

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

Construction Management Services for IDIQ

Solicitation No.: DCAM-15-CS-0097 Amendment No. 7

Issued: July 6, 2015

This Amendment No. 7 is issued and hereby published on the DGS website on July 6, 2015. Except as modified hereby, the Request for Proposals ("RFP") remains unmodified.

Item #1 A.6 Procurement Schedule

Delete:

- Proposal Due Date - July 7, 2015 at 2:00 p.m.

Insert:

- Proposal Due Date - July 9, 2015 at 2:00 p.m.

Item #2 E.3 Date and Time for Receiving Proposals

Delete: July 7, 2015

Insert: July 9, 2015

Item #1 A.7 Attachments

Delete:

Attachment G Form of Contract (Issued by Addendum)

Insert:

Attachment G Form of Contract (Exhibit 1 to Amendment No.7)

Supporting Documents:

Exhibit 1- Attachment G Form of Contract

By: 

James Marshall
Supervisory Contracting Specialist

Date: 7-6-15

AGREEMENT FOR

Construction Management Services IDIQ
CONTRACT NO. DCAM-15-CS-0097

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

WITNESSETH:

WHEREAS, the Department of General Services (“Department” or “DGS”) issued a Request for Proposal (“RFP to engage multiple Contractors to provide Construction Management Services for District of Columbia Government construction projects;

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

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

NOW, THEREFORE, the Department and Contractor, for the consideration set forth herein, mutually agree as follows:

AGREEMENT:

ARTICLE 1
SCOPE OF WORK

Section 1 Scope of Work. The Contractor shall provide Construction Management Services, coordinate, manage, and oversee selected District of Columbia Government construction projects including at a minimum the following:

Section 1.2 Background. The Department of General Services (DGS) is seeking multiple contractors to provide Construction Management (CM) services to the District of Columbia. This solicitation is to establish Indefinite Delivery/Indefinite Quantity (IDIQ) contracts for CM services.

Section 1.3 Qualifications:

Section 1.3.1 The CM firm must have demonstrated knowledge and proven record of successfully managing the entire life cycle of a construction project ranging from design inception to project closeout and turnover.

Section 1.3.2 The CM firm shall present and document the depth and professional credentialing of its staff, including the designated key personnel.

Section 1.3.3 The CM firm must demonstrate its capabilities in utilizing industry standard Project Management Control tools, specifically Prolog, P6, MS Projects, Timberline and RSMMeans.

Section 1.4 Key Personnel: The key personnel specified in the contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified key personnel for any reason, the CM shall notify the Contracting Officer at least thirty (30) calendar days in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the contract. The CM shall not reassign these key personnel or appoint replacements, without written permission from the CO.

Section 1.5 Summary Responsibilities:

Section 1.5.1 When directed by DGS, the CM shall provide staff to successfully coordinate, manage, and oversee all on-site construction operations. The CM shall act as an extension of the department to ensure the project is properly constructed, on time, and on budget.

Section 1.5.2 The CM shall provide their assigned staff with all equipment and supplies necessary to fulfill the requirements described in this Section B, including but not limited to a cell phone/email device, a laptop computer with wireless internet connection, a printer with wireless connection, and any typical equipment used by a CM in the fulfillment of their responsibilities. The cost for such equipment shall be included in the Offeror's fully loaded Fixed Hourly Rates.

Section 1.5.3 In providing services under this Agreement, the CM shall provide services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

Section 1.5.4 The DGS Project Manager is referred to later in this document as "PM"

Section 1.6 Construction Schedule. The Contractor shall review and verify the accuracy of the GC's detailed Construction Schedule and once approved, distribute among the appropriate parties as identified by the PM. The Contractor shall ensure the GC's Construction Schedule uses the critical path method and is broken down into activities showing the sequence of the construction activities. The Construction Schedule shall be the contractual schedule by which the construction will be sequenced and the basis for measuring the project's progress and the GC's performance. The Contractor shall:

Section 1.6.1 Maintain and update the Construction Schedule on behalf of the District and track milestone activity against the schedule of record maintained by the GC in Primavera 6.

Section 1.6.2 Review the progress of construction with the GC, observe work in place and properly stored materials on a daily basis, and evaluate the percentage complete of each construction activity as indicated in the construction Schedule of Values (SOV).

Section 1.6.3 Prepare and distribute Weekly Progress Report including Construction Schedule updates. After an evaluation of the actual progress as observed, assign schedule activities percentage-complete values in conjunction with the GC; Reflect in the schedule, actual progress as compared to schedule progress noting variances (if any).

Section 1.7 Construction Monitoring. The Contractor shall utilize spot-checking, selective sampling, and other similar methods of general observation to provide the ongoing monitoring of construction activities. The Contractor shall:

Section 1.7.1 Confirm that as-built drawings are maintained by the GC as required by their contract; verify the accuracy and completeness of all as-built drawings, and assure that the GC maintains and updates the drawings on a regular basis and includes all actual locations and routings of services, all changes from the original documents, field changes, final details, actual dimensions, and other similar items on the drawings. Compare this set of plans to construction GC's set as changes occur. Reconcile any differences.

Section 1.7.2 Maintain a separate, complete, and updated set of as-built drawings throughout the project for verification purposes against the GC's records.

Section 1.7.3 Monitor the GC's performance as to consistency cost, quality and schedule monthly and issue a GC Performance Report;

Section 1.7.4 Review building materials for compliance to contract requirements; the CM shall maintain records of all reviews in the Daily Log;

Section 1.7.5 Ensure that all installation and construction work adheres to contract requirements (including testing equipment, material, utilities, etc., before and after installation to verify initial and final state);

Section 1.7.6 Review and interpret drawings, specifications and shop drawings for completion and accuracy; the CM shall document all reviews in the Daily Log;

Section 1.7.7 Advise the PM of any specialized construction required to fabricate/install systems or sub-components and identify lead times for material/equipment that may impact the construction schedule;

Section 1.7.8 Ensure GC and subcontractors comply with current labor and safety regulations;

Section 1.7.9 Ensure receipt of Subcontractor Plan and that the necessary qualifications and special requirements are met by all contractors on the project, most notably subcontractors; and

Section 1.7.10 Ensure A/E & GC meet all federal and District regulatory abatement requirements

Section 1.8 Change Orders. The Contractor shall develop and implement a system for the preparation, review, and processing of construction change directives and change orders including at a minimum the following:

Section 1.8.1 Respond to situations or occurrences, which warrant a change order in an expeditious manner;

Section 1.8.2 Estimate the cost of all change orders and negotiate final costs with the GC on behalf of the client;

Section 1.8.3 CM shall verify that all changes have been authorized. If any unauthorized work has been identified on the drawings or in the field CM shall bring these items to the PM attention immediately;

Section 1.8.4 Provide Change Order Package to the PM including relevant written information, all costs and potential impact(s) on project budget, project scheduling, suggested alternatives to achieve cost/time effectiveness; cost and scheduling data which are in accord with the contract requirements, and furthers the goals for development of the project. Prepare a written cost estimate, provide technical assistance during negotiations, document negotiations, and prepare appropriate documentation to be forwarded to the PM for issuance of change orders;

Section 1.8.5 Advise the PM on all scope and cost changes to the contract as the result of client and implementing agencies, A/E, changes due to existing conditions or complications or GC's error or omission;

Section 1.8.6 The Contractor shall evaluate the GC's proposal cost and make a formal recommendation to the PM regarding acceptance of the proposal for a Change Order; and

Section 1.8.7 In the event of major scope changes during the construction phase prepare an estimate for this change in scope in a format approved by the PM. Estimates shall be completed within a mutually agreed time frame that does not present a negative project schedule impact. CM may be directed to negotiate change orders with the GC on behalf of the District.

Section 1.9 Project Management and Administration. The Contractor shall develop and implement procedures for the following:

Section 1.9.1 Applications for Payment - Develop and implement a procedure for the review and processing of the GC's applications for payment including the following:

Section 1.9.1.1 Review and reconcile the GC's SOVs for each of the activities included in the Construction Schedule and recommend to the PM ways to improve. Use this approved document to initialize the progress payment schedule for the Construction Phase. SOV shall be broken down into activities and in accordance with PM's desired format.

Section 1.9.1.2 Review and validate the GC's invoices; submit invoices to the PM for payment with recommendation for payment or identification of items requiring additional documentation or explanation.

Section 1.9.2 Claims - Support the PM in the defense and resolution of any claims related to the Project including at a minimum the following:

Section 1.9.2.1 Receive all notices of claims by Contractors against the District for additional cost or time due to any alleged cause and perform a preliminary evaluation of the contents of the claim, obtain factual information concerning the claim, and provide a written recommendation to the PM that includes all costs and potential impact(s) on project scheduling. Suggest alternatives, which may be more, cost effective, both with respect to costs and scheduling. Support all recommendations with cost and scheduling data, which are in accord with the contract requirements, can be accommodated within the project budget, and furthers and Client's goals for development of the project. Prepare a written cost estimate, provide technical assistance during negotiations, and prepare appropriate documentation to be forwarded to the PM for issuance of change orders.

Section 1.9.2.2 Perform claims analysis and validation

Section 1.9.2.3 Prepare an Impact Evaluation Report, reflecting the actual impact on the Construction Schedule and provide in the report a narrative including a recommendation for action to PM.

Section 1.9.2.4 Prepare claim estimates based on the alleged cause of claims submitted by the GC and prepare alternate estimates based on varying scenarios of the claim cause. Transmit and document the estimates claim rulings and negotiation of claims with the GC on behalf of DGS. Make a final recommendation to DGS concerning settlement or other appropriate action.

Section 1.9.3 Document control and records keeping.

Section 1.9.3.1 Provide and maintain central location for archiving and storage of building drawings, computer files, design and construction correspondence, regulatory information, estimates/payment, QA/QC, materials, zoning, historical preservation, energy and other special documents;

Section 1.9.3.2 Set up and maintain filing system and Project working folders for both CM and PM

Section 1.9.3.3 Maintain organized construction files; provide administrative assistance to support document/file maintenance during the construction period

Section 1.9.3.4 Maintain construction related documents including but not limited to the Construction Schedule, As Built Drawings, Change Orders, Applications for Payment, Claims, Meeting minutes and communication, Project Logs, Daily Reports, GC Performance Reports, Weekly Progress Reports, Photo Progress Reports, Inspection and Turnover Documents, and Training Materials

Section 1.9.3.5 Maintain electronic files of Construction Related Documents

Section 1.9.4 Provide assistance with the acquisition of all required Permits

Section 1.10 Meetings, Reports, and Communication. The Contractor shall at a minimum provide the following to ensure the timely dissemination of information and to foster open lines of communication between the GC, PM, FEMS, and A/E to provide access to the

original or copies of all such materials upon the request by the District for a period of three (3) years after completion of the Project.

Section 1.10.1 Meetings

Section 1.10.1.1 Attend weekly Progress meetings with the PM and GC representatives;

Section 1.10.1.2 Attend any other meetings related to the project;

Section 1.10.1.3 Develop, review and revise all meeting minutes within 72 hours of meeting end time. In addition, if requested by the PM, the CM shall write and distribute meeting minutes for these meetings within 72 hours of meeting end time;

Section 1.10.2 Reports

Section 1.10.2.1 The Contractor shall maintain a detailed daily report. Submit daily reports to the PM on the status of construction, including updated copies of all logs maintained at the site for items that include but are not limited to change orders, claims, submittals, etc. Reports shall be made available to the PM at all times and shall be turned over to the PM, hole-punched and in labeled and tabbed binders per location, and presented in hard and soft/electronic format at the completion of the project.

Section 1.10.2.2 Prepare and disseminate Weekly Progress Report and GC Performance Report;

Section 1.10.2.3 Complete and submit Incident Reports within twenty-four (24) hours of incident to the PM or elsewhere, which affect, or may be expected to affect, Project progress.

Section 1.10.3 Logs

Section 1.10.3.1 Maintain Project logs of all clarifications requested by the GC A/E, client and implementing agency. Provide written notifications to the Design A/E's requesting design clarification, inform them of delays that may be caused, and advise them accordingly.

Section 1.10.3.2 Create and maintain logs of any and all sorts as requested by the PM. All logs shall be maintained in 3-ring binders and Prolog and labeled with all necessary back up information included. Logs shall be made available to the PM at all times and shall be turned over to the PM, hole-punched and in labeled and tabbed binders Project Logs.

Section 1.10.3.3 Develop and maintain an updated Deliverables Distribution List;

Section 1.10.3.4 Assist the PM with responses to FEMS and other project inquiries; Ensure timely processing of, and response to, project documentation such as correspondence, Request for Information (RFI's), Request for Proposals (RFP's), material submittals Change Order (CO) documentation, and any other documentation requested by the PM;

Section 1.10.3.5 Maintain a Daily Log to document the projects day to day activity including for example technical and procedural conflicts and the resolution of each, results of

site visits, inspections status of Construction, including updated copies of all logs maintained at the site for change orders, claims, submittals,

Section 1.10.3.6 Provide progress photos weekly, a minimum of one (1) per scope item or area per week whether or not any work was done during the previous week. Photographs shall be labeled with: the name of the Project, the scope item or area name, and the date taken. These photos shall be provided via email and/or Prolog as requested by the PM and compiled onto three (3) CD-ROM per site and delivered to the PM upon Project completion;

Section 1.10.3.7 Deliver Project documentation, submittals, material, and equipment of any sort to clients, agencies, consultants, GC as needed.

Section 1.11 Inspections, Turnover and Training Services. The Contractor shall provide inspection and turnover services including at a minimum the following:

Section 1.11.1 Coordinate the technical inspection and testing provided by other third parties; include the results of inspection and testing in the Project Daily Reports;

Section 1.11.2 Coordinate with DGS PM to determine if the facility is substantially complete according to the contract requirements and provide the required documentation. When the facility is substantially complete, develop a work list before recommending Beneficial Occupancy inspection.

Section 1.11.3 Recommend whether the facility is ready for Beneficial Occupancy inspection by the PM. If the contractor's request for Beneficial Occupancy inspection is denied, provide an explanation to the PM, delineating prerequisites not yet satisfied. If facility is ready for Beneficial Occupancy inspection, conduct Beneficial Occupancy inspection with contractor, using and implementing agency, and A/E and prepare a comprehensive punch and coordinate the inspections that may be performed by others that may be performed by others.

Section 1.11.4 Transmit the punch list to the GC and PM. Monitor the corrective work signing off each deficiency as it is corrected. Prepare a project specific checklist of the items contractually required before the contract can be considered ready for final acceptance. Provide all documentation required for final payment and close-out; and

Section 1.11.5 Coordinate the turnover of the completed facility to facility managers, ensuring that equipment and system testing, commissioning and start-up take place.

Section 1.11.6 Ensure that all documents required for project close out are being developed, submitted and upload into Prolog by the Contractor including but not limited to warranties, AS-Built drawings, submittal, Operation and Maintenance Manuals, and training materials. Organize equipment start-up seminars and training with the contractor and facility personnel and supervise start-up testing and balancing of all equipment and systems

Section 1.12 Deliverables. The Contractor shall provide items listed in the SOW including but not limited to the following:

Section 1.12.1 Electronic files shall be provided on compact disks. Documents (presentations) shall conform with Word Processing Spread-sheet, etc. any and/or a combination

of Microsoft Word .doc format, Microsoft Excel .xls format, Primavera or Microsoft Project .mpp format, or Microsoft Access .mbd format Power Point as appropriate.

Section 1.12.2 All review and associated notes shall be both in hard copy and electronic formats such as PDFs, DOCS, and XLS produced in the performance of this contract, or in contemplation thereof, produced after completion of the work shall be and remain the sole property of the District Government and may be used on any other work without additional cost to the Government. With respect thereto, the Contractor agrees not to assert any rights or to establish any claim under the property or copyright laws and not to publish or reproduce such matter in whole or in part or in any manner or form, or authorize others so to do without the written consent of DGS, until such time as the District may have released such matter to the public. The Contractor agrees to furnish and provide access to the original or copies of all such materials upon the request by the District for a period of three (3) years after completion of the project.

Section 1.13 Deliverables Schedule. All required deliverables shall be presented in a professionally acceptable manner and submitted to DGS no later than 4:00 p.m. on the agreed upon due date(s).

Section 1.13.1 The contractor shall develop and submit one (1) hard and (1) electronic copy for each of the following deliverables to PM on required due date:

Deliverable:	Frequency:
• Daily Reports	- Daily
• Weekly Reports	- Weekly
• Incident Reports	- Within 24 hours of incident
• Claims	- As Requested by PM
• GC Performance Report	- Monthly
• Meeting Minutes and Progress Reports	- Within 72 hours
• Close-out Documents	- As Requested by PM

Section 1.14 Project Manager. The Department’s Project Manager shall provide certain program management functions. The Project Manager shall, at all times, act solely for the benefit of the Department, not the Contractor. The Contractor acknowledges that the Project Manager is not authorized to modify any of the rights or obligations of the Department or the Contractor pursuant to this Contract, or to issue Change Orders or Change Directives. **The Contractor hereby acknowledges and agrees that only a duly authorized Contracting Officer of the Department shall have the authority to issue Change Orders or Change Directives on the Department’s behalf. The Department’s duly authorized Contracting Officers are Jonathan Kayne, Kim Gray, and James Marshall.**

ARTICLE 2
Standard Task Order Provisions

Section 2.1 Unless otherwise expressly stated in a Task Order, all of the provisions of the Contract shall be deemed incorporated into the Task Order as if set forth therein. Any services to be provided under this contract shall be performed in accordance with the terms and conditions of this Agreement and of individual Task Orders issued by DGS.

Section 2.2 The Contractor will be asked to submit an estimated total price or such other pricing as may be requested by the Department for the proposed work. The price will be based on the hourly rates and unit prices established in this Agreement. In most cases, the Contractor will be provided the project narrative; specifications and schedule in order to better understand and clarify the work prior to submitting the estimated price.

Section 2.3 It is contemplated that individual Task Orders shall, in general, contain the following information: (i) a description of the scope of work and period of performance included in such Task Order (s); (ii) an estimated total price and/or such other terms of compensation for the work included in the Task Order's scope of work; (iii) the Substantial Completion Date for the Task Order's scope of work and/or such other schedule requirements for the Task Order; and any other specific requirements of the scope of work.

ARTICLE 3
CONTRACT TYPE

Section 3.1 Contract Type. This is an indefinite delivery indefinite quantity contract (ID/IQ) with fixed unit prices.

ARTICLE 4
COMPENSATION

Section 4.1 The Consultant shall be entitled to receive a minimum of Two Hundred Fifty Dollars (\$250.00) regardless of whether any work is assigned to the Consultant via a Task Order. In no event, however, shall the Consultant be entitled to receive more than Nine Hundred Fifty Thousand Dollars (\$950,000.00) per year for work performed pursuant to all Task Orders.

ARTICLE 5
CONTRACT TERM

Section 5.1 Base Term. The base term of the contract shall be from date of execution to twelve (12) months thereafter.

Section 5.2 Option Year. The Department shall have the right to extend the term of this Contract for four (4) one (1) year option periods; provided that the Department shall give the Contractor preliminary written notice of its intent to exercise the option to extend the term of the Contract thirty (30) days prior to the expiration of the contract. The preliminary notice does not commit the Department to an extension. Contractor may waive the thirty (30) day notice requirement by providing a written waiver to the Contracting Officer prior to the expiration of the Contract.

Section 5.3 Option Year Pricing. In the event the Department exercises its option to extend the Contract as described in Section 5.2, the fixed unit prices applicable to such Option Year is set forth in Exhibit A.

ARTICLE 6 **DEPARTMENT'S RESPONSIBILITIES**

Section 6.1 Information and Services

Section 6.1.1 The Department will 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 6.2 Department's Designated Representatives

Section 6.2.1 Chief Contracting Officer (CCO) In accordance with 27 DCMR, Chapter 47, Section 4704 contracts may be entered into and signed on behalf of the District Government only by CCO. The address and telephone number of the CCO is:

Jonathan Kayne
Interim Director/Chief Contracting Officer
Department of General Services
2000 14th Street, N.W. – 8th Floor
Washington, D.C. 20009
Telephone: (202) 727-2800
E-mail:jonathan.kayne@dc.gov

Section 6.2.2 Authorized Changes by the Contracting Officer (CO) and the CCO

Section 6.2.2.1 The CCO and the CO are the only persons authorized to approve changes to any of the requirements of the Contract. The CO is authorized to approve changes valued up to \$100,000.00.

Section 6.2.2.2 The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this Contract, unless issued in writing and signed by the CCO.

Section 6.2.3 Project Manager (PM)

Section 6.2.3.1 The Project Manager is responsible for general administration of the Contract and advising the CCO as to the Contractor's compliance or noncompliance with the Contract. The Project Manager has the responsibility for the day-to-day monitoring and supervision of the Contract, of ensuring the Work conforms to the requirements of the Contract and such other responsibilities and authorities as may be specified in writing by the CCO and/or in the Contract. These include:

Section 6.2.3.1.1 keeping the CCO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CCO of any potential problem areas under the Contract;

Section 6.2.3.1.2 Coordinating site entry for Contractor personnel, if applicable;

Section 6.2.3.1.3 Reviewing invoices for completed work and recommending approval by the CCO if the Contractor's prices and costs are consistent with the Contract and progress is satisfactory and commensurate with the rate of expenditure;

Section 6.2.3.1.4 Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions and the Contract; and

Section 6.2.3.1.5 Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

Section 6.2.3.1.6 the address and telephone number of the Project Manager is:

Agyei Hargrove
Project Manager
Department of General Services
Capital Construction Services Division
1250 U Street, N.W. – 4th Floor
Washington, DC 20009
Telephone: (202) 698-4151
E-mail: agyei.hargrove@dc.gov

Section 6.2.4 The Project Manager shall NOT have the authority to:

Section 6.2.4.1 Award, agree to, or sign any Contract document, change order, change directive, delivery order or task order. Only the CCO shall make contractual agreements, commitments or modifications;

Section 6.2.4.2 Grant deviations from or waive any of the terms and conditions of the Contract;

Section 6.2.4.3 Increase the dollar limit of the Contract or authorize work beyond the scope and dollar limit of the Contract,

Section 6.2.4.4 Authorize the expenditure of funds by the Contractor;

Section 6.2.4.5 Change the period of performance; or

Section 6.2.4.6 Authorize the use of District property, except as specified under the Contract.

Section 6.2.4.7 The Contractor shall be held fully responsible for any changes not authorized in advance, in writing, by the CCO, and may be denied compensation or other relief

for any additional work performed that is not authorized by the CCO in writing. In addition, Contractor may also be required at no additional cost to the District, to take all corrective action necessitated by reason of any unauthorized changes.

ARTICLE 7 **CHANGES IN THE WORK**

Section 7.1 Executed Change Order Required. Changes to the Contract may be made only by a written Change Order executed by the Department. The Contracting Officer is the only person authorized to approve changes in any of the requirements of this contract. The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the Contracting Officer.

Section 7.2 In the event the Contractor effects any change at the instruction or request of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

Section 7.3 Prompt Notice. In the event the Contractor encounters a situation which the Contractor believes to be a change to this Contract, the Contractor shall provide the Department with prompt written notice of such event and the possible impact such event could have on cost and schedule. All such notices shall be given promptly, considering the then applicable situations, but in no event more than ten (10) calendar days after encountering the situation. The Contractor acknowledges that the failure to provide such notice in a timely manner could limit or eliminate the Department's ability to mitigate such events, and thus, the Contractor shall not be entitled to an adjustment in the event it fails to provide prompt notice. The Contractor shall include provisions similar to this provision in all of its subcontracts.

Section 7.4 Executed Change Orders Final. The Contractor agrees that any Change Order executed by the Department and the Contractor constitutes its full and final adjustment for all costs, delays, disruptions, inefficiencies, cumulative impact, accelerations, schedule impacts, or other consequences arising from the change in question, whether a Change 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 Event giving rise to the Change Order.

ARTICLE 8 **INSURANCE**

Section 8.1 Required Insurance. The Contractor shall maintain the following types of insurance throughout the life of the contract:

Section 8.1.1 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 One Million (\$1,000,000) for liability for bodily injury, death and property damage arising from any one occurrence and Two Million Dollars (\$2,000,000) from the aggregate of all occurrences within each policy year. The policy should include completed operations coverage.

Section 8.1.2 Workers' Compensation and Employers Liability Coverage providing statutory benefits for all persons employed by the Contractor, or its subcontractors at or in connection with the Work.

Section 8.1.3 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

Section 8.2 Waiver of Subrogation. All such insurance shall contain a waiver of subrogation against the Department and its respective agents.

Section 8.3 Strength of Insurer. All insurance shall be placed with insurers that are reasonably acceptable to the Department and with an A.M. Best's rating of not less than a then-current rating of "A-" or better and a financial size category of Class XV or higher. All such insurers shall be licensed/approved to do business in the District of Columbia.

ARTICLE 9 **CLAIMS & DISPUTE RESOLUTION**

Section 9.1 Notice of Claim. If the Contractor has complied with all provisions in Section 7 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 Contractor wishes to pursue a claim over the disputed item, it shall inform the Department's Chief Contracting Officer, in writing, of its claim. The notice must be delivered to the Department within fifteen (15) days of the Department's decision, or within thirty (30) days of the written request for a Change Order, if the Department has failed to respond to the request. If the Contractor wishes to assert a claim, as such term is defined in the General Conditions, over a dispute not arising from matters related to a Change Event, Change Order or Change Directive, the written notice of claim must be delivered to the Department's Chief Contracting Officer within fifteen (15) days of the date the Contractor knew or should reasonably have known of the events giving rise to the claim. All claims must be submitted pursuant to the 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 9.2 Contents of Notice of Claim. The notice of claim shall state the nature of the claim, the events or circumstances giving rise to the claim, the type of relief requested, and the amount of time or additional compensation, or other damages sought. If the amount of time, compensation, or other damages sought is not reasonably ascertainable at the time, the Contractor shall so state, explain why, and provide whatever estimates it can reasonably provide. The notice shall state clearly that the Contractor intends to assert a claim against the Department under this Contract.

Section 9.3 Appeal Procedures. All claims arising under or in connection with the Contract 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 PPRA. However, if a third party brings any claim or suit against the Department, including, without limitation, claims of infringement of patents, copyrights or other intellectual property rights, the Department may bring an action for defense or indemnification against the Contractor in the court in which such claim or suit is being litigated.

ARTICLE 10 PAYMENTS

Section 10.1 Invoicing. The Contractor shall invoice the Department on a monthly basis. Each such invoice shall itemize all of the work performed during the invoice period. Invoices for the COTR shall be submitted electronically to dgsfm.invs@dc.gov. Properly prepared invoices with the necessary backup shall be paid within thirty (30) days of receipt. Invoices not paid by that date shall bear interest in accordance with the Prompt Payment Act.

Section 10.2 Right to Withhold Payments. The Department will notify the Contractor within fifteen (15) calendar days after receiving any invoice for payment, of any defect in the invoice or the work which may result in the Department's declining to pay all or a part of the invoiced amount. The Department may withhold payment from the Contractor, in whole or part, as appropriate, if:

- (a) The work is defective and such defects have not been remedied; or
- (b) The Department has determined that the Contractor's progress has fallen behind the Project Schedule, and the Contractor fails, within ten calendar days of the Department's written demand, to provide the Department with a realistic and acceptable plan to recover the delays; or
- (c) The Contractor has failed to pay subcontractors promptly or has made false or inaccurate certifications that payments to Subcontractors or Suppliers are due or have been made; or
- (d) The Contractor is otherwise in substantial breach of the Contract.

Section 10.3 The Department's liability under this contract is contingent upon the future availability of appropriated monies with which to make payment under the contract. The legal liability on the part of the Department for the payment of any money shall not arise unless and until such appropriations have been provided.

ARTICLE 11 MISCELLANEOUS PROVISIONS

Section 11.1 Extent of Contract. The Contract, which includes this Agreement and the exhibits attached hereto, and other documents incorporated herein by reference, represents the entire and integrated agreement between the Department and Contractor 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 Contractor. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

Section 11.2 Conformance with Laws. It shall be the responsibility of the Contractor to perform the Contract in conformance with the Department's Procurement Rules (27 DCMR § 4700 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

Contractor to determine the Procurement Regulations, statutes, laws, codes, ordinances, regulations, rules, requirements and orders that apply and their effect on the Contractor's obligations thereunder.

Section 11.3 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 11.4 Assignment. The Department and Contractor respectively bind themselves, their partners, members, joint ventures, constituent entities, successors, assigns and legal representative to the other party hereto and to partners, members, joint ventures, constituent entities, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract. 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 11.5 Retention of Records and Inspections and Audits

Section 11.5.1 The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under the Contract in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Contract.

Section 11.5.2 The Contractor shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Department and the required cost submissions in effect on the date of execution of the Department.

Section 11.5.3 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 Contractor for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection.

Section 11.5.4 The Contractor agrees to include the wording of this Section in all its subcontracts in excess of five thousand dollars (\$5,000) that directly relate to Project performance.

Section 11.5.5 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 11.5.6 The Contractor agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions

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

Section 11.5.7 The Contractor shall preserve all records described herein from the effective date of the Contract completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

Section 11.6 Inspection for Supplies and Services

Section 11.6.1 To the extent applicable or appropriate, the Department may, in its sole discretion, enter the place of business of the Contractor 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 Contractor 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 Contractor or any Subcontractor of responsibility for defects or other failures to meet Contract requirements, and shall not constitute or imply acceptance.

Section 11.6.2 Notwithstanding the Department's acceptance of or payment for any product or service delivered by Contractor, the Contractor shall remain liable for latent defects, fraud, gross mistakes amounting to fraud and the Department's rights under any warranty or guarantee.

Section 11.6.3 The Department shall have the right to enter the place of business of the Contractor 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 Contractor or any such Subcontractor.

Section 11.7 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 Contractor and the Department. It shall be the responsibility of the Contractor 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 Contractor to determine the procurement regulations, statutes, laws, codes, ordinances, regulations, rules, requirements, and orders that apply and their effect on the Contractor's obligations thereunder. However, if the application of a future law or regulation requires the Contractor to undertake additional work that is materially different in scope than that presently contemplated or required, the Contractor shall be entitled to an equitable adjustment for such additional work.

Section 11.8 Anti-Competitive Practices and Anti-kickback Provisions

Section 11.8.1 The Contractor recognizes the need for markets to operate competitively and shall observe and shall comply with all applicable law, rules, and regulations prohibiting anti-competitive practices. The Contractor shall not engage, directly or indirectly, in collusion or other anti-competitive practices that reduces or eliminates competition or restrains trade. The Department shall report to the appropriate authority any activity that evidences a violation of the antitrust laws, and take such other further action to which it is entitled or obligated under the law.

Section 11.8.2 The Contractor shall observe and comply with all applicable law, rules, and regulations prohibiting kickbacks and, without limiting the foregoing, Contractor shall not (i) provide or attempt to provide or offer to provide any kickback; (ii) solicit, accept, or attempt to accept any kickback; or (iii) include, directly or indirectly, the amount of any kickback in the contract price charged by Contractor or a Subcontractor of the Contractor to the Department. The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in this subparagraph in its own operations and direct business relationships. The Department may take any recourse available to it under the law for violations of this anti-kickback provision.

Section 11.8.3 The Contractor represents and warrants that it did not, directly or indirectly; engage in any collusive or other anti-competitive behavior in connection with the bid, negotiation or award of the Contract.

Section 11.9 Responsibility for Agents and Contractors. At all times and during Project, the Contractor shall be responsible to the Department for any and all acts and omissions of the Contractor's agents, employees, Subcontractors, Sub-Subcontractors, material suppliers, and laborers, and the agents and employees of the Subcontractors, Sub-Subcontractors, material suppliers, and laborers performing or supplying Work in connection with the Project.

Section 11.10 Ethical Standards For Department's Employees And Former Employees. The Department expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed under the Contract. The Contractor may not assign to any former Department or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Subcontractor or vendor.

Section 11.11 Gratuities and Officers Not to Benefit Provisions

Section 11.11.1 If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any

official, employee or agent of the Department or the District with a view toward securing the Contract or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract and may pursue such other rights and remedies provided by law and under the Contract.

Section 11.11.2 In the event the Contract is terminated as provided in Section 11.11.1, the Department shall be entitled:

Section 11.11.2.1 to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor; and

Section 11.11.2.2 as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Department) which shall be not less than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

Section 11.11.3 No member of, nor delegate to Congress, Mayor or City Council Member, nor officer nor employee of the District, nor officer nor employee of the Department shall be admitted to any share or part of the Contract or to any benefit that may arise therefrom, and all agreements entered into by the authorized representative of the Department in which he or any officer or employee of the Department shall be personally interested as well as all agreements made by the Department in which the Mayor or City Council Member or officer or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department or by any officer thereof; but this provision shall not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or officer or employee of the District is de minimus.

Section 11.12 Covenant Against Contingent Fees Provisions. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a Commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the 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 11.13 Non-Discrimination in Employment Provisions

Section 11.13.1 The Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. The affirmative action shall include, but not be limited to, the following:

Section 11.13.1.1 Employment, upgrading, or transfer;

Section 11.13.1.2 Recruitment or recruitment advertising;

Section 11.13.1.3 Demotion, layoff, or termination;

Section 11.13.1.4 Rates of pay, or other forms of compensation; and

Section 11.13.1.5 Selection for training and apprenticeship.

Section 11.13.2 Unless otherwise permitted by law and directed by the Department, the Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Department setting forth the provisions of this Section concerning non-discrimination and affirmative action.

Section 11.13.3 The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor; state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in this Section.

Section 11.13.4 The Contractor agrees to send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Department, advising each labor union or workers' representative of the Contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

Section 11.13.5 The Contractor agrees to permit access by the Department to all books, records and accounts pertaining to its employment practices for purposes of investigation to ascertain compliance with this Section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

Section 11.13.6 The Contractor shall include in every subcontract the equal opportunity clauses of this Section so that such provisions shall be binding upon each Subcontractor or vendor.

Section 11.13.7 The Contractor shall take such action with respect to any Subcontractor as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for non-compliance.

Section 11.14 Buy American Act Provision. The Contractor shall comply with the provisions of the Buy American Act (41 U.S.C. § 10a), including, but not limited to, the purchase of steel.

Section 11.15 Contract Work Hours And Safety Standards Act Provision. The Contractor 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 11.16 Service Contract Act Provision. The Contractor agrees that the construction management work performed under this Contract shall be subject to the Service Contract Act (41 U.S.C. §§ 351). The wage rates applicable to this Project are attached as Exhibit 2. The Contractor further agrees that it and all of its subcontractors shall comply with

the regulations implementing the Davis-Bacon Act and such regulations are hereby incorporated by reference.

Section 11.17 False Claims Act. Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in District of Columbia Code § 22-2514.

Section 11.18 Interpretation of Contract. All of the documents comprising the Contract should be read as complementary, so that what is called for by one is called for by all. Ambiguities should be construed in favor of a broader scope of work for the Contractor, as the intent of the Contract is, with specific identified exceptions, to require the Contractor 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 General Conditions, and 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 11.19 Independent Contractor. In carrying out all its obligations under the Contract, the Contractor shall be acting as an independent Contractor, and not as an employee or agent of the Department, or joint venture or partner with the Department. The Contractor shall have exclusive authority to manage, direct, and control the Work, and shall be responsible for all construction means, methods, techniques, sequences, and procedures, as well as for Project safety.

Section 11.20 Confidential Information. In the course of the Contractor's performance of the Work, the Department may make available to the Contractor 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 Contractor 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 Contractor to carry out the Project. The Contractor shall similarly obligate any and all persons to whom such information is necessarily disclosed to maintain the information in strict confidence. The Contractor 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 11.21 No Third-Party Beneficiary Rights. Nothing in this Agreement shall be construed as creating third-party beneficiary rights in any person or entity, except as otherwise expressly provided in this Agreement.

Section 11.22 Media Releases. Neither the Contractor, its employees, agents or Subcontractors or material suppliers shall make any press release or similar media release related to the Project unless such press release have been discussed with the Department prior to its issuance.

Section 11.23 Construction. This Agreement shall be construed fairly as to all parties and not in favor of or against any party, regardless of which party prepared the Agreement.

Section 11.24 Notices. All notices or communications required or permitted under the Contract shall be in writing and shall be hand delivered or sent by telecopier or by recognized overnight carrier to the intended recipient at the address stated below, or to such other address as the recipient may have designated in writing. Any such notice or communication shall be deemed delivered as follows: if hand delivered, on the day so delivered, if sent by telecopier, on confirmation of successful transmission, and if sent by recognized overnight carrier, the next business day.

If to the Department:

Jonathan Kayne
Interim Director/Chief Contracting Officer
Department of General Services
2000 14th St, NW – 8th Floor
Washington, DC 20009

If to the Contractor:

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

Section 11.25 Limitations. The Contractor agrees that any statute of limitations applicable to any claim or suit by the Department arising from this Contract or its breach shall not begin to run, or shall be deemed to be tolled, until Final Completion or, with respect to latent defects or nonconformities, such later time as the Department knew or should have known of the defect or nonconformity.

Section 11.26 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 Contractor acknowledges that, in entering into the Contract, the Department is relying on the particular qualifications of the Contractor, and the Contractor 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 Contractor 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 11.27 Survival. All agreements warranties, and representations of the Contractor contained in the Contract or in any certificate or document furnished pursuant to the Contract shall survive termination or expiration of the Contract.

Section 11.28 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 11.29 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 Contractor or any other person or entity.

Section 11.30 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 11.31 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 Contractor, unless otherwise expressly provided to the contrary in the Contract.

Section 11.32 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 11.33 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 12 **TERMINATION OR SUSPENSION**

Section 12.1 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 Contractor shall not be entitled to any compensation or damages if cancellation occurs.

Section 12.2 Termination for Default. The Department may terminate the Contract for default if the Contractor 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:

Section 12.2.1 the Contractor 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

Section 12.2.2 the Contractor 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

Section 12.2.3 the Department reasonably determines that the Contractor has abandoned the Work, or has failed to pay laborers, mechanics, material men, Subcontractors or suppliers when payment is due; or

Section 12.2.4 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

Section 12.2.5 the Contractor fails to pay its debts in a timely manner or becomes insolvent or the Department reasonably determines that the Contractor does not have the financial ability to carry out its obligations under the Contract and the Contractor fails to give the Department prompt and reasonable assurances of its ability to perform.

Section 12.2.6 the Department must provide the Contractor 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 Contractor has begun its curative action and has made progress satisfactory to the Department within the seven days, the Department may so notify the Contractor and the termination will not take effect. Otherwise, the termination shall take effect after seven days without further notice or opportunity to cure.

Section 12.2.7 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 12.3 Termination for Convenience

Section 12.3.1 The Department may, upon seven (7) days written notice to the Contractor, terminate the Contract in whole or specified part, for its convenience, whether the Contractor 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 12.3.2 After receiving notice of termination for convenience, the Contractor 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 Contractor'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 Contractor 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 12.3.3 The Contractor 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; (2) reasonable costs of terminating outstanding subcontracts and supply agreements and other similar wind-up costs in a reasonable amount; (3) a fair and reasonable portion of the overhead and profit attributable to the Work performed on the terminated portion of the Project, up to the time of termination. The Contractor shall not be entitled to recover overhead or profits on unperformed portions of the Work. Further, if it appears to the Department that the cost of completing 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 Contractor 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 Contractor may owe the Department.

Section 12.3.4 Payment of such amounts shall be the Contractor's sole remedy for termination for convenience.

Section 12.3.5 The Contractor 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 12.3.2 through 12.3.4, 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 12.4 Effect of Wrongful Termination. Any termination for cause which is later determined to have been improperly affected shall be deemed to have been a termination for convenience pursuant to Paragraph 12.4 and shall be governed by that Paragraph.

Section 12.5 Continued Responsibility After Termination. If the Contractor is terminated, either for default or otherwise, the Contractor shall remain responsible for defects or non-conformities in all Work performed to the date of the termination.

Section 12.6 Suspension

Section 12.6.1 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 Contractor 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 Contractor. No such suspension, delay, interruption or reduction by the Department shall constitute a breach or default by the Department under the Contract Documents. The Contractor 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 12.6.2 Payment Upon Suspension For Convenience. In the event of suspension, delay, reduction or interruption for convenience by the Department, the Department shall pay the Contractor 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 12.6.2.1 Additional Costs of the Work, if any, which are incurred by the Contractor, 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 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 12.6.2.2 Other reasonable and unavoidable Costs of the Work, if any, which are directly related to any subsequent re-mobilization of the suspended, delayed

ARTICLE 13 **DEFINITIONS**

Section 13.1 Agreement. The term Agreement shall mean this Agreement consisting of 28 pages. It does not include exhibits attached hereto or any document incorporated by reference.

Section 13.2 Change Directive. A written direction signed and issued by the Department ordering the Contractor 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 13.3 Change Event. Any condition, event, act, omission or breach, other than the issuance of a Change Directive, which the Contractor believes entitles it to a change in the Lump Sum Price, or the Substantial or Final Completion Date.

Section 13.4 Change Order. A written document, executed by the Department and the Contractor, setting forth the agreed terms upon which a change to the Contract has been made.

Section 13.5 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 Contractor for the purpose of obtaining bids from potential trade Subcontractors and material suppliers for use in constructing the Project.

Section 13.6 Contract. The entire, integrated agreement between the Department and the Contractor with respect to the Project, consisting of this Agreement and the Exhibits to the Agreement, the Construction Documents released for the Contractor's use and any Change Directives or Change Orders that have been executed by the Department.

Section 13.7 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 13.8 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 Contractor is required to deliver to the Department as a condition to receiving final payment.

Section 13.9 Final Completion Date. The date established herein by which the Contractor shall achieve Final Completion. The Final Completion Date may be modified only by Change Order or Change Directive in accordance with the Agreement.

Section 13.10 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 Contractor 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 13.11 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 13.12 Notice to Proceed. A written notice to proceed, signed by the Department, directing the Contractor to proceed with the Project or any portion of the Project.

Section 13.13 Project Schedule. The schedule for the project agreed to by the Department and the Contractor 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 13.14 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 13.15 Subcontractor. Any person, natural or legal, to whom the Contractor 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 Contractor. "Subcontractors at all tiers" shall mean not only those Subcontractors in direct privity with the Contractor, but also those performing Work pursuant to sub-subcontracts, subcontracts, and so on. "Subcontractors" shall include both those who are retained to perform labor only and those who are retained both to perform labor and to supply material or equipment. "Subcontractors" shall also include design professionals who are not the Contractor's employees and to whom the Contractor delegates any part of its responsibilities under the Contract, except that references to "trade Subcontractors" shall exclude design professionals.

Section 13.16 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 ninety (90) days without interfering with the Department's normal use of the Project.

Section 13.17 Substantial Completion Dates. The dates established herein by which the Contractor shall achieve Substantial Completion. The Substantial Completion Dates may be modified only by Change Order or Change Directive in accordance with the Agreement.

ARTICLE 14 **GENERAL CONDITIONS**

Section 14 General Conditions. To the extent that this Agreement is silent on an action or requirement of the Contractor, and current as of the date of this Agreement the Standard Contract Provisions For Use With Specifications for District of Columbia Construction Projects Revised March 2011 shall govern the Contractor's obligations with respect to such action or requirement under this Agreement.

ARTICLE 15 **INDEMNIFICATION**

Section 15 Indemnification. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Department and Department's consultants, 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 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 Work itself), but only to the extent caused by the

negligent acts or omissions of the Contractor, 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.

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

Name: Jonathan Kayne
Title: Interim Director/Chief Contracting Officer
Date:
Signature:

CONTRACTOR

Name:
Title:
Date:
Signature: