

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

**DESIGN-BUILD SERVICES
STUART HOBSON MIDDLE SCHOOL MODERNIZATION**

Solicitation #:DCAM-14-CS-0069

**Addendum No. 6
Issued: November 6, 2013**

This Addendum Number 06 is issued by e-mail on November 6, 2013. Except as modified hereby, the Request for Proposals (“RFP”) remains unmodified.

Item #1

Form of Contract: Attached to this Addendum is the Form of Contract. THE TERMS OF THE FORM OF CONTRACT SHALL PREVAIL OVER THE RFP. TO THE EXTENT THERE IS AN INCONSISTENCY BETWEEN THE FORM OF CONTRACT ISSUED HEREWITH AND THE RFP, THE FORM OF CONTRACT SHALL GOVERN.

Item #2

Revised Drawings: Additional Revised drawings are available for download at: <https://leftwichlaw.box.com/s/ylsfsuoiykhbftmuzhi>.

Item #3

Requests for Information: Below is a list of questions and the Department’s responses.

1. In Section 220719.2.15 C.1 of the specifications it states to install additional .020 PVS jacket on the concealed plumbing pipe. Please confirm that this is required or if it can be excluded to save cost. **Response: Jacketing is not required in ceiling spaces unless they are susceptible to damage.**
2. In reference to drawing M-201A, in the clouded area there are 3-HP that will be F&I. Please clarify if the mains for the CWS and CWR already exist where and that all we have to do is Tee off the mains and pipe out the connection of the Heat Pumps. **Response: The 3” mains were originally sized to accommodate those 3 HP’s, however, we are not certain the as-built conditions as to where and if these mains were installed as designed. This must be verified by the Design-Builder.**
3. Please provide the specifications for the marker and tackboards. **Response: The Department will provide these specifications, if they exist and can be located.**
4. What is the extent of utility demolition? Note 9 on C2.00 references an existing catch basin that is scheduled for demolition, yet it is not shown on the civil plans. **Response: The existing catch basin to be removed was mis-labeled. Apply note #9 (to replace note #8) at catch basin structure S-18 next to the existing basketball court area (4th Street mid-block).**

5. Note 1 on C4.00 identifies a new 10" storm sewer line at the NE corner of 5th & E Street, yet the extent of this work is not shown. Can you please clarify? **Response: Disregard Note #1 at this location.**
6. Is a more concise layout and extent of the greenscreen fencing identified per detail 9 on L-107. The section identified per 2/L-102 seems arbitrarily placed. **Response: Detail 9/L-107 gives correct panel width and post spacing (3' + 4" = 3'-4" post spacing) and represents the total extent of the GreenScreen. Center the GreenScreen in the 11'-5" length of the planter area as shown on L-102. Locate as close as possible to the building wall based on clearance required for the 1-6" diameter concrete footer.**
7. Can you provide additional details concerning work to be done to brick walkways surrounding the site? Landscape drawings reference a layout on the civil drawings, yet nothing is shown in either set. **Response: The work for the Streetscape falls within the bid allowance, with the exception of any work we have shown on the drawings, such as the repair to the stairs, the landscape around the building and the new light poles and traffic signals.**
8. Note 10 on C2.00 says to exclude all rear parking lot demolition, yet the Site Improvement Plan C3.00 shows redevelopment work to be included within the base bid. Can you clarify? **Response: General Parking lot Demolition is not included in the base bid. Incidental demolition and restoration for proposed re-development should be included.**
9. Page S-106A references section details 1 & 2 on S-307, yet this sheet does not exist. Are there other details that correspond to these locations? **Response: Callouts should be removed, work is existing and completed during the Renovation & Modernization scope.**
10. Both the "Building Envelope & Cafeteria Renovation" and the "Renovation & Modernization" drawing sets reference similar scope items to be performed in both sets. For example: cutting the existing roof slab per Note 2/SD-106A for new ductwork infrastructure, or the installation of RTU-2 over the cafeteria with the associated dunnage supports. Were these completed with the previous renovation work, or should it be included within our bid? **Response: Per Addendum No. 5, RTU work was completed during Renovation & Modernization scope; these details are removed in the Addendum replacement sheets.**
11. Can you clarify why the Ground Level Finish Schedule is missing from A-601? **Response: The schedule was not part of original referenced drawing set, and most spaces within are already completed/existing as part of Renovation & Modernization scope. Additional notes for deferred are clouded: Library spaces are set aside as an allowance so are not applicable. All of the Cafeteria work and finishes are shown within Set 2. Finishes for ALT 2 rooms adjacent to Museum Exhibit Space are defined on blow-up plans E3/A-404 (SET 3), Ceiling Plans, and Finish Plans.**
12. The clouded portion of Media Center G07 on A-101B includes note G06 display cases. Are the corridor display cases to be included as part of the media center's renovation? **Response: These were completed as part of the Renovation & Modernization scope.**
13. A smartboard is shown on A-101B but not on T-101B. Are we to include a smartboard as shown on A-101B? **Response: The design of this Library area and associated space**

within the clouded drawing is part of the designated Library allowance. Refer to RFP for Undesigned Work Allowances.

14. Please confirm that the scope of work for rooms G06, G07B, & G07B is limited to new ACT system only. **Response: These rooms should be contained within the clouding of Library above and all work to be included within the Library allowance. Nothing has been completed within these spaces per the Renovation & Modernization original scope.**
15. Detail C1/A-621 indicates a higher new sill. Please confirm that this is typical of every replacement window and the extent of painting at each location. **Response: Existing sill conditions to be verified in field; Depending on final window manufacturer, some blocking is assumed to be required at all windows, in order to provide new flashing & trim piece above existing concrete sill. Paint as shown to patch existing wall & over wood jambs/heads.**
16. Specifications call out for shades but no fabric types are provided. Please provide fabric types. **Response: Fabric is called for in the spec: Thermoveil 2% open; Color to be determined from standard samples provided.**
17. Please confirm the window shade type, if any, to use for Type F windows (6 each) in the auditorium. **Response: No shades provided for auditorium are within this Lump Sum scope. Instead, auditorium window shades will be a part of the auditorium allowance.**
18. S-002 calls out for spay-on fireproofing yet we don't have a specification section or details on structural drawings. Please confirm if we are to include fireproofing the steel. **Response: Spray-on fire proofing to be applied to all framing members that project through the rated stair/elevator shaft walls. This includes framing members extending into the Vestibule of north service addition (set 1) plan 3/S111; columns located at intersection of column lines Col Line B.1 / Col Line 6; Col line 7 / Col Line A.**
19. Specifications call out for music instruments (model numbers 173C601 and 173A010) but they are not shown on the plan. Please provide the quantity of the music instrument storage equipment. **Response: Music Instrument storage equipment is not part of the contract and has been purchased by owner.**
20. Please confirm that all existing aluminum windows, window trim and interior sills are to be removed and replaced as a part of the GMP work for this project. Current plans dated 10-8-13 only indicate seven new windows to be installed on all four elevations of the existing building, and twenty existing window openings are to be in-filled with masonry to match existing. **Response: Please refer to the elevation drawings on sheets A-201, A-202, A-203 (Set 2), as all window types are labeled on the elevations and locations for in-fill in more than four elevations, including courtyards. Window details describe which trim is to be replaced and which trim is to be maintained, for those corresponding types.**
21. Please clarify the extent of new interior work to be performed within the existing school building as a part of renovation and modernization. Only a very limited amount of interior work is shown on set # 3 for this project. **Response: As noted on cover sheet, all items clouded within Set 3 sheets contain design work that needs to be constructed and included within the bid.**

Item #4

The bid date is hereby changed. Proposals are due by **November 14, 2013 at 2:00 pm EST.** Proposals that are hand-delivered should be delivered to the attention of: Shannon Harris, Contract Specialist, at **Frank D. Reeves Center, 2000 14th Street, NW, 8th floor, Washington, DC 20009.**

- End of Addendum No. 6 -

FORM OF

**AGREEMENT FOR DESIGN-BUILD SERVICES
STUART HOBSON MIDDLE SCHOOL MODERNIZATION**

BY AND BETWEEN

**THE DEPARTMENT OF GENERAL SERVICES
AND**

[CONTRACTOR]

**AGREEMENT FOR DESIGN-BUILD SERVICES
FOR STUART HOBSON MIDDLE SCHOOL MODERNIZATION
DCAM-14-CS-0069**

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

WITNESSETH:

WHEREAS, the Department wishes to retain the Design-Builder to provide design-build services for the construction of an addition to, as well as the modernization of, Stuart Hobson Middle School located at 410 E Street, NE, Washington, DC (the “Project”). The Project includes two phases: the Preconstruction Phase; and the Construction Phase;

WHEREAS, the Design-Builder wishes to provide the construction and related services necessary to complete the Project, subject to the terms and conditions set forth in the Contract;

WHEREAS, the Department had retained Hughes Group Architects (hereinafter referred to as the “Architect/Engineer”) to develop, subject to a few excepted areas, a complete set of construction documents that describe the design of the Project;

WHEREAS, the Design-Builder has agreed to engage the Architect/Engineer and from this point forward, the Design-Builder shall be responsible for both the completion of the design and for the construction of the Project;

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

WHEREAS, the Department desires that the modernization be completed no later than August 15, 2014 and that the construction of the addition be completed no later than December 15, 2014 (the “Substantial Completion Date”);

WHEREAS, the Department and the Design-Builder entered into a letter contract dated [DATE] (the “Letter Contract”) pursuant to which the Design-Builder was authorized to proceed with certain preconstruction services;

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 Architect/Engineer and 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, Architect/Engineer, 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 education facilities 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 state-of-the-art education facilities in large, urban areas.

Section 1.2 Project Description. As a general description, the Project consists of Preconstruction, Design, Site Work, Abatement, Selective Demolition and Construction Services necessary to complete the modernization of the existing facility as well as constructing a new, three-story addition of approximately 14,000 square feet, which will house a museum science and arts integration program with classroom space for museum science, drama/coral, band, and an art atrium, as generally depicted in the design documents attached as **Exhibit []**.

Section 1.3 Program Manager. At its discretion, the Department may hire a Program Manager (or "PM") to provide certain program management functions. Said Program Manager, if hired, 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 Design-Builder 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 Brian J. Hanlon and JW Lanum.**

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 Contract Work is to be performed all labor, materials, equipment, tools, services, and supervision, and shall bear all items of expense, necessary to complete and satisfactory 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 preconstruction phase services to be performed by the Design-Builder (the “Preconstruction Phase Services”). 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”).

ARTICLE 2 **DESIGN BUILDER’S PRECONSTRUCTION SERVICES**

Section 2.1 Preliminary Evaluation. Within seven (7) days of the issuance of a Notice to Proceed for Preconstruction Phase Services, the Design-Builder shall submit to the Department for its approval a schedule of Preconstruction Phase activities.

Section 2.2 Consultation and Analysis. The parties acknowledge that the Design-Builder was engaged through a competitive procurement process based on a set of bid documents that are intended to represent a complete set of construction documents (the “Bid Set”); provided, however, that a small portion of the overall Project design remains incomplete (the “Undesigned Work”) and such Undesigned Work is not included in the Bid Set. Notwithstanding the characterization of the Bid Set as a complete set of documents, both parties to this Agreement acknowledge and agree that the Bid Set is likely to contain errors, omissions, ambiguities and discrepancies that are typically found in documents of this nature, and it is the intent of the Agreement to transfer the risk associated with such errors, omissions, ambiguities and discrepancies to the Design-Builder.

Section 2.3 Letter Contract. It is understood and agreed that certain preconstruction activities were performed pursuant to a letter contract date [INSERT DATE] between DGS and the Design-Builder (the “Letter Contract”), and the terms of the Letter Contract shall merge into and be superseded by this Agreement upon its execution. Based on the preconstruction review of the Bid Set, the Design-Builder has confirmed the Lump Sum Price set forth herein and the Project Schedule attached hereto, and the parties have agreed to liquidated damages if the Substantial Completion Date is not met.

Section 2.4 Project Schedule. Within seven (7) days after receiving a Notice to Proceed for Preconstruction Phase Services from the Department, the Design-Builder, shall prepare and provide for the Program Manager’s and the Architect/Engineer’s review, and the Department’s approval, a proposed project schedule for Preconstruction Phase Services and Construction Phase Services (“Project Schedule”). The Project Schedule shall be based on the Critical Path Method (“CPM”) and shall provide the timing of the various components of major activities to be undertaken in connection with the Project and the approximate timing for commencement and completion of such activities. The Project Schedule should be cost loaded and in appropriate level of detail to facilitate the management of the Project. The Project Schedule shall also include, without limitation, proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, delivery of materials or equipment requiring long-lead time procurement, the Department’s occupancy requirements

showing portions of the Project having occupancy priority, and proposed dates of Substantial Completion, and Final Completion of the Project.

During the 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 updated during the Preconstruction and Construction Phase.

Section 2.5 Long-Lead Time Items. The Design-Builder shall recommend to the Department a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project Schedule. If the Department so determines, it may direct the Design-Builder to purchase (including, but not limited to, placing mill orders for structural steel) such long 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.

Section 2.6 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 2.6 shall apply during the Preconstruction Phase and the Construction Phase.

Section 2.7 Warranties and Representations

Section 2.7.1 All disclosures, representations, warranties, and certifications the Design-Builder makes in its proposal in response to the Request for Proposals for Design Build Services for Stuart Hobson Middle School Modernization ("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 2.7.2 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 2.7.3 The terms and conditions of Section 2.7 shall apply during the Preconstruction and Construction Phases.

Section 2.8 Responsibility for Agents and Design-Builders. The Design-Builder shall be responsible to the Department and the Program Manager 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. This Section 2.8 shall apply during the Preconstruction and Construction Phases.

Section 2.9 Design-Builder Warranty of the Construction Work. 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-Builder and a representative of the Department shall walk the Project together eleven (11) months after the Substantial Completion Date to identify any necessary warranty work. In the event the Design-Builder fails schedule such a walk, the Warranty period shall be extended until such time as the Design-Builder schedules such walk.

Section 2.10 Review of Means and Methods. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder has evaluated the jobsite safety thereof during the preconstruction phase and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Department during the Preconstruction Phase and shall not proceed with that portion of the Work without further written instructions from the Department. If the Design-Builder is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Design-Builder, the Department shall be solely responsible for any loss or damage arising solely from those Department-required means, methods, techniques, sequences or procedures.

Section 2.11 Field Measurements. The Design-Builder shall take field measurements

and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Design-Builder with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to Department in writing prior to the performance of the work. Once work is started, the Design-Builder assumes the responsibility and costs for the work and the cost of correcting work previously installed.

Section 2.12 Undesigned Work. During the Preconstruction Phase, the Design-Builder shall prepare such drawings as may be required to describe the Undesigned Work for submission to the Department for its review and approval prior to commencing with any construction. The Design-Builder shall ensure that the design for the Undesigned Work is consistent with the Department's budget, schedule, programmatic and other requirements for such work. In addition, the Design-Builder shall be required to obtain any necessary permits for such work. It is understood that the Design-Builder's Lump Sum Price contains allowances, as specified herein, for the Undesigned Work.

ARTICLE 3 **LUMP SUM PRICE**

Section 3.1 Lump Sum Price. The Design-Builder shall be paid a lump sum price of [AMOUNT] [(\$NUMBER)] (such amount, the "Lump Sum Price") to Fully Complete the Project.

Section 3.2 Certain Work Included in the Lump Sum Price. The Design-Builder acknowledges and understands that the Lump Sum Price is based on the Drawings & Specifications listed in **Exhibit A** as well as the Clarifications & Assumptions attached hereto as **Exhibit C**. It is understood and agreed that the Lump Sum Price represents the Design-Builder's offer to Fully Complete the Project. The parties acknowledge and agree that it is their intent to have the Design-Builder to construct and deliver a fully functional facility as contemplated in the Bid Set for the Lump Sum Price and consistent with the Project Schedule. In furtherance of such intent, the Design-Builder hereby assumes the risks associated with and shall be responsible for (i) any changes in market conditions that affect the cost of labor or materials; (ii) coordination issues between the drawings; (iii) elements of work not shown on the Bid Set, but which are reasonably inferable from the Bid Set; (iv) cost associated with acceleration of the work and expediting of materials necessary to meet the Project Schedule which are the result of anything other than an Excusable Delay; and (v) the risk of subcontractor default or non-performance. It is understood and agreed by the parties that items (i) through (v) listed in the preceding sentence are not intended to be an exclusive list of the risks assumed by the Design-Builder and that such items represent a partial list of the risks assumed by the Design-Builder.

Section 3.3 Review of Lump Sum Drawings & Specifications. The Department has selected the Design-Builder because of its special expertise in constructing similar projects. Before agreeing to the Lump Sum Price, the Design-Builder reviewed the Bid Set for accuracy, constructability and completeness and was required to bring such deficiencies to the attention of

the Department and its Architect/Engineer to address any such deficiencies. To the extent that any such deficiencies in the Lump Sum 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 Lump Sum Price or delaying the Project Schedule.

Section 3.3.1 During the course of the work, should any errors, omissions, ambiguities or discrepancies be found on the Lump Sum Drawings or in the Specifications, or should there be found any discrepancies between the Drawings and the Specifications to which the Design-Builder has failed to call attention before agreeing to the Lump Sum Price, the Design-Builder shall bring any such errors, omissions, ambiguities or discrepancies to the attention of Department, and the Department will interpret the intent of the Drawings and Specifications. The Design-Builder hereby agrees to abide by and to carry out the Work in accordance with the decision of the Department. Wherever the intent of the Drawings or Specifications is not indicated clearly or there is a conflict between the Drawings and Specifications, the Design-Builder will be held to have included in the Lump Sum Price the more expensive material or method of construction and the quantity of material.

Section 3.3.2 If any item or material shown on the Drawings is omitted from the Specifications, or vice versa (except when the Drawings and Specifications clearly exclude such omitted item), and such item or material is required to complete the detail shown or specified, and if additional details or instructions are required to complete the work, then the Design-Builder is deemed to have made an allowance in the Lump Sum Price for the completion of the work, consistent with adjoining or similar details and the best accepted practices of the trade for projects of this type and quality, whichever is more expensive, unless such additional information was not reasonably inferable from the Contract Documents. Without limiting the Design-Builder's other duties, in the case of a difference among the Contract Documents as to the Design-Builder's obligations, or an inconsistency in the Contract Documents, the Department will decide which requirement governs; however, the Design-Builder shall assume that the more expensive material or method of construction and the quantity of material shall be required without a change to the Lump Sum Price.

Section 3.3.3 Execution of the Contract by the Design-Builder is a representation that the Design-Builder has thoroughly examined all Contract Documents, including all details, plans, elevations, sections, schedules and diagrams, has visited the site, has become familiar with local conditions under which the work is to be performed, has correlated personal observations with the requirements of the Contract Documents, and has satisfied himself before executing the Contract as to all matters that can affect the work and its cost, including: (1) the nature of the land and subsoil; (2) the form and nature of the site and surrounding areas; (3) details and levels of existing pipe lines, conduits, sewers, drains, cables or other existing services; (4) the quantities, nature and availability of the materials, tools, equipment and labor necessary for the completion of the work; (5) the means of access to the site and any accommodation he may require; (6) uncertainties of weather and physical conditions at the site; and in general to have himself obtained all necessary information as to risk contingencies, climatic, hydrological and natural conditions and other circumstances which may influence or affect his performance of the

Work. The Design-Builder waives any and all claims against the Department arising from or relating to such contingencies and conditions that are reasonably inferable from the Contract Documents, in light of the required preconstruction review and inspection and the Design-Builder's expertise in the field of construction.

Section 3.4 Basis of Lump Sum Price. The Lump Sum Price shall be based on the following documents:

- .1 **Exhibit A:** A list of the Drawings, Specifications and other documents on which the Lump Sum Price is based.
- .2 **Exhibit B:** A List of Unit Prices and Allowance items.
- .3 **Exhibit C:** A list of Clarifications and Assumptions made by the Design-Builder in the preparation of the Lump Sum Price, noting particular exclusions. The Assumptions and Clarifications shall take precedence over the Drawings and Specifications, but shall be subordinate to the Agreement.
- .4 **Exhibit D:** The Lump Sum Price Breakdown which includes a statement of the detailed cost estimate organized by trade categories, allowances, Contingency, and other Items and the overhead and profit that comprise the Lump Sum Price.
- .5 **Exhibit E:** The Project Schedule.
- .6 **Exhibit F:** An LSDBE Utilization Plan setting for the estimated dollar volume of the work that will be perform by small, local and disadvantaged business enterprises, as certified by the Department of Small and Local Business Development, upon which the Lump Sum Price is based.
- .7 **Exhibit G:** A Workforce Utilization Plan setting forth, by subcontractor, the percentage participation of District residents in performing the labor necessary for the Project upon which the proposed Lump Sum Price is based.
- .8 **Exhibit H:** A list of alternates.

Section 3.5 Allowances.

Section 3.5.1 The Design-Builder has included in the Lump Sum Price all allowances stated on **Exhibit B.** Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Department may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has made a reasonable objection. Allowances for the Undesigned Work are intended to cover all costs related to the Undesigned Work, including the cost of all design services related to the Undesigned Work,

other than construction administration which is outside the allowances and included in the Lump Sum Price.

Whenever actual costs are more than or less than allowances, the Lump Sum Price shall be adjusted accordingly by Change Order.

Section 3.6 Tax Exempt Status. The Department expects that the Project will qualify as tax-exempt under the applicable laws, and such tax exemption shall be reflected in the Lump Sum Price.

Section 3.7 Extent of Responsibility and Site Conditions.

Section 3.7.1 During the 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 3.7.2 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 3.7.3 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, by entering into the Agreement, agrees to assume all risks arising from site conditions, at or above the surface, foreseeable or unforeseeable, naturally occurring or man-made. In consideration of the foregoing understands and in an effort to reasonably allocate the risks between the parties, the Design-Builder shall be entitled to an equitable adjustment to the Lump Sum Price or the Substantial Completion Date only if conditions are discovered that satisfy the definition of Differing Site Conditions as defined herein with the risk of all other differing site conditions, whether known or unknown, being assumed by the Design-Builder.

Section 3.8 Unsafe Materials and Hazardous Materials

Section 3.8.1 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. The Department shall not be responsible under this Section 3.8 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Contract Documents. The Department shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

Section 3.8.2 If the Design-Builder discovers Hazardous Materials on the site, it shall immediately notify the Department, in writing, and promptly make arrangements for appropriate and lawful removal, treatment, encapsulation, passivation, and/or disposal of the Hazardous Materials by employees or Subcontractors who are fully qualified and licensed to perform such Work. If any notices to governmental authorities are required, the Design-Builder shall also give those notices at the appropriate times. The Design-Builder shall comply with all laws, including, without limitation, all laws relating to safety, health welfare, and protection of the environment, in removing, treating, encapsulating, passivating, and/or disposing of Hazardous Materials. The Design-Builder shall ensure abatement subcontractors and disposal sites are appropriately licensed. 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 3.8.3 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.

ARTICLE 4 **CONSTRUCTION PHASE**

Section 4.1 General. The Construction Phase shall commence when this Agreement is executed by the Department and the Design-Builder and the Department issues a Notice to Proceed for Construction Phase Services. The Design-Builder shall, through Subcontractors or, with the written consent of the Department, with its own forces, perform all of the Work necessary to construct the Project so that it is complete, safe, and properly built in strict accordance with the released Construction Documents and other requirements of the Contract. Without limitation, the Design-Builder shall provide all of the labor, materials, tools, equipment, demolition, site preparations, 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. Work, materials, or other 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 kind and quality of materials and equipment.

Section 4.2 Unrenovated Portions of the Structure. In constructing the Project, the Design-Builder shall ensure that the unrenovated portions of the facility, including, but not limited to, building systems are not adversely affected. All unrenovated portions of the facility 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 facility function 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 is addressing the decreased functionality.

Section 4.3 Bidding/Subcontracting and Administration

Section 4.3.1 It is understood that the Design-Builder may, subject to the term of this Agreement, subcontract a portion of the work to a Subcontractor pursuant to written contract with the Design-Builder; provided, however, that the Design-Builder shall not be permitted to subcontract all or substantially all of the work to a single Subcontractor. 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; provided, however, that such subcontracts shall include unit prices or other appropriate contractual provisions designed to address coordination issues related to the fast-track nature of the Project and the fact that certain aspects of the Work will not have been fully designed when the subcontracts are purchased.

Section 4.3.2 The Department may at any time direct the Design-Builder to terminate any subcontractor or supplier performing services on the Project.

Section 4.3.3 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 4.3.4 The Design-Builder must contract for provision of all services and materials for the Project (other than Self-Performed Work) 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 at least three (3) years after the Project is substantially complete and requiring the Subcontractor or supplier to make those records available for review or audit by the Department during that time;
- .7 that the Subcontractor 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 this Agreement;
- .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 4.3.5 Within seven (7) days of receiving any payment from the Department including amounts attributable to Work performed, or materials or equipment supplied, by a Subcontractor or supplier, the 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 Contract shall be used first to pay amounts due to Subcontractors or suppliers supplying labor or materials for the Project and only money remaining after such payments are made may be retained by the Design-Builder. 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 entitle the Design-Builder to a Change Order.

Section 4.3.6 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 4.3.7 The Design-Builder shall not substitute or replace any Subcontractor or supplier approved by the Department without the Department's prior written consent.

Section 4.3.8 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 Progress Meetings. 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.

Section 4.5 Written Reports. The Design-Builder shall provide monthly written reports to the Department and the Program Manager on the progress of the entire Work in accordance with Section 4.9. 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.

Section 4.6 Cost Control System. The Design-Builder shall maintain accurate records of the Cost of the Work. Where Work is being performed on a time and materials basis or is to be funded through an allowance in the Lump Sum Price, the Design-Builder shall identify variances between actual and estimated costs and report the variances to the Department, the Architect/Engineer 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 [] 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, disability or separation from the employment of the Design-Builder or any affiliate of the Design-Builder, then the Design-Builder shall promptly appoint a replacement acceptable to the Department. The Department shall be entitled to complete

information on each such replacement, including a current resume of his or her qualifications and experience.

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 []** as subject to the liquidated damages provisions. In the event there is no delineation in **Exhibit []** 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 []** as being subject to liquidated damages (but excluding instances where such personnel become unavailable due to death, disability or separation from the employment of the Design-Builder or any affiliate of the Design-Builder) without the prior written consent of the Owner's Designated Representative, the Design-Builder shall pay to the Owner the sum of Fifty Thousand Dollars (\$50,000) as liquidated damages and not a penalty, to reimburse the Owner 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 Owner'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 consent of the Department. In the event the Owner 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 Monthly Reports. On the fifth (5th) day of each month, from Notice to Proceed until Final Completion of the Project, the Design-Builder shall deliver to the Department and the Program Manager a written report including the following elements:

- .1 Schedule Update.** Each monthly update 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 a form reasonably acceptable to the Department. 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.

- .2 Cost Update.** The monthly update shall reflect 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 Lump Sum 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 Lump Sum Price will operate to increase the Lump Sum Price or waive the Department's right to enforce the Lump Sum Price; nor shall such submission or failure to reject by the Department constitute approval of the expenditure of contingency funds or the transfer of funds from one line item to another. 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.

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 of this Contract.

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 for 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. Such determinations shall be made based on the number of rain/snow days or the cumulative precipitation total for the month in question. Notwithstanding the foregoing, named storms shall conclusively be deemed "adverse";
- .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 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;
- .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 or Hazardous Materials Remediation.

In addition to the foregoing, 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 claim for an increase in the Contract time, written notice as provided herein shall be given. The Design-Builder's claim shall include an estimate of the cost and of the probable effect of delay on the progress of the Work. In the case of continuing delay, only one claim is necessary.

Section 4.11.5 In no event shall the Design-Builder be entitled to an increase in its Lump Sum Price as a result of either an Excusable or Non-Excusable Delay.

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.

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. 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 4.14 [Intentionally Omitted]

Section 4.15 Salvaged and Stored Items. The Design-Builder shall be responsible for salvaging and storing all items as identified by the Department.

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 fifteen (15) days prior to the commencement of work in the field, and a final plan shall be agreed upon and approved by the Department's Program Manager 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 Lump Sum Price, 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 Lump Sum Price on the Substantial Completion Date.

Given the nature of the Project and the fact that there is a fixed date upon which DCPS plans to commence the school year, the Design-Builder hereby: (i) acknowledges that this provision is a material inducement upon which the Department has relied in entering into this Agreement; and (ii) represents and warrants that it has included sufficient funding in its Lump Sum Price 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 Lump Sum Price on the Substantial Completion Date.

Section 4.20 Prolog. The Design-Builder shall utilize the Department's Prolog system to submit any and all documentation required to be provided by the Builder for the Project, including, but not limited to, (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) proposed Changes; and (v) applications for payment.

Section 4.21 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.

Section 4.22 Manufacturers' Warranties.

Section 4.22.1 Design-Builder warrants that all manufacturers' or other warranties on all labor, materials and equipment furnished by Design-Builder or a Subcontractor or supplier shall run directly to or will be specifically assigned to Department on demand or upon Final Completion of the Project without demand. In the event any issue or defect which would be covered by any warranty arises but is not addressed by the grantor of the warranty, the Design-

Builder shall be required to act as the guarantor of the obligations under the warranty and to perform under the terms of the warranty.

Section 4.22.2 Design-Builder warrants that the installation of all materials and equipment shall be in strict accordance with the manufacturers' requirements or specifications and Legal Requirements, as applicable, and that the materials and equipment shall function as required by the Contract Documents and be suitable for their intended purpose. Prior to Final Completion, Design-Builder shall obtain a statement from the manufacturers of the roofing system and major mechanical equipment, systems and/or components approving Design-Builder's installation of all such equipment, systems and/or components. If Department seeks to enforce a claim based upon a manufacturer's warranty and such manufacturer asserts a claim of defective installation by Design-Builder, Department shall be entitled to assert a claim for defective installation against Design-Builder regardless of any limitations on time.

Section 4.22.3 If the Design-Builder fails to commence the cure of any breach of this warranty within after the time specified in a written cure notice that Work is defective or not conforming to the Contract Documents, and if the Design-Builder fails to provide a written plan and schedule to cure within the time specified in a written notice for requesting a cure plan, and if the Design-Builder fails to initiate the cure within the time specified in the Department's approval of the plan and schedule to cure, and if the Design-Builder fails to continue with and complete the cure within the approved schedule (or such longer time as may be mutually agreed in writing and such shorter time as Department may direct in case of emergency), then the Department may, without prejudice to other remedies the Department may have, cure such breach of warranty. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the cost of curing such breach, including compensation for the Architect's additional services and expenses made necessary by such failure. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, then the Design-Builder or its surety shall pay the difference to the Department, subject to the right to appeal and obtain a refund from the Department.

Section 4.22.4 Modifications, extensions, attachments to, completion of or repair to systems in the Work by or on behalf of the Department, including without limitation the electrical, HVAC, plumbing, security and sprinkler systems, shall not void the Design-Builder's warranty so long as the same are done in accordance with the original design and installation standards.

Section 4.22.5 The Design-Builder assigns, with effect not later than the date of final acceptance of the Work by the Department, all manufacturers' warranties relating to materials and labor used in the 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 [] as its representative with express authority to bind the Department with respect to all matters requiring the Department's approval or authorization. Subject to the limitations on their authority specified in Exhibit [], 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 [] 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 education facilities in large, urban areas.

ARTICLE 6 **COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

Section 6.1 Compensation. The Design-Builder shall be paid its compensation in a series of progress payments and a final payment. Progress payments shall be based on a schedule of values that is agreed upon by the Parties as well as the Program Manager's good faith estimate of the level of completion for each component of the schedule of values.

Section 6.1.1 Subject to the terms and conditions of this Agreement, the Lump Sum Price shall be increased by two percent (2%) if both of the objectives set forth below are met and shall be decreased by two percent (2%) if either or both of the objectives set forth below are not met. The objectives are as follows:

- .1 **On-Time Completion.** Substantial Completion for the modernization is achieved on or before August 15, 2014 and Substantial Completion for the addition is achieved on or before December 15, 2014.
- .2 **Cost Control.** The total amount paid to the Builder for Work performed under this Contract is less than or equal to the Lump Sum Price and regardless of any increases authorized by subsequent Change order plus Three Hundred Thousand Dollars (\$300,000).

In determining whether these objectives have been met, the Department will evaluate whether the stated objectives have, in fact, been achieved. This decision shall be made regardless of the reason the objectives have or have not been met, and the Builder acknowledges and agrees that the Builder may lose entitlement to such portion of the Lump Sum Price even if objectives are not met due to the fault of the Department, the Architect/Engineer, the Code Official, events of force majeure or otherwise.

Section 6.2 Schedule of Values. The Design-Builder has prepared the Schedule of Values attached hereto as **Exhibit D** which breaks down the Lump Sum Price for the various parts of the Work. The Schedule of Values shall be maintained in such a manner to provide a breakdown of the Lump Sum Price in enough detail to facilitate continued evaluation of applications for payment and progress reports. Large subcontracts shall be broken into several line items where, in the opinion of the Program Manager, such detail is necessary to properly track the progress of the Work. The proposed schedule of values shall also include separate line items for labor and material for those elements of the Work where, in the opinion of the Program Manager, the cost and materials and labor are experienced are incurred at different points in time during the Project. Such elements of work typically include mechanical systems, vertical transport systems, windows, structural steel. The Design-Builder and the Program Manager shall meet as necessary to maintain the schedule of values for the Project in a manner acceptable to the Program Manager. No progress payments shall be made unless the then current Schedule of Values is acceptable to the Program Manager.

Section 6.3 Retention. The Department shall withhold from each progress payment an amount equal to ten percent (10%) of each progress payment until such time as fifty percent (50%) of the Work has been completed at which point the Department may cease retaining against such item. Once Substantial Completion has occurred, the Department will reduce the retention being withheld to an amount that is equal to Two Hundred percent (200%) of the Program Manager's good faith estimate of the remaining Work.

Section 6.4 Documents Required with Application for Payment. Each Application for Payment shall be accompanied by the 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.

Section 6.5 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 6.6 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 6.7 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 [] 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 6.8 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 6.9 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 6.10 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 report in full compliance with Section 4.9 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 Lump Sum Price would not be adequate to cover actual or liquidated damages arising from the anticipated delay; or
- .8 the Department has reasonable evidence that the Work cannot be completed for the unpaid balance of the Lump Sum Price; or
- .9 the Design-Builder is otherwise in substantial breach of this Contract (including, without limitation, failures to comply with economic inclusion requirements in Article 11).

Section 6.11 Payment Not Acceptance. Payment of any progress payment or final payment shall not constitute acceptance of Work that is defective or otherwise fails to conform to the Contract, or a waiver of any rights or remedies the Department may have with respect to defective or nonconforming Work.

Section 6.12 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.

Section 6.13 Final Payment. Final payment shall be made by the Department to the Design-Builder when (i) Final Completion has been achieved; and (ii) 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. The Department may, if it so elects, require that copies of all such lien releases be provided as a condition to making final payment.

Section 6.14 Interest on Payments. Payments are due and payable in accordance with Article 6 of this Agreement. Amounts unpaid after the date of which payments due shall bear interest in accordance with the Prompt Payment Act.

ARTICLE 7 **CHANGES IN THE WORK**

Section 7.1 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 7.2 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, or the Lump Sum Price.

Section 7.3 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 Lump Sum 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 Lump Sum Price to which it believes it is entitled as a result of the Change Directive. If additional time is sought, a schedule analysis supporting the requested extension should be included. The schedule analysis should include a written narrative explanation. If a change in the Lump Sum Price is sought (or if the Department has requested a deduct change), the statement should include a breakdown, by line item, of the estimated cost changes attributable to the proposed change. The Department may request, and the Design-Builder shall provide, further cost breakdowns, clarifications, documentation or back-up if the Department reasonably believes such additional information is needed to understand and evaluate the request. The additional information required may include cost and pricing data in accordance with the Department's regulations. Any requested adjustment to the Lump Sum Price shall be limited to increased Cost of the Work due to the Change Directive. The Design-Builder is not entitled to any markup on any kind of change orders except as authorized in Section 7.6.1, and if so authorized, any mark-up shall be in accordance with Section 7.6.1. All deductive Change Orders shall include a corresponding reduction for home office overhead, field supervision, general conditions and profit for the Work not performed.
- .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 Lump Sum Price that are justified by the Change Directive. If they 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 7.3.2, 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, or the Lump Sum Price as the Department has judged to be appropriate.

Section 7.4 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 Lump Sum Price arising from the Change Event and, if the notice is not given within the required time, the Design-Builder will have waived the right to any adjustment to the Substantial or Final Completion Date, or the Lump Sum Price arising from the Change Event.

Section 7.5 Detailed Change Request. Within twenty (20) days after giving notice of a change event, the 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 Lump Sum Price as a result of the Change Event. The change request shall include the same information as described in Subparagraph 7.3 with respect to any Contract changes the Design-Builder seeks due to the Change Event, and the amount of any requested adjustment to the Lump Sum Price shall be limited in accordance with that Subparagraph.

Section 7.6 Changes to the Lump Sum Price. Subject to the condition precedent that the Design-Builder have complied with the notice and documentation provisions of this Article, and subject to the limitations stated in this Agreement, the Design-Builder is entitled to an adjustment to the Lump Sum Price in the following cases:

- .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 Lump Sum Price; or
- .2 The Design-Builder encounters Differing Soil Conditions or Hazardous Materials not identified in the Preconstruction Phase.

Section 7.6.1 For Changes to the Lump Sum Price, the following conditions shall apply:

- .1 For increases in the Work which the Design-Builder is permitted to perform by Design-Builder's own forces, the Lump Sum Price shall be increased by the sum of: (i) the Direct Cost of the Work; and (ii) a fee (covering home office overhead, field supervision, general conditions and profit) of fifteen percent (15%) of the sum due under (i);
- .2 For increases in the Work performed by Subcontractors, the Lump Sum Price shall be increased by the sum of: (i) the Direct Cost of the Work incurred by the Subcontractor for the changed Work; (ii) a fee (covering home office overhead and profit) equal to fifteen percent (15%) of the sum due under (i) above for the Subcontractor performing such Work; and (iii) a fee (covering the Design-Builder's home office overhead, field supervision, general conditions and profit) of five percent (5%) of the sum of items (i) and (ii). Intervening tier Subcontractors shall be entitled to a mark-up of five percent (5%) (covering home office overhead, field supervision, general conditions and profit); provided, however, that in all situations and regardless of the number of tier Subcontractors involved, the maximum mark-up on the Direct Cost of the Work shall be twenty percent (25%) and provided, further, that the Design-Builder shall not be entitled to the markup referred to in item (iii) on changes unless such changes exceed, either individually or in the aggregate, five percent (5%) of the Lump Sum Price.
- .3 When both additions and credits are involved in any one change in the Work, the Design-Builder's Change Order and markup shall be figured on the basis of the net increase, if any.
- .4 Fee will not be paid by Department for overtime or weekend work unless overtime is requested in writing and approved in writing by Department.
- .5 The amount of credit to be allowed by Design-Builder to Department for a deletion or change which results in a net decrease in the Lump Sum Price shall be the Cost avoided as confirmed by Department plus Five percent (5%) for profit on the deleted work.

Section 7.6.2 If the cost to Department of changed Work is determined by the lump sum method, Design-Builder warrants that the charge to Department shall not exceed the sum of: (a) any Subcontractor's charge to Design-Builder for such work; and (b) Design-Builder's best estimate of the actual cost of Design-Builder's work plus the permitted markup. If the cost to Department of changed Work is determined on a time and materials basis, Design-Builder warrants that the cost of any addition represents the true and actual cost, including Design-Builder's permitted markup, of such addition to Design-Builder, Subcontractor or Sub-subcontractor or other entity involved in such addition. If the changed Work will result in a reduction in the cost to Department, Design-Builder warrants that the amount of any deduction shall represent the amount of

deduction to Design-Builder by the appropriate Subcontractor or the amount of Design-Builder's best estimate where the deduction involves Work which Design-Builder will perform.

Section 7.7 Deductive Change Orders. The Department is likewise entitled to issue deductive Change Orders (reducing the Lump Sum 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 7.8 [Intentionally Omitted]

Section 7.9 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.

Section 7.10 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.

ARTICLE 8
LIQUIDATED DAMAGES

Section 8.1 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 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. Notwithstanding anything to the contrary in this Agreement, in no event shall the liquidated damages, or the amount be assessed against the Design-Builder for late delivery, exceed One Hundred Thousand Dollars (\$100,000).

ARTICLE 9
THIS ARTICLE IS INTENTIONALLY OMITTED

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 Contract. 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 Lump Sum Price for the costs of paying such deductible.

- .1** Commercial general public liability insurance (“Liability Insurance”) against liability for bodily injury and death and property damage, such Liability Insurance to be in an amount not less than Five Million Dollars (\$5,000,000) for liability for bodily injury, death and property damage arising from any one occurrence and Five Million Dollars (\$5,000,000) from the aggregate of all occurrences within each policy year. The policy should include completed operations coverage and must be maintained for a period of at least three (3) years after substantial completion occurs.
- .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** The Department intends to purchase a builder’s risk policy that will cover the work being installed by the Design-Builder as well as the value of the base building. This policy will be in lieu of builder’s risk insurance that would typically be carried by the Design-Builder. The Design-Builder shall be responsible for the payment of any deductible for a claim made on such policy.
- .6** Design-Builder’s Pollution Liability coverage in the amount of at least Two Million Dollars (\$2,000,000) for each occurrence. Such coverage shall be maintain for the duration of the Project as well as three (3) years after Substantial Completion of the Project is achieved.

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 Lump Sum Price at the time the Contract is executed. 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. All bonds must be in a form acceptable to the Department, its lenders or bond trustee, and issued by a surety included on the Department of Treasury's Listing of Approved Sureties, authorized to do business in the District of Columbia and reasonably acceptable to the Department. All subcontractors' bonds must include a dual obligee rider, naming the Design-Builder and the Department as dual obligees. If the Lump Sum Price is increased pursuant to the terms of the 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.

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 50% of the Contract. Of this amount, thirty-five

percent (35%) must be awarded to entities that are certified as either Small or Disadvantaged Business Enterprises by the District of Columbia Local Business Opportunity Office and twenty percent (20%) 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 an LSDBE Utilization Plan that is attached hereto as Exhibit []. 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 11.3 Workforce Utilization.

Section 11.3.1 At least thirty five percent (35%) of the percentage labor hours for the Project must be performed by District of Columbia residents (such requirement, the “Workforce Utilization Requirement”). If the Department determines that the Design-Builder has achieved the Workforce Utilization Requirement, the Builder shall be entitled to an incentive payment equal to one half of one percent (½%) of the Lump Sum Price.

Section 11.3.2 Each Trade Subcontractor shall be paid an amount equal to ten percent of the Bare Salary paid to employees who are (i) a bona fide resident of the District of Columbia; and (ii) working on the Project. For trade work that is self-performed, the Contractor shall also be entitled to an amount equal to ten percent (10%) of the Bare Salary paid to employees who are (i) a bona fide resident of the District of Columbia; and (ii) working on the Project. Bare Salary shall mean wages paid to employees for work performed on the job site and excludes the cost of benefits or taxes associated with such employees. Only those employees who are directly employed on the job site shall count toward this calculation. Employees who work in home or regional offices and who support multiple projects shall not be eligible for this incentive. In calculating this incentive payment, the certified payrolls collected and maintained as part of the Davis-Bacon Act shall be used.

Section 11.3.3 It is understood that the Lump Sum Price includes an allowance of [AMOUNT] for incentive payments to be made pursuant to Sections 11.3.1 and 11.3.2 (such allowance, the “Workforce Incentive Allowance”). It is further understood that the Workforce Incentive Allowance shall only be used to pay the incentive payments established by those Sections. To the extent there are any funds remaining in the Workforce Incentive Allowance at the end of the Project, such amounts shall revert to the Department. In the event the Workforce Incentive Allowance is insufficient to cover such costs, the Department shall issue a change order increasing the Workforce Incentive Allowance by the necessary amount.

Section 11.4 Economic Inclusion Reporting Requirements

Section 11.4.1 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 11.4.2 The Design-Builder and its constituent entities shall comply with subchapter X of Chapter II of Title 2 of the D.C. Code, and all successor acts thereto, and any implementing regulations, as the same may be amended from time to time. Without limiting the generality of the foregoing, the Design-Builder shall use commercially reasonable best efforts to comply with the recently adopted amendments to such law, including, but not limited to, the workforce percentage goals set forth in such amendments. 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 11.4.3 The Design-Builder shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

Section 11.4.4 The Design-Builder shall be responsible for: (i) including the provisions of this Section 11.3 in all subcontracts; (ii) collecting the information required in this 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 11.5 Compliance with the Apprenticeship Act. The Design-Builder agrees to comply with the requirements of the Apprenticeship Act of 1946, D.C. Code §§ 32-1401, *et seq.* It is understood and agreed that thirty five percent (35%) of all apprentice hours for the Project must be District residents. If the Design-Builder or any of its subcontractors fail to use its best efforts to meet this goal, the Design-Builder or the subcontractor shall be subject to a penalty of five percent (5%) of the labor costs associated with the Contract.

ARTICLE 12 **CLAIMS & DISPUTE RESOLUTION**

Section 12.1 Notice of Claim. If the Builder has complied with all provisions in Section 7.4 regarding changes, and the Department has denied the changes requested in a written Change Proposal, or has failed to respond to a written Change Proposal within thirty (30) days, and the Builder wishes to pursue a claim over the disputed item, or if the Builder wishes to assert a claim over a contract dispute not arising from matters related to a Change Event, Change Order or Change Directive, then the written notice of claim must be submitted to the Department pursuant to procedures set forth in section 4733 of the Department's procurement rules and section 908 of the District's Procurement Practices Reform Act of 2010 (PPRA).

Section 12.2 Contents of Notice of Builder's Claim. The notice of claim shall state the nature of the claim, the events or circumstances giving rise to the claim, the type of relief requested, and the amount of time or additional compensation, or other damages sought. If the amount of time, compensation, or other damages sought is not reasonably ascertainable at the time, the Builder shall so state, explain why, and provide whatever estimates it can reasonably provide. The notice shall state clearly that the Builder intends to assert a claim against the Department.

Section 12.3 Appeal Procedures. All claims arising under or in connection with the Agreement or its breach, or relating to the Project, whether framed in contract, tort or otherwise, and which are not resolved via the claims process may be resolved by filing an appeal with the District of Columbia Board of Contract Appeals in accordance with Title X of the *Procurement Practices Reform Act of 2010*. However, if a third party brings any claim against the Department, including, without limitation, claims of infringement of patents, copyrights or other intellectual property rights, the Department may bring an action for defense or indemnification against the Design-Builder in the court in which such claim is being litigated.

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.

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 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 Contact Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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 (\$5,000.00) 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 latent defects, fraud, gross mistakes amounting to fraud and the Department's rights under any warranty or guarantee.

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 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. However, if the application of a future law or regulation requires the Design-Builder to undertake additional work that is materially different in scope than that presently contemplated or required, the Design-Builder shall be entitled to an equitable adjustment for such additional work.

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. 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.

Section 13.10 To the fullest extent permitted by law, the Design-Builder shall 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 performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Design-Builder, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

Section 13.11 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 13.12 Gratuities and Officers Not to Benefit Provisions

Section 13.12.1 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 13.12.2 In the event the Contract is terminated as provided in Section 13.12.1, 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 13.12.3 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 13.13 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 13.14 Non-Discrimination in Employment Provisions

Section 13.14.1 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 13.14.2 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 13.14.3 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 13.14.4 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 13.14.5 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 13.14.6 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 13.14.7 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 13.15 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 13.16 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 13.17 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 []**. 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 13.18 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 § 2-381.02.

Section 13.19 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, the Construction Documents released by the Department. Any Change Order issued and executed by the Department shall supersede those portions of earlier dated contract documents to which it pertains.

Section 13.20 Independent Design-Builder. 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 13.21 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 13.22 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 13.23 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 13.24 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 13.25 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:

Mr. Brian J. Hanlon
Director
Department of General Services
2000 14th Street, NW
Washington, DC 20009

If to the Design-Builder:

[NAME]
[TITLE]
[COMPANY]
[ADDRESS]
[ADDRESS]

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

Section 13.26 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 13.27 Binding Effect; Assignment. The Contract shall inure to the benefit of, and be binding upon and enforceable by, the parties and their respective successors and permitted assigns. The Design-Builder acknowledges that, in entering into the Contract, the Department is relying on the particular qualifications of the Design-Builder, and the Design-Builder therefore shall not delegate or assign any of its duties or obligations under the Contract, except in accordance with the Contract's provisions relating to subcontracting, or pursuant to the Department's prior written consent. 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 Paragraph shall be null and void.

Section 13.28 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 13.29 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 13.30 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 13.31 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 13.32 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 unless made in writing signed by both the Department and the Design-Builder, unless otherwise expressly provided to the contrary in the Contract.

Section 13.33 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 13.34 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**

Section 14.1 Cancellation Before Notice to Proceed. The Department may cancel the Contract at any time before issuance of a Notice to Proceed, in the Department's sole discretion. Such a cancellation shall not be a breach of the Contract, and the Design-Builder shall not be entitled to any compensation or damages if cancellation occurs.

Section 14.2 [Intentionally Omitted]

Section 14.3 Termination for Default. The Department may terminate the Contract for default if the Design-Builder fails materially to perform any of its duties or obligations under the Contract. In particular, but without limitation, the Department may terminate the Contract if:

- .1 the Design-Builder fails to prosecute the Work diligently, in accordance with the Project Schedule or to make such progress in the Work as the Department reasonably believes is necessary to complete the Project within the time required by the Contract; or
- .2 the Design-Builder fails to perform the Work in a good and workmanlike manner or to correct defects in the Work promptly upon notice by the Department; or
- .3 the Department reasonably determines that the Design-Builder has abandoned the Work, or has failed to pay laborers, mechanics, materialmen, Subcontractors or suppliers when payment is due; or
- .4 becomes insolvent, makes an assignment for the benefit of creditors, files a voluntary petition under any chapter of the Bankruptcy Code or has an involuntary petition filed against it under any chapter of the Bankruptcy Code, or has a receiver appointed, or files for dissolution or otherwise is dissolved; or
- .5 the Design-Builder fails to pay its debts in a timely manner or becomes insolvent, or the Department reasonably determines that the Design-Builder does not have the financial ability to carry out its obligations under the Contract and the Design-

Builder fails to give the Department prompt and reasonable assurances of its ability to perform.

- .6 The Department must provide the Design-Builder with written notice of its intent to terminate the Contract under this provision seven (7) days before actually putting the termination into effect. If the Design-Builder has begun its curative action and has made progress satisfactory to the Department within the seven days, the Department may so notify the Design-Builder and the termination will not take effect. Otherwise, the termination shall take effect after seven days without further notice or opportunity to cure.
- .7 If the Department terminates the Contract for default, the Department will have the right to take over the Work, to accept assignment of some or all Subcontracts or agreements with material suppliers, to take possession of the Project, to take and use all tools, equipment and supplies then being used in connection with the Work, and to finish the Project by whatever method it deems expedient, including accepting assignment of all outstanding Subcontracts and Supply Agreements.

Section 14.4 Termination for Convenience

Section 14.4.1 The Department may, upon seven (7) days written notice to the Design-Builder, terminate the Contract in whole or specified part, for its convenience, whether the Design-Builder is in breach of Contract or not. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions.

Section 14.4.2 After receiving notice of termination for convenience, the Design-Builder shall (1) stop work on the terminated portion of the Project as of the effective date of the termination and stop placing subcontracts or supply agreements thereunder; (2) consult with the Department regarding the disposition of existing orders and subcontracts, and use its best efforts to terminate them on terms favorable to the Department; (3) consult with the Department to decide what actions should be taken to protect work in place and equipment that has been delivered and not yet installed, and to render the site safe, and proceed to take such actions as may be agreed upon or, absent agreement, as may be reasonable; (4) take necessary or directed action to protect and preserve property in the Design-Builder's possession in which the Department has or may acquire an interest and, as directed by the termination notice or other order from the Department, deliver the property to the Department; and (5) promptly deliver to the Department all computer files it has prepared relating to the Project. The Design-Builder shall also promptly notify the Department, in writing, of any legal proceeding arising from any subcontract or supply agreement related to the terminated portion of the Project, and, in consultation with the Department, settle outstanding liabilities arising out of the terminated portion of the Project on the best terms reasonably possible.

Section 14.4.3 The Design-Builder shall be entitled to receive only the following with respect to the terminated portion of the Project: (1) Cost of Work performed up to the date of

termination; and (2) reasonable costs of terminating outstanding subcontracts and supply agreements and other similar wind-up costs in a reasonable amount. The Design-Builder shall not be entitled to recover any overheads or profits on unperformed portions of the Work. Further, if it appears to the Department that the cost of completing the work would have exceeded the Lump Sum Price, the Department shall have the right to adjust the settlement figure downward in an appropriate amount. In no case shall the Design-Builder be entitled to receive an amount in settlement for termination for convenience that would exceed the percentage value of the Work actually performed in accordance with the Contract, multiplied by the Lump Sum Price, and reduced by any damages, liquidated or otherwise, the Design-Builder may owe the Department.

Section 14.4.4 Payment of such amounts shall be the Design-Builder's sole remedy for termination for convenience.

Section 14.4.5 The Design-Builder shall, promptly after termination, submit a proposal for settlement of the amounts due to it as a result of the termination for convenience. The proposal shall be consistent with the requirements of Subparagraphs 14.4.2 through 14.4.4, and shall be accompanied by such documentation of costs as the Department may reasonably require. Such documentation may include cost and price data in accordance with the Department's Regulations.

Section 14.5 Effect of Wrongful Termination. Any termination for cause which is later determined to have been improperly effected shall be deemed to have been a termination for convenience pursuant to Paragraph 14.4 and shall be governed by that Paragraph.

Section 14.6 Continued Responsibility After Termination. If the Design-Builder is terminated, either for default or otherwise, the Design-Builder shall remain responsible for defects or non-conformities in all Work performed to the date of the termination.

Section 14.7 Suspension

Section 14.7.1 Suspension at the Convenience of the Department. The Department may at any time, with or without cause, suspend, delay, reduce or interrupt performance of all or any portion of the Work for such period or periods as the Department elects by giving the Design-Builder written notice specifying which portion of the Work is to be suspended and the effective date of such suspension. Such suspension, delay or interruption shall continue until the Department terminates such suspension, delay or interruption by written notice to the Design-Builder. No such suspension, delay, interruption or reduction by the Department shall constitute a breach or default by the Department under the Contract Documents. The Design-Builder shall continue to diligently perform any remaining Work that is not suspended, delayed, reduced or interrupted and shall take all actions necessary to maintain and safeguard all materials, equipment, supplies and Work in progress affected by the suspension, delay, reduction or interruption.

Section 14.7.2 Payment Upon Suspension For Convenience. In the event of suspension, delay, reduction or interruption for convenience by the Department, the Department shall pay the Design-Builder and the Lump Sum Price shall be increased by such amounts (subject to the payment and related requirements of the Contract Documents) as follows:

Section 14.7.2.1 Additional Costs of the Work, if any, which are incurred by the Design-Builder, its Subcontractors and Vendors as a result of continuing to maintain dedicated personnel, materials and equipment at the Site at the Department's request during any suspension, delay or interruption period, including for the purpose of safeguarding all material, equipment, supplies and the Design-Builder's Work in progress caused solely by such suspension, delay or interruption ordered by the Department for convenience, but the Lump Sum Price shall be increased only if and to the extent such delay, suspension or interruption exceeds a period of thirty (30) consecutive days following commencement of the Work; and

Section 14.7.2.2 Other reasonable and unavoidable Costs of the Work, if any, which are directly related to any subsequent re-mobilization of the suspended, delayed or interrupted the Design-Builder's Work caused solely by such suspension, delay or interruption ordered by the Department for convenience, but the Lump Sum Price shall be increased only if and to the extent such delay, suspension or interruption exceeds a period of thirty (30) consecutive days following commencement of the Work.

Section 14.7.2.3 Provided, however, that no adjustment shall be made to the extent that performance was otherwise subject to suspension, delay or interruption by another cause for which the Design-Builder is responsible. Furthermore, the Design-Builder shall not be entitled to an increase in its fee for a suspension ordered by the Department.

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. This Agreement and any attachments or Exhibits hereto. The term Agreement shall not include the Drawings and Specifications, and any other Contract Document.

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 Lump Sum Price, 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 [Intentionally Omitted]

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 Preconstruction Phase to review the reports prepared by the Architect/Engineer. The Design-Builder 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 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.

Section 16.12 Final Completion Date. The date established herein 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 [Intentionally Omitted].

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

Section 16.16 Hazardous Materials Remediation Costs. The direct Costs incurred by the Design-Builder in connection with the removal, remediation, passivation or encapsulation of Hazardous Materials.

Section 16.17 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 16.18 Project Schedule. The schedule for the project agreed to by the Department and the Design-Builder herein. 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 16.19 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 16.20 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 16.21 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, subsubsubcontracts, and so on. "Subcontractors" shall include both those who are retained to perform labor only and those who are retained both to perform labor and to supply material or equipment. "Subcontractors" shall also include design professionals who are not the Design-Builder's employees and to whom the Design-Builder delegates any part of its responsibilities under the 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; and (6) the Project is ready for the Department to use it for its intended purpose. "Minor punch list items" are defined for this purpose as items that, in the aggregate, can be completed within 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.

Section 17 RFP and Proposal. Reference is made to the Request for Proposals issued by the Department and the proposal submitted by the Design-Builder in response thereto. Copies of the cover pages of those documents are attached as **Exhibit []**. Those documents are subordinate to the terms of this Agreement. To the extent that either of those documents is inconsistent with the terms of the Agreement, the terms of the Agreement shall prevail.

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

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

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

[COMPANY NAME]

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