https://app.box.com/s/7141wn4294f6pdru67a594pmpkzs5tc2</p>

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7.	Would you be so kind and send me the list of bidders on this project?	Please refer to Amendment No. 1, Sign-in Sheet.
8.	Also, what is the estimated amount (\$) for the project?	Please refer to Section A.1, Project Budget, of the RFP for the budget.
9.	I am trying to find out if there are site plans available for the Design Build at MacFarland Middle School project. In order to properly quote the scope we would need site plans, etc.	All documents related to the MacFarland site and the Marie Reed swing space have been provided.
10.	Is there any guidance to what equipment should be included in the play areas and is there an associated budget for the playground?	The RFP's requirements do not include a play area; a playground is not anticipated for the middle school students at MacFarland.
11.	Could DGS please provide an Ed Spec or outline of the required program for the temporary space/swing space in McFarland during the 2017/2018 school year? We would like to know what typical middle school program spaces must be included (e.g. library, gym, laboratory etc.) and what if any facilities would be available for use in Roosevelt High School.	The Department does not have educational specifications for the 6 th and 7 th grade students. These are the current spaces in the middle school portion: <ul style="list-style-type: none"> ○ No Basement ○ 1st Floor <ul style="list-style-type: none"> ▪ 1 Science lab ▪ Resource room ▪ 1 Classroom ▪ 1 gang bathroom ▪ Teacher Lounge ▪ Main Offices ▪ 5-6 Misc. Offices ○ 2nd floor <ul style="list-style-type: none"> ▪ 5 classrooms ▪ 1 gang bathroom ○ 3rd Floor <ul style="list-style-type: none"> ▪ 1 PE/Multipurpose Room ▪ 3 Resource Rooms ▪ 1 Media center/Computer Lab ▪ 1 Music Room
12.	LEED – Executive summary lists “minimum, LEED for Schools – Gold certification under most current version of LEED rating system.” Please confirm required version of rating system.	The Department is not specifying the LEED version for this project. This will depend on when the project is registered with USGBC, and the applicable rating system at the time of registration.
13.	Punchlist – Please clarify timeframe for punchlist completion. Section	Timeframe for punchlist completion is 30 Days.

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	B.3.2.1 lists 30 days and B.4.1 lists 90 days.	
14.	Permit expeditor – B.2.3.4 indicates that Design-builder shall engage permit expeditor. Please confirm if this should be included as part of design fee, design build fee, or cost of work.	Confirmed, this should be included in the cost of work.
15.	Design Drawings - Can a set of the original design drawings for the MacFarland School be made available?	Documents can be found at: https://app.box.com/s/srqtg6ovjxuti8uya03cbn8riilsar4g
16.	HazMat Drawings - Can a record of all known Hazmat Drawings be made available?	Documents can be found at: https://app.box.com/s/gsvg3n8559hkyx7goz0d7nc6mdqj9xg
17.	School Enrollment - Does DCPS know the number students and teachers who will occupy the School during year 1?	Students: 150 Staff/Teachers: 15 - 17