June 22, 2020

The Honorable Phil Mendelson  
Chairman  
Council of the District of Columbia  
John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Suite 504  
Washington, DC 20004

Reference: District of Columbia Department of General Services  
Letter Contract and Proposed Construction Management-at-Risk Agreement  
for Franklin Park  
Contract Number: DCAM-19-CS-RFP-0062  
Contractor: Smoot Construction Company of Washington, DC

Dear Chairman Mendelson:


If approved, the Contract will authorize the Contractor to provide all required construction management-at-risk services required to renovate and modernize Franklin Park located at 14th and K Streets, NW, Washington, DC 20005. The Contract provides for a total Contract amount of $13,563,460.80 with an administrative term through November 15, 2021, inclusive of a substantial completion date of July 15, 2021 and final completion date of September 15, 2021. The Department executed a Letter Contract in the initial not-to-exceed amount of $949,560.00. The proposed Contract increases the amount of the Contract by $12,613,900.80, from $949,560.00 to $13,563,460.80. As the proposed amount of the Contract exceeds $1 million, Council approval is required for this action.
In addition to the Letter Contract and proposed Contract, attached are (i) a contract summary, (ii) a fiscal certification, (iii) legal sufficiency reviews and certifications, and (iv) a Citywide Clean Hands certificate for the Contractor.

If you have any questions regarding this proposed action, please feel free to contact Keith A. Anderson, the Department’s Director, or George G. Lewis, CPPO, the Department’s Chief of Contracts and Procurement, at (202) 727-2800.

Sincerely,

Muriel Bowser

Enclosures
A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To approve, on an emergency basis, Contract No. DCAM-19-CS-RFP-0062 between the Department of General Services and Smoot Construction Company of Washington, DC, increasing the amount of the Contract to $13,563,460.80 and authorizing payment to Smoot Construction Company of Washington, DC for goods and services received and to be received under the Contract.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

That this act may be cited as the “Contract No. DCAM-19-CS-RFP-0062 with Smoot Construction Company of Washington, DC Approval and Payment Authorization Emergency Act of 2020”.

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves, on an emergency basis, Contract No. DCAM-19-CS-RFP-0062 between the Department of General Services and Smoot Construction Company of Washington, DC, increasing the amount of the Contract to $13,563,460.80 and authorizing payment to Smoot
Construction Company of Washington DC for goods and services received and to be received under the Contract.

Sec. 3. Fiscal impact statement.


Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).
Pursuant to section 202(c) of the Procurement Practices Reform Act of 2010, as amended, D.C. Official Code § 2-352.02(c), the following contract summary is provided:

COUNCIL CONTRACT SUMMARY
(Letter Contract)

Letter Contract and Proposed Construction Management-at-Risk Agreement for Franklin Park

(A) Contract Number: DCAM-19-CS-RFP-0062 (the “Contract”)

Proposed Contractor: Smoot Construction Company of Washington, DC (the “Contractor”)

Letter Contract Amount: $949,560.00

Proposed Contract Amount: $13,563,460.80 Project Budget (inclusive of Letter Contract amount of $949,560.00)

Unit and Method of Compensation: Progress Payments on a monthly basis.

Term of Contract: January 13, 2020, execution date of Letter Contract through substantial completion of construction no later than July 15, 2021

Note: The Contract must be approved by Council and executed on or before July 7, 2020 in order to timely complete the Project.

Type of Contract: Cost Plus Fixed Fee with GMP

Source Selection Method: Competitive Request for Proposals

(B) For a contract containing option periods, the contract amount for the base period and for each option period. If the contract amount for one or more of the option periods differs from the amount for the base period, provide an explanation of the reason for the difference:

N/A.
(C) The date on which the letter contract or emergency contract was executed:

A letter contract with the Contractor was executed by the Department of General Services (the “Department”) on January 13, 2020 (the “Letter Contract”).

(D) The number of times the letter contract or emergency contract has been extended:

The Letter Contract was extended twice. Modification No. 01 to the Letter Contract, executed on April 20, 2020, extends the term of the Letter contract from April 30, 2020 to June 30, 2020. Modification No. 02 to the Letter Contract, executed on June 11, 2020, extends the term of the Letter contract from June 30, 2020 to the earlier of July 31, 2020 or the effective date of the proposed definitive Contract. Upon Council’s approval and the Department’s execution of the definitive Contract, the letter contract shall merge with and be superseded by the Contract.

(E) The value of the goods and services provided to date under the letter contract or emergency contract, including under each extension of the letter contract or emergency contract:

The total value of the goods and services provided to date under the Letter Contract is $949,560.00, which represents the not-to-exceed amount established by the Letter Contract.

(F) The goods or services to be provided, the methods of delivering goods or services, and any significant program changes reflected in the proposed contract:

The Contract would authorize the Contractor serve as Construction Manager at Risk (CMAR) for the renovation and modernization of Franklin Park, located at 14th and K Streets, NW, Washington, DC. The project includes restoring and replacing the tree canopy, restoring the soil and curbing rodent infestations, significant regrading and relocation of paths, rain-gardens for on-site surface storm-water-management, restoration of the central flag-stone plaza with a redesigned interactive fountain, restoration and augmentation of historic light-fixture, benches and fencing, creation of a new “children’s garden” informal play area, and a Café-Pavilion, deck and plaza, located at the southern edge of the site. The scope of the project includes utilities, streetscapes and sidewalks continuous with park-block beyond the parcel property.

(G) The selection process, including the number of offerors, the evaluation criteria, and the evaluation results, including price, technical or quality, and past performance components:

On September 9, 2019, the Department issued a Request for Proposal (“RFP”) for a contractor serve as the Construction Manager at Risk for the Project. Five (5) addenda to the RFP were issued. Addendum No. 1, issued September 12, 2019, incorporated the date and time for the pre-proposal conference and the site visit and the set aside market (CBE) for the solicitation. Addendum No. 2, issued September 19, 2019, incorporated proposal conference sign-in sheets and business cards. Addendum No. 3 Issued October 8, 2019 extended the proposal due date to October 16, 2019 at 2:00 pm. Addendum No. 4 issued October 9, 2019 Incorporated responses to questions and RFP documents. Addendum 5 issued October 15, 2019 incorporated answers to additional questions, extended the proposal due date to October 17, 2019.
On the proposal due date, October 17, 2019, five (5) firms submitted proposals in a timely manner.

**Technical Evaluation:**

The proposals were evaluated by a technical evaluation Panel (“Panel”) in accordance with the criteria set forth in the RFP. Each proposal was independently evaluated utilizing a point scale, certain points of which were for the technical evaluation component as follows: (i) Past performance, Relevant Experience & Capabilities; (ii) Key Personnel; (iii) Project Management Plan & Schedules; (iv) Price; (v) CBE Preference Points.

The panel initially met on December 2, 2019 to develop a consensus technical score. Prior to convening for the evaluation meetings, each of the panel members individually completed an evaluation of the proposals. In doing so, each panel member rated each Offeror with respect to specific factors in the four categories. In developing the consensus score, the panel presented details of each of the proposals in light of the evaluation factors. Following such discussions and consensus ratings of the Offerors, the ratings were converted to numbers.

**Price Evaluation:**

As outlined in the RFP, in addition to the technical scoring, certain points were available for price. The RFP required offerors to submit pricing in the form of: (i) a Preconstruction Fee; (ii) a Construction Management Fee; and (iii) a General Conditions Budget. The Construction Management Fee is fixed fee and covers the cost of the CMAR’s overhead and profit. The cost of general conditions, as defined in the Agreement shall be reimbursable subject to a cap equal to the General Conditions Budget proposed by the Offeror.

**Certified Business Enterprise Preference Points:**

In addition to the price and technical scoring, a certain number of points were available for each Offeror based on its status as a Certified Business Enterprise (“CBE”) as determined by the Department of Small and Local Business Development (“DSLBD”). All of the Offerors, including the Contractor, were so certified and received points accordingly. Based on the technical rating, preference points awarded, as well as capacity to timely complete the Project, the Contractor was determined to be the most qualified offeror for the Project.

**Contracting Officer’s Determination of Fair and Reasonable Price:**

The DGS Contracting Officer examined the fee/price proposal submitted by the contractor. After review the fee proposal the contracting officer determined the proposal in comparison with the Government Estimate to be fair and reasonable. The contracting officer determined award be made without discussion.
Contract Award:

In accordance with the criteria set forth in the RFP the panel determined that the Contractor is the most qualified and responsible offeror. The Contracting Officer determined that the Contractor is responsible and that the Contractor’s proposed pricing is fair and reasonable.

Subsequently, by award memorandum executed December 16, 2019, the Department awarded Contract No. DCAM-19-CS-RFP-0062 to the Contractor as such award would be most advantageous to the District.

On January 13, 2020, the Department executed a Letter Contract in the amount of $949,560.00. The value of Letter Contract was less than $1 million; thus, it did not require Council approval. The proposed Contract would increase the amount of the Contract by $12,613,900.80, from $949,560.00 to $13,563,460.80. As the amount of the proposed Contract is in excess of $1 million, Council approval is required.

(H) A description of any bid protest related to the award of the contract, including whether the protest was resolved through litigation, withdrawal of the protest by the protestor, or voluntary corrective action by the District. Include the identity of the protestor, the grounds alleged in the protest, and any deficiencies identified by the District as a result of the protest:

The award of the Contract was not protested.

(I) The background and qualifications of the proposed contractor, including its organization, financial stability, personnel, and performance on past or current government or private sector contracts with requirements similar to those of the proposed contract:

The Contractor is a minority-owned Construction firm that provides a full range of construction management services and has experience and success with the alteration, restoration, and adaptive reuse of existing buildings. The firm consists of a diverse group of design professionals with experience in completing residential, commercial and institutional facilities. Every staff member is working on, or has worked on, one or more LEED projects. Forty percent of the firm professionals are LEED accredited.

The Contractor has successfully provided construction services for Fort Davis Recreation Center, Banneker Recreation Center, Fort Davis Park, Kennedy Recreation Center, and Hamilton Recreation Center in the District. The Contractor's portfolio also includes the Maury Elementary School.

(J) A summary of the subcontracting plan required under section 2346 of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended, D.C. Official Code § 2-218.01 et seq. (“Act”), including a certification that the subcontracting plan meets the minimum requirements of the Act and the dollar volume of the portion of the contract to be subcontracted, expressed both in total dollars and as a percentage of the total contract amount:

The Contractor’s subcontracting plan meets the minimum requirements of the Act as follows:
Contract Dollar Value  $13,563,460.80
Dollar Value Subcontracted to SBEs/CBEs:  $4,747,211.30
Percentage of Contract Value:  35%

(K) Performance standards and the expected outcome of the proposed contract:

Performance standards outlined in the Contract consist of strict adherence to established milestones ensuring the timely completion of the required services will be closely monitored by Department staff. The terms and conditions of and the Standard Contract Provisions for use with District of Columbia Government Architectural/Engineering Services contracts.

(L) The amount and date of any expenditure of funds by the District pursuant to the contract prior to its submission to the Council for approval:

The total value of the goods and services provided to date under the Letter Contract is $949,560.00, which represents the not-to-exceed amount established by the Letter Contract. The Letter Contract was executed on January 13, 2020 and was extended one time. Modification No. 01 to the Letter Contract, executed on April 20, 2020, extends the term of the Letter Contract from April 30, 2020 to the earlier of June 30, 2020 or the effective date of a definitive contract.

(M) A certification that the proposed contract is within the appropriated budget authority for the agency for the fiscal year and is consistent with the financial plan and budget adopted in accordance with D.C. Official Code §§ 47-392.01 and 47-392.02:

The proposed Contract is within the appropriated budget authority for the agency for the fiscal year and is consistent with the financial plan and budget adopted in accordance with D.C. Official Code §§ 47-392.01 and 47-392.02. The applicable Fiscal Sufficiency certification accompanies this Council Package.

(N) A certification that the contract is legally sufficient, including whether the proposed contractor has any pending legal claims against the District:

The proposed Contract has been deemed legally sufficient by the Office of the General Counsel, and the Contractor does not appear to have any currently pending legal claims against the District.

(O) A certification that Citywide Clean Hands database indicates that the proposed contractor is current with its District taxes. If the Citywide Clean Hands Database indicates that the proposed contractor is not current with its District taxes, either: (1) a certification that the contractor has worked out and is current with a payment schedule approved by the District; or (2) a certification that the contractor will be current with its District taxes after the District recovers any outstanding debt as provided under D.C. Official Code § 2-353.01(b):

The Citywide Clean Hands database indicates that the Contractor is current with its District taxes.
(P) A certification from the proposed contractor that it is current with its federal taxes, or has worked out and is current with a payment schedule approved by the federal government:

The Contractor has certified that it is in compliance with federal tax laws. The applicable Clean Hands certification for the Contractor accompanies this Council Package.

(Q) The status of the proposed contractor as a certified local, small, or disadvantaged business enterprise as defined in the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended, D.C. Official Code § 2-218.01 et seq.:

According to the DSLBD’s website, the Contractor is a certified Local, Small, or Disadvantaged Business Enterprise. The Contractor’s CBE No. is LR1491062021 with an expiration date of May 21, 2021.

(R) Other aspects of the proposed contract that the Chief Procurement Officer considers significant:

N/A

(S) A statement indicating whether the proposed contractor is currently debarred from providing services or goods to the District or federal government, the dates of the debarment, and the reasons for debarment:

The Contractor is not debarred from providing services to the Government of the District of Columbia or the Federal Government according to the Office of Contracts and Procurement’s Excluded Parties List and the Federal Government’s Excluded Parties List.

(T) Any determination and findings issues relating to the contract’s formation, including any determination and findings made under D.C. Official Code § 2-352.05 (privatization contracts):

N/A

(U) Where the contract, and any amendments or modifications, if executed, will be made available online:

Contract award information is available on the DGS web page. Copies of Contract documents (if approved) will also be made available on the DGS web page.

(V) Where the original solicitation, and any amendments or modifications, will be made available online:

The original solicitation and any amendments have been/will be posted on the Department’s website.
CERTIFICATE OF CLEAN HANDS

As reported in the Clean Hands system, the above referenced individual/entity has no outstanding liability with the District of Columbia Office of Tax and Revenue or the Department of Employment Services. As of the date above, the individual/entity has complied with DC Code § 47-2862, therefore this Certificate of Clean Hands is issued.

TITLE 47. TAXATION, LICENSING, PERMITS, ASSESSMENTS, AND FEES
CHAPTER 28 GENERAL LICENSE
SUBCHAPTER II. CLEAN HANDS BEFORE RECEIVING A LICENSE OR PERMIT
§ 47-2862 PROHIBITION AGAINST ISSUANCE OF LICENSE OR PERMIT

Authorized By Marc Aronin
Chief, Collection Division

To validate this certificate, please visit MyTax.DC.gov. On the MyTax homepage, click “Clean Hands” and then the “Validate a Certificate of Clean Hands” hyperlink.
Memorandum
To: Keith A. Anderson
   Director

From: Antoinette Hudson Beckham for AHB
   Agency Fiscal Officer

Reference: Contract for Construction Management-at-Risk Services for Franklin Park
   (Contract No. DCAM-19-CS-RFP-0062) with Smoot Construction Company of Washington DC

Date: June 12, 2020

Subject: Fiscal Sufficiency Review

In my capacity as the Agency Fiscal Officer of the Department of General Services (the “Department”), I hereby verify that the agreement for Construction Management-at-Risk Services for Franklin Park (DCAM-19-CS-RFP-0062) with Smoot Construction Company of Washington DC (the “Contractor”) in the amount of $12,613,900.80 is consistent with the Department’s current budget and that adequate appropriated funds are available for the expenditure.

Previously, a letter contract value of $949,560.00 was verified and approved. The proposed contract in the amount of $12,613,900.80, would increase the contract value to $13,563,460.80 ($949,560.00 + $12,613,900.80).

The Department of General Services (DGS – Implementing AGY) has $12,613,900.80 in Department of Parks & Recreation (DPR – Owner AGY) cumulative capital budget. The PASS/SOAR attributes are attached below:
Fiscal Sufficiency Review
Construction Management-at-Risk Services for Franklin Park
Contract Number: DCAM-19-CS-RFP-0062

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Project Number</th>
<th>AY</th>
<th>Fund Detail</th>
<th>Imp. Agency</th>
<th>Owner Agency</th>
<th>RQ/PO</th>
<th>Amount</th>
<th>Comments</th>
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<td>QN751C</td>
<td>2012</td>
<td>0301</td>
<td>AM0</td>
<td>AM0</td>
<td>RK152450</td>
<td>$1,810,309.80</td>
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<td>FRANKLIN SQUARE PARK</td>
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<td>AM0</td>
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<td>RK152451</td>
<td>$2,130,000.00</td>
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<td><strong>Total</strong></td>
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<td><strong>$12,613,900.80</strong></td>
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</table>

Antoinette Hudson Beckham
Agency Fiscal Officer
Department of General Services

[Signature] for AHB
MEMORANDUM

TO: Ronan Gulstone  
   Director  
   Office of Policy and Legislative Affairs

FROM: Brian K. Flowers  
   Deputy Attorney General  
   Legal Counsel Division

DATE: June 10, 2020


This is to Certify that this Office has reviewed the above-referenced legislation and has found it to be legally sufficient. If you have any questions regarding this certification, please do not hesitate to contact me at 724-5524.

Brian K. Flowers

Brian K. Flowers
CONSTRUCTION MANAGEMENT AT-RISK AGREEMENT
FRANKLIN PARK

BY AND BETWEEN

THE DEPARTMENT OF GENERAL SERVICES

AND

Smoot Construction Company of Washington DC

CONTRACT NUMBER: DCAM-19-CS-RFP-0062
# PROJECT INFORMATION

## A. PROJECT SUMMARY

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<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>1. Project Name:</strong></td>
<td>Construction Management At-Risk - FRANKLIN PARK</td>
</tr>
<tr>
<td><strong>2. Project Address:</strong></td>
<td>14th and K Street, NW, Washington, DC</td>
</tr>
<tr>
<td><strong>3. Agreement Type:</strong></td>
<td>Construction Management At-Risk with Guaranteed Maximum Price</td>
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<tr>
<td><strong>4. Client Agency:</strong></td>
<td>District of Columbia Department of Parks and Recreation (“DPR”) and the National Park Service (“NPS”), each a “Client Agency”)</td>
</tr>
<tr>
<td><strong>5. Construction Manager:</strong></td>
<td>Smoot Construction Company of Washington DC</td>
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<td><strong>6. Agreement Amounts:</strong></td>
<td></td>
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<tr>
<td></td>
<td>i. <strong>Initial NTE:</strong> $13,563,460.80 (which is inclusive of letter contract amount of $949,560.00)</td>
</tr>
<tr>
<td></td>
<td>ii. <strong>Project Budget:</strong> $13,563,460.80</td>
</tr>
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<td><strong>7. Construction Manager Compensation:</strong></td>
<td></td>
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<tr>
<td></td>
<td>i. <strong>Construction Management Fee:</strong> $440,000.00</td>
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<td>ii. <strong>Preconstruction Fee:</strong> $72,000.00</td>
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<td>iii. <strong>Base Construction Management Fee (70% of the Construction Management Fee):</strong> $308,000.00</td>
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<td>iv. <strong>At Risk Portion of the Construction Management Fee (30% of the Construction )</strong> $132,000.00</td>
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<td>Maximum Cost of General Conditions:</td>
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<td>vi.</td>
<td>Contingency:</td>
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<td>vii.</td>
<td>Allowances:</td>
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<tr>
<td>8.</td>
<td>Liquidated Damages:</td>
</tr>
<tr>
<td>i.</td>
<td>Failure to Submit Deliverables:</td>
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<tr>
<td>ii.</td>
<td>Delay in Substantial Completion:</td>
</tr>
<tr>
<td>9.</td>
<td>GMP Proposal Submission</td>
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<tr>
<td>10</td>
<td>GMP Amendment Executed By:</td>
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<tr>
<td>11</td>
<td>Substantial Completion Date:</td>
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<tr>
<td>12</td>
<td>Final Completion Date:</td>
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<tr>
<td>13</td>
<td>Administrative Term Expiration Date:</td>
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<td>14</td>
<td>Key Personnel Replacement Cost</td>
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<td>15</td>
<td>Letter Contract:</td>
</tr>
<tr>
<td>i.</td>
<td>Period of Performance</td>
</tr>
<tr>
<td>ii.</td>
<td>NTE Amount:</td>
</tr>
<tr>
<td>16</td>
<td>GMP Basis Documents Design Progression (“GMP Drawings &amp; Specifications”)</td>
</tr>
</tbody>
</table>
CONSTRUCTION MANAGEMENT AT-RISK AGREEMENT

FOR

FRANKLIN PARK

DCAM-19-CS-RFP-0062

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”) and Smoot Construction Company of Washington DC duly organized under the laws of the Washington, DC and with a place of business at 5335 Wisconsin Avenue, NW, #940, Washington, DC 20015 (the “Construction Manager” or “Contractor”, and collectively, the “Parties”).

RECITALS

WHEREAS, the Department issued a Request for Proposals dated September 9 (the “RFP”) to engage a contract manager to provide construction management at-risk services for the construction of the Franklin Park project, located at 14th and K Street, NW, Washington, DC (individually and collectively, the “Project”);

WHEREAS, the Department desires that the Project be substantially complete no later than July 15, 2021 (“Substantial Completion Date”);

WHEREAS, the Construction Manager submitted a proposal entitled Construction Management-at-Risk Franklin Park dated October 17, 2020 to provide construction management at-risk services for the Project;

WHEREAS, the Department wishes to retain the Construction Manager to provide construction management at-risk services for the Project. The Project is to include pre-construction services and construction services;

WHEREAS, the Construction Manager wishes to provide the preconstruction and construction and related services necessary to complete the Project, subject to the terms and conditions set forth in this Agreement;

WHEREAS, the Department has retained the services of a program manager (the “Program Manager”) to advise it concerning the Project;
WHEREAS, the Department has established a budget for the Project, including all fees, hard construction costs, loose furnishings, and fees and general conditions of the Construction Manager (such budget, the “Project Budget”);

WHEREAS, the Department has engaged Studios Architects (the “Architect” or the “Architect/Engineer”) pursuant to a separate contract (the “Design Contract”) to provide design, planning, architectural and engineering services in order to construct the Project and the Architect has advanced the design of the Project to the development of approximately 100% complete Design Development Documents;

WHEREAS, the Department will remain in contract with the Architect/Engineer and will manage the Design Contract for the duration of the Project. The Construction Manager will, however, be required to coordinate with the Architect/Engineer; and

WHEREAS, the Department and the Construction Manager entered into a letter contract dated January 13, 2020 (the “Letter Contract”) pursuant to which the Construction Manager was authorized to proceed with certain preconstruction services in furtherance of the Project.

NOW, THEREFORE, the Department and Construction Manager, for the consideration set forth herein, mutually agree as follows.

Article 1 - DEFINITIONS

Section 1.1. Administrative Term.
The Agreement shall have an administrative term (the “Administrative Term”) that runs from the effective date of the Notice to Proceed to the later of the Administrative Term Expiration Date set forth in the Project Information Section above; or the disbursement of Final Payment to the Construction Manager in accordance with Section 10.12 In addition, within this time the Construction Manager shall execute and submit a Final Release of Liens and Claims in a form and format required by the Contracting Officer, inclusive of providing the Department with a complete set of any product manuals (O&M) and training videos. The Administrative Term is established for the sole purpose of permitting the Department’s Office of the Chief Financial Officer to process payments in the event any payments become due. Notwithstanding the foregoing, nothing herein shall be construed to: extend the Substantial Completion Date; extend the Final Completion Date; or, limit the Department’s ability to assess liquidated damages thereon.

Section 1.2. Agreement.
The term “Agreement” shall mean this entire, integrated agreement between the Department and the Construction Manager with respect to the Project, consisting of this document and the Exhibits thereto, including but not limited to the District of Columbia Department of General Services Standard Contract Provisions, General Provisions for Construction Contracts (“SCP”),
the Construction Documents released for the Construction Manager’s use and any Change Orders or Change Directives that have been executed by the Department.

**Section 1.3. Client Agency.**
The governmental or quasi-governmental entity represented by the Department, requesting the Project. The client agency is the District of Columbia Department of Parks & Recreation (“DPR” and “Client Agency”).

**Section 1.4. Construction Documents.**
The final Drawings and Specifications, as prepared, sealed by the Architect’s design professional in accordance with the law, and issued by the Construction Manager for the purpose of obtaining bids from potential trade subcontractors and material suppliers for use in constructing the Project.

**Section 1.5. Construction Phase Services.**
Services provided throughout the construction phase during which the Construction Manager shall carry out the bulk of the construction for the Project.

**Section 1.6. Cost of General Conditions.**
The Cost of General Conditions shall have the meaning set forth in Section 8.2 of this Agreement.

**Section 1.7. Contract Documents.**
The term “Contract Document” refers one or more component of the documents that comprise the Agreement between the Department and the Construction Manager, including any modifications or changes thereof, the Drawings and Specifications, and any addenda issued thereto.

**Section 1.8. Preconstruction Phase Services.**
The services to be provided under Article 3 constituting the preconstruction phase services to be performed by the Construction Manager.

**Section 1.9. Drawings.**
The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and wherever issued, showing the design, locations and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

**Section 1.10. 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 Construction Manager is required to deliver to the Department as a condition to receiving final payment have been delivered.
Section 1.11. Final Completion Date.
The date established in the Agreement by which the Construction Manager shall achieve Final Completion. The Final Completion Date may be modified only by Change Order or Change Directive in accordance with the Agreement.

Section 1.12. 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 Construction Manager and Subcontractors and material suppliers; complete all punch list items to the Department’s approval and sign-off; and cause all representations, warranties and guarantees to be honored and otherwise fulfill all of the requirements set forth in the Agreement.

Section 1.13. Guaranteed Maximum Price or GMP.
The maximum amount, including, but not limited to, the Construction Management Fee and the Cost of the Work, that will be paid to the Construction Manager to Fully Complete the Project as set forth in Article 5. The Guaranteed Maximum Price (“GMP”) may be modified only by Change Order, Contract Modification or Change Directive in accordance with the Agreement. The GMP shall be established in the GMP Amendment.

Any toxic substance or hazardous chemical defined or regulated pursuant to federal, state or local laws relating to pollution, treatment, storage or disposal of waste, or protection of human health or the environment. Such laws include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act and laws relating to emission, spills, leaks, discharges, releases or threatened releases of toxic material. The term Hazardous Materials shall also include petroleum and petroleum bi-products.

Section 1.15. Notice to Proceed.
A written notice to proceed, signed by the Department, directing the Construction Manager to proceed with the Project or any portion of the Project (“Notice to Proceed” or “NTP”).

Section 1.16. Project Schedule.
The schedule for the Project agreed to by the Department and the Construction Manager. Such schedule shall include a baseline schedule as updated periodically by the Construction Manager, approved by the Department and as finalized by the GMP Amendment. The Project Schedule shall not be changed except by a Change Order or Change Directive issued by the Department. The Project Schedule shall be in a form and contain such detail as may be agreed upon by the Parties.
Section 1.17. Self-Performed Work.
Trade work performed by employees of: (1) the Construction Manager; (2) any entity that is a partner or member of the entity comprising the Construction Manager; (3) any entity that controls, is controlled by, or is under common control with the Construction Manager; or (4) any entity that controls, is controlled by, or is under common control with any entity that is part of the Construction Manager. Self-Performed Work is distinguished from trade work performed by Subcontractors unaffiliated with the Construction Manager or the entities of which the Construction Manager is comprised.

Section 1.18. Services.
The services to be provided pursuant to the Agreement which shall include the Preconstruction Phase Services and the Construction Phase Services.

Section 1.19. Specifications.
The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.


Section 1.21. Subcontractor.
Any person, natural or legal, to whom the Construction Manager delegates performance of any portion of the Work required by the Agreement. The term “Subcontractor,” used without a qualifier, shall mean a subcontractor in direct privity with the Construction Manager. “Subcontractors at all tiers” shall mean not only those Subcontractors in direct privity with the Construction Manager, 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 Construction Manager’s employees and to whom the Construction Manager delegates any part of its responsibilities under the Agreement, except that references to “trade Subcontractors” shall exclude design professionals.

Section 1.22. 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 temporary certificate of occupancy and all other required permits or approvals have been obtained; (3) draft copies of all operating and maintenance manuals, training videotapes and warranties required by the Agreement have been delivered to the Department and the Client Agency; (4) any supplemental training session required by the
Agreement for operating or maintenance personnel have been scheduled; (5) all clean-up required by the Agreement has been completed; (6) the Project is ready for the Department and Client Agency to use it for its intended purpose; and (7) all equipment, supplies, materials and items to be installed have been installed in accordance with the manufacturer’s specifications and industry standards and have undergone and passed the requisite testing and inspections. “Minor punch list items” are defined for this purpose as items that, in the aggregate, can be completed within thirty (30) days without interfering with the Department or Client Agency’s normal use of the Project.

Section 1.23. Substantial Completion Date.
The date established herein by which the Construction Manager shall achieve Substantial Completion. The Substantial Completion Date may be modified only by Change Order or Change Directive in accordance with the Agreement. In the event the Project is to be completed in parts or phases, references in the Agreement to the “Substantial Completion Date” and all rights and obligations associated therewith, shall individually apply to the Substantial Completion Date of each such part or phase.

Section 1.24. Work.
The term “Work” refers to any and all work done in performance of the Services necessary, at any and all phases of the Agreement, to Fully Complete the Project.

Article 2 - GENERAL PROVISIONS

Section 2.1. Letter Contract
The Parties acknowledge that certain of the preconstruction activities described in Article 3 of this Agreement were performed pursuant to the Letter Contract between the parties dated January 13, 2020. Pursuant to the terms of the Letter Contract, upon execution of this Agreement by the Department (the “Agreement Effective Date”), the Letter Contract shall automatically terminate and shall merge into and be superseded by this Agreement. For avoidance of doubt, any services provided or work performed pursuant to the merged Letter Contract, and prior to the date that this Agreement is effective, shall be governed by the terms and condition of this Agreement.

Section 2.2. Term and Termination
The period of performance under this Agreement shall commence from the date of execution of the Letter Contract by the Department and shall terminate upon the expiration of the Administrative Term or upon termination by the Department pursuant to Articles 5 and 6 of the SCP.

Section 2.3. Relationship of Parties.
The Construction Manager accepts the relationship of trust and confidence established with the Department by this Agreement, and covenants with the Department to furnish the Construction Manager’s reasonable skill and judgment and to cooperate with the Program Manager in furthering
the interests of the Department. The Construction Manager shall use its best efforts to perform the Work and complete the Project in an expeditious and economical manner consistent with the interests of the Department. The Department shall endeavor to promote harmony and cooperation among the Department, Construction Manager, Program Manager, and other persons or entities employed by the Department for the Project. In performing its duties under this Agreement, the Construction Manager shall at all times use the standard of care used by Construction Managers that construct projects similar to the Project in type, size and scope in large, urban areas. Whenever the term “competent” is used herein to describe the Construction Manager’s actions or duties, that term shall refer to the level of competence customarily possessed by those Construction Managers that construct projects similar to the Project in type, size and scope in large, urban areas.

**Section 2.4. Confidentiality of Information**

The Construction Manager shall assure and keep all information and data obtained throughout the performance of the Project whether related to the Agreement, the Work in all of its aspects, the Department and the Department’s employees confidential, during and following the term of the Agreement, and shall not use the information in connection with any other matters; nor shall it disclose any such information to any other person, firm or corporation, unless disclosure is required pursuant to court order, subpoena or other regulatory authority. The Construction Manager shall not be divulged of confidential information without the individual’s and the Department’s written consent and only in accordance with the District’s or Federal’s laws, codes and regulations. The Construction Manager and any Subcontractors who utilize, access, or store personally identifiable information as part of the performance of this Agreement are required to safeguard this information and immediately notify the Department of any breach or suspected breach in the security of such information. The Construction Manager and all Subcontractors shall allow the Department to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. The Construction Manager, Subcontractors and their respective employees working on this Project may be required to sign a confidentiality statement.

**Section 2.5. Project Description.**

The Construction Manager shall provide Construction Management At-Risk (“CMAR”) services required to construct and implement the approved design for the Franklin Park Project, located at 14th and K Streets, NW, Washington, DC. The Project generally includes, but is not limited to, restoring and replacing the tree canopy, restoring the soil and curbing rodent infestations, significant re-grading and relocation of paths, rain-gardens for on-site surface storm-water-management, restoration of the central flag-stone plaza with a redesigned interactive fountain, restoration and augmentation of historic light-fixtures, benches and fencing, creation of a new “children's garden” informal play area, and a Cafe-Pavilion, deck and plaza, located at the southern edge of the site. Scope of the project includes utilities, streetscapes and sidewalks continuous with the park-block beyond the parcel property.

Generally, the Construction Manager’s responsibilities shall include, but will not be limited
to, the following:

a) To confirm the construction of the Project in accordance with the RFP Documents.
b) To provide all construction management services necessary to implement the goals of the Project inclusive of, but not limited to, the following: civil, architectural, electrical, structural, and mechanical design services as required for the Project (by the A/E); construction management services inclusive of budgeting, value engineering (“Value Engineering”), scheduling, project administration, management and coordination of subcontractors.
c) To conduct subsurface investigations work if and as required for the Project.
d) To furnish and provide all materials, management, personnel, equipment, hazardous material abatement, supervision, labor and other services necessary to complete the Project.

Section 2.6. Program Manager and Project Manager.
The Department has engaged a Program Manager and Project Manager to provide certain program management functions. Such Program Manager and Project Manager shall, at all times, act solely for the benefit of the Department, not the Construction Manager. The Construction Manager hereby acknowledges and agrees that only a duly authorized and designated Contracting Officer shall have the authority to issue Change Orders, Contract Modifications or Change Directives on the Department’s behalf. As of the date that this Agreement is signed, the Department’s duly authorizing contracting officers are set forth in Exhibit I.

The Program Managers are as follows:

Alphonso Fluelling
The Department of General Services
1250 U Street, N.W., 4th Floor
Washington, DC 20009
Alphonso.Fluelling@dc.gov

and

Shahrokh Ghahramani
1250 U Street, N.W., 4th Floor
Washington, DC 20009
Shahrokh.Ghahramani@dc.gov

Section 2.7. General Description of Construction Manager’s Duties.
Generally, the Construction Manager shall perform the Services in a professional workmanlike manner. The Construction Manager shall supply and furnish at the location where the Work is to be performed all labor, materials, management, personnel, equipment, tools,
services, and supervision, and shall bear all items of expense, necessary to complete and satisfactorily perform this Agreement, except such items that the Department, in this Agreement, specifically agrees to supply or furnish to or for the use of Construction Manager. Any labor, materials, equipment, tools, services or supervision not specifically described in this Agreement, but which may be fairly implied as required thereby or necessary to properly complete the Work, shall be deemed within the Scope of the Work and shall be provided by the Construction Manager at Construction Manager’s sole expense.

2.7.1 NPS Requirements

The Department Manager shall ensure that the Project design complies with all applicable laws, regulations, legal requirements, building codes, NPS design requirements and NPS management requirements. Design elements and NPS construction standards are addressed in the Denver Service Center (DSC) workflow. The relevant information can be found here: http://www.nps.gov/dsc/workflows. Please also see Exhibit S.

2.7.1.1 Additionally, the Contractor agrees:

   a. That the National Park Service (NPS) is a third-party beneficiary of this contract, with all legal rights associated with that status, including the right to enforce the contract.


   c. To comply with the terms and conditions of the Project Development Plan, or special use permits issued by NPS relating to the Project;

   d. To follow any District order to suspend work in the event of an emergency which threatens public safety, as determined by NPS or the District in their reasonable discretion and that at any time the NPS and the District may monitor, inspect, or access the construction site and construction-related materials and documents;

   e. To obtain, and transfer to the District from subcontractors, manufacturers or suppliers for work performed and materials furnished all warranties that would be given in normal commercial practice:

      i. For a period of not less than one year; and

      ii. Executed, in writing, for the benefit of the District and the United States;

   f. To be responsible for all damages to persons or property that occur as a result of the
Contractor’s fault, breach of this Contract, or negligence because of, or in any way related to the Project;

g. To waive any defense to any claim based on the Contractor’s alleged reliance on the District’s or the NPS’s Project monitoring, inspections or tests. All monitoring, inspections or tests are for the benefit of the District or the NPS and do not relieve the Contractor of responsibility for (i) providing adequate quality control measures, or (ii) ensuring against damage or loss before Project acceptance. In addition, such monitoring, inspections or tests do not imply acceptance of the Contractor’s work by either the District or the NPS, nor does it affect the continuing rights of the District or the NPS after acceptance of the Contractor’s work;

h. That neither the District’s nor the NPS’s review, approval, or acceptance of the Contractor’s services nor the District’s payment for those services will be construed to operate as a waiver of any rights of the District or the NPS, or of any cause of action that the District or the NPS may have, and the Contractor will be and remain liable to the District and the NPS in accordance with the terms of this Contract and applicable law for all damages for which the Contractor is legally responsible;

i. That in the event of a conflict between the provisions of this Contract and the provisions of the Partner Design and Construction Agreement between the NPS and the District, dated July 22, 2019 recognize that the terms of the Partner Design and Construction Agreement control, except for schedule dates included thereof in Attachment C.

j. To obtain and maintain insurance consistent with the requirements of Article IX of the Partner Design and Construction Agreement;

k. That the Contractor has no recourse against the United States with respect to Contractor’s performance under the Contract or payment for construction activities and will not lien any land, structures, fixtures, or improvements associated with this Contract;

l. To be jointly and severally liable under this Contract if the Contractor consists of more than one legal entity.

2.7.1.1 Additionally, the following provisions shall be applicable to this Agreement and shall be incorporated into all subcontracts:

a. Through the District procurement of the Contractor’s services, the NPS, as owner of the Franklin Park property, will own any and all rights, title, and interest, including design and construction documents and any and all patents, copyrights, trademarks, trade secrets, inventions, products or other intellectual property rights created as a result of, arising from, or directly relating to this Agreement, including without limitation intellectual property utilized in bid proposals and any pre-existing intellectual property belonging to the Contractor that is
provided to the District in connection with the Project.

The NPS grants to the District and the District’s Contractor, for the term of this Agreement, a worldwide, non-exclusive, non-assignable, revocable, royalty-free license for the use, in any manner and for any purpose, of any copyright, trademark, and related intellectual property rights and interest in, to, and associated with the design and construction documents, and any and all patents, copyrights, trademarks, trade secrets, inventions, products, or other intellectual property rights necessary for the design, construction, maintenance, operation, fundraising, and promotional activities in support of the Project. This license expressly excludes any existing NPS trademarks, trade dress, logos, or insignia, including the Arrowhead symbol.

b. The District, at no cost to the District, and the Contractor will fully cooperate with the NPS in the protection and enforcement of any intellectual property rights resulting from activities and services performed in connection with this Agreement. This obligation includes timely execution, acknowledgment, and delivery to the NPS of all documents and papers that may be necessary to enable the NPS to utilize in any manner any copyrights, patents, trademarks, trade secrets, and other intellectual property and proprietary rights; and

c. If any invention or material created in the course of performing tasks under this Agreement or any associated agreement is patentable intellectual property, the Contractor will report the invention or patentable intellectual property to the District within thirty days of its creation and the District will immediately report the invention or intellectual property to the NPS.

Section 2.8. Warranties and Representations

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

2.8.2. If any disclosure, representation, warranty or certification the Construction Manager has made or makes pursuant to the RFP or the Agreement, including, without limitation, representations concerning the Construction Manager’s construction or design experience and qualifications, claims or litigation history or financial condition, is materially inaccurate, that shall constitute a material breach of the Agreement, entitling the Department to any and all available remedies.
2.8.3. The terms and conditions of this Section 2.8 shall apply during both the Preconstruction and Construction Phases.

Section 2.9. Responsibility for Agents and Contractors.
At all times and during both the Preconstruction and Construction Phases, the Construction Manager shall be responsible to the Department for any and all acts and omissions of the Construction Manager’s agents, employees, Subcontractors, Sub-Subcontractors, material suppliers, and laborers, and the agents and employees of the Subcontractors, Sub-Subcontractors, material suppliers, and laborers performing or supplying Work in connection with the Project.

Article 3 - CONSTRUCTION MANAGER’S PRECONSTRUCTION SERVICES

Section 3.1. Preconstruction Services.
The Preconstruction Phase will start from the issuance of the notice to proceed through the execution of the GMP amendment (“GMP Amendment”). The Department will issue a notice to proceed for preconstruction services (the “Letter Contract”). During the Preconstruction Phase, the Construction Manager shall provide such preconstruction services as are necessary to properly advance the Project. Without limiting the generality of the foregoing, during the Preconstruction Phase, the Construction Manager shall: (i) work with the Department’s Architect and any design consultants to provide constructability reviews of the design for the Project in consultation with Client Agency, the Department and its Program Manager; (ii) obtain bids from trade subcontractors to perform the work described in the Construction Documents and provide bid tabulations to the Department; (iii) engage in any value engineering and scoping exercises necessary to return the cost of the work to the Project Budget; (iv) engage in preconstruction activities, including identifying any long-lead items; (v) develop a GMP proposal for the Project; and (vi) enter into a GMP for the Project. Throughout the Preconstruction Phase, the Construction Manager shall schedule and attend regular meetings with the Department, the Program Manager and the Architect. A list of preconstruction deliverables is set forth in Exhibit C.

Section 3.1.1 Additional Preconstruction Services. In addition to those items enumerated above, the Construction Manager shall provide such preconstruction services as are necessary to properly advance the Project. These services shall include, but are not limited to, condition assessments, conservator studies, archeological studies, recommended testing, additional geotechnical testing, and monitoring of historic assets. The cost of these additional Preconstruction Services are not included in the preconstruction fee, and if required will be added to the cost of construction work.

Section 3.2. Baseline Schedule, Building System Assessment, and Construction Management Plan.
**Section 3.2.1 Baseline Schedule.**

Within seven (7) days after the Letter Contract is issued, the Construction Manager shall prepare and submit a preliminary schedule for the Project (including the preconstruction phase activities and the construction phase activities) (the “Baseline Schedule”). The Baseline Schedule shall be subject to review and approval by the Department and the Construction Manager shall incorporate such adjustments to the Baseline Schedule as may be reasonably requested by the Department. This schedule shall be prepared in a Critical Path Method (“CPM”) and be developed in a sufficient level of detail so as to permit the affected parties (i.e. the Department, the Architect and the Construction Manager) to properly plan the Project and shall show: (i) key design milestones and bid packages; (ii) release dates for long lead items; (iii) release dates for key subcontractors; and (iv) Substantial and Final Completion Dates. The preliminary schedule shall include durations and logic ties for those building systems that the Construction Manager is recommending for replacement. The Baseline Schedule must also be submitted in Primavera 6 native format or the latest version of the software and shall be updated by the Construction Manager, at a minimum, on a monthly basis. The preliminary schedule is attached hereto as Exhibit B.

During the Preconstruction Phase, the Construction Manager 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 Construction Manager’s best projection of the effect of such delays on the Project Schedule. The Department's receipt of, and lack of objection to, any schedule update showing a later Substantial Completion or Final Completion shall not be regarded as the Department’s agreement that the Construction Manager may have an extension of time, or as a waiver of any of the Department’s rights, but merely as the Construction Manager’s representation that, as a matter of fact, the Project may not be completed by the applicable Substantial or Final Completion Date. The Project Schedule shall be maintained and continuously updated during the Preconstruction and Construction Phases.

**Section 3.2.3 Construction Management Plan.** The Construction Manager shall submit a draft of its construction management plan (“Construction Management Plan”) no later than thirty (30) days prior to the start of on-site work to include, but is not limited to, noise control, hours for construction and deliveries, truck routes, trash and debris removal plan, traffic and parking control, communications procedures, emergency procedures, quality control procedures, dust control, public street cleaning and repair, planned occupancy of public ways, erosion control, tree protection plan, vibration monitoring, temporary fire protection measures, project signage, pest control, construction staging plan, and construction logistics plan.

**Section 3.3. Constructability Reviews**
3.3.1. It is contemplated that the Construction Manager will have met with representatives of the Department, DPR, NPS and the Architect as well as other stakeholders to better develop the Department’s requirements for the Project following contract award. During the Preconstruction Phase, the Construction Manager will be required to provide constructability reviews of the design documents for the Project.

3.3.2. The Construction Manager shall meet with the representatives of the Department, Architect and Client Agency throughout the Preconstruction Phase as the design progresses and these and other stakeholders provide input in and approve the design direction at appropriate times. The GMP Basis Documents and all interim design submissions shall be subject to review and approval by the Department, and the Construction Manager shall be required to provide input on these documents to address concerns raised by the Department and/or other project stakeholders and such reviews shall not entitle the Construction Manager to an increase in the Preconstruction Fee.

3.3.2.1. Preliminary Budget Estimate. Within fourteen (14) days of the receipt of the GMP Basis Documents, the Construction Manager shall submit a detailed cost estimate of the proposed design (such estimate, the “Preliminary Budget Estimate”). With regard to building systems (i.e. roofs, doors, HVAC, security, IT, etc.), the cost estimate shall be prepared on a “system” basis that identifies the key building systems or functions and allocates an estimated cost for each such system. The Construction Management Fee, the Cost of General Conditions, and Contingencies shall be broken out in separate line items. The primary purpose of such cost estimate is to aid the Department and Client Agency in understanding the costs associated with key elements of the Project so as to better prioritize and manage the use of the funding allocated to this Project.

3.3.2.2. Baseline Budget and Program. The Department shall provide the Construction Manager with the approved baseline budget and program. Such approval shall be provided (or signed by) the Department. In the event the Construction Manager does not receive such approval within fourteen (14) days after submitting the Preliminary Budget Estimate, it shall so advise the COTR, the Department’s Deputy Director for Capital Construction and the Contracting Officer in writing of such failure and request direction. If the Construction Manager fails to provide such
notice, the Construction Manager will be proceeding at its own risk and will be responsible for costs associated with budget revisions. Only the Department shall have the authority to increase the Project budget, and absent such direction, the Construction Manager shall proceed throughout the Project on the assumption that the budget remains as originally directed by the Department pursuant to this Section 3.3.2.2.

3.3.2.3. **Constructability/Sole Source/Long-Lead Time Memorandum.** The Construction Manager shall prepare a memorandum identifying key construction concerns related to the Project. Such memorandum shall: (i) assess the constructability issues related to the Project, including site logistics; (ii) identify any items where the design is predicated on a single manufacturer and, if so, identify at least two (2) comparable products; and (iii) identify any long-lead delivery items that could adversely affect the Baseline Schedule. To the extent any such long-lead items are identified, the memorandum shall make recommendations for addressing such items. Department may release funding for hazardous materials abatement and selective demolition, and funding for long-lead items in advance of the Construction Phase. If the Construction Manager believes an earlier release is required for long-lead items in order to meet the Project Schedule, it shall advise the Department and make a recommendation as to the requested release date. Similarly, if the Construction Manager believes that additional work must be released in advance of the establishment of a GMP for the Project, it shall advise the Department and make a recommendation as to the scope of work to be released as well as to the requested release date. Further, any decision to authorize an early release shall be made by the Department in its sole and absolute discretion.

3.3.2.4. **Permits.** The Construction Manager shall be responsible for preparing and submitting permit applications for construction trades that are necessary for the construction of the Project. The Construction Manager shall develop a list of the required permits and shall track the progress of all such permits through the review process. The Construction Manager shall update the Department with the status of each permit that is required for the Project. The Construction Manager shall engage such permit expediter as the Construction Manager deems necessary or appropriate in light of the Project’s schedule. The Construction Manager shall hire a permit expediter to help facilitate the review, and approval of the Building Permit. The Construction Manager shall work with the Architect/Engineer and the expediter to ensure the
necessary building permits (including, but not limited to demolition permits, foundation to grade permits, superstructure permits, utility permits, public space permits, and any other permits required for the execution of the Work) are received in a timely manner. The Construction Manager shall be responsible for paying all permits and fees associated with the Project, other than the building permit fees; provided, however, the Department reserves the right to direct the Construction Manager to pay for building permit fees from an Owner Allowance. Costs for a permit expediter shall be considered part of the Cost of Work.

Article 4 - FORMATION OF GMP PROPOSAL

Section 4.1. General.

During the Preconstruction Phase, the Department shall cause the Architect/Engineer in coordination with the Construction Manager shall to prepare a set of drawings and specifications upon which the Construction Manager’s GMP for construction of the Project will be based (the “GMP Basis Documents”) as set forth in the Project Information Section of this Agreement. Based upon the GMP Basis Documents, the Construction Manager shall propose a GMP (referred to as the “GMP Proposal”) no later than the date set forth in the Project Information Section of this Agreement, and which shall be submitted in accordance with this Article. The Construction Manager acknowledges and understands that the GMP Basis Documents will be incomplete at the time it submits its GMP Proposal. Although complete construction documents will not be available and many details will not be shown on GMP Basis Documents or will otherwise need to be adjusted, the GMP proposed in the Construction Manager’s GMP Proposal shall be intended to represent the Construction Manager’s offer for Final Completion of the Project. The GMP Proposal shall include: (i) a line item construction budget; (ii) a detailed CPM schedule; (iii) a listing of the drawings upon which the GMP is based; (iv) an LSDBE utilization plan; and (v) a workforce utilization plan. In the event that the Department and the Construction Manager are unable to agree upon a GMP or schedule for the Project, the Department shall have the right to terminate the contract and assume any trade subcontracts held by the Construction Manager. In such an event, the Construction Manager shall only be entitled to Fifty Percent (50%) of the Preconstruction Fee.

If the Construction Manager’s GMP Proposal is acceptable to the Department, it shall be memorialized in form of an amendment to this Agreement (such amendment, the “GMP Amendment”). The Construction Manager and the Department shall execute a GMP Amendment in the form of Exhibit L attached hereto no later than the date set forth in the Project Information Section of this Agreement.
As part of the GMP Amendment, the Construction Manager shall certify that the GMP established thereby (i) contains sufficient amounts to perform all Work necessary for the Final Completion of the Project; and (ii) contains sufficient amounts to provide and construct any items or facilities that are not contained in the GMP Basis Documents but which are necessary for a fully functioning facility that meets the programmatic requirements established for the Project. The Construction Manager will further covenant and agree in the GMP Amendment that it will perform all of the construction work necessary for the Final Completion of the Project, including, without limitation, aspects of the Work that are not shown on the GMP Basis Documents but which are a logical development of the design intent reflected in the GMP Basis Documents, for an amount not to exceed the Guaranteed Maximum Price.

Section 4.2. Review of GMP Basis Documents.
The Department has selected the Construction Manager, in large part, because of its special expertise in constructing similar projects. Before submitting its Guaranteed Maximum Price, the Construction Manager shall review the GMP Basis Documents for accuracy, constructability and completeness and shall bring such deficiencies to the attention of the Department and shall cause its Architect to address any such deficiencies. To the extent that any such deficiencies in the GMP Basis Documents could have been identified by such review by a competent Construction Manager, such deficiencies shall not be the basis for a change in the GMP or delaying the Project Schedule.

Section 4.3. Contingency.
The Cost of the Work shall include a contingency, which shall be a sum established by the Department and the Construction Manager to cover, among other things costs necessary to address scope expansion that is a logical development of the design, issues arising from or as a result of deficiencies in the GMP Basis Documents and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order, such as costs that were not reasonably foreseeable as of the effective date of this Agreement, including such items as emergencies, unforeseeable changes in market conditions for materials or labor, or subsurface, soils or site conditions that were neither known nor reasonably discoverable as of the effective date of the Agreement (the “Contingency”). During the Construction Phase, the Construction Manager shall keep the Program Manager informed as to the status of the Contingency and shall, at a minimum: (i) advise the Program Manager or any significant draws upon the Contingency in a timely manner; and (ii) provide the Program Manager with running status of the Contingency balance at least once every two (2) weeks.

Section 4.4. Trade Bids.

4.4.1. Subcontractors and Suppliers: Bidding Procedures. During the Preconstruction Phase, the Construction Manager shall seek to develop subcontractor interest in the Project. Within fifteen (15) days after the
receipt of the GMP Basis Documents, the Construction Manager shall provide to the Department for its review and approval a written submission on the proposed bidding procedures. Such procedures shall include: (i) a list of proposed trades packages; (ii) a list of trade subcontractors that will be invited to bid on each such package; and (iii) a narrative description of the process. At least three (3) potential subcontractors shall be identified for each trade package. A copy of this deliverable must be submitted to both the COTR and the Contracting Officer. In the event the Department does not approve the proposed bidding procedures within fifteen (15) days after its receipt, such procedures shall be deemed approved unless the Department advises that such is still under review. The Construction Manager shall have at least one “over the shoulder” review session for each major trade package with the Architect. These "over the shoulder" review sessions shall be scheduled at appropriate times for such review.

4.4.2. **Bidding.** Following the Department’s approval of the GMP Basis Documents, the Construction Manager shall manage the trade bidding process in accordance with the approved bidding procedures and shall use commercially reasonable best efforts to solicit at least three (3) qualified and bona fide bids for each trade package that has an expected value in excess of One Hundred Thousand Dollars ($100,000). Trade packages shall not be parcelled, split or divided to avoid the $100,000 threshold. In addition to the information normally required in such bids, the Construction Manager shall also require subcontractors to provide an estimate of the percentage of labor hours performed in completing the subcontracted work which will be performed by District residents. The Construction Manager shall carefully document its procedures for making available bid packages to potential bidders, the contents of each bid package, discussions with bidders at any pre-bid meetings, bidders’ compliance with bid requirements, all bids received, the Construction Manager’s evaluations of all bids, and the basis for the Construction Manager’s recommendation as to which bidders should be chosen. The Department shall be afforded access to all such records at all reasonable times so that, among other things, it may independently confirm the Construction Manager’s adherence to all requirements set forth in the Agreement, including, without limitation, affirmative action requirements and subcontracting requirements.

4.4.3. **Bid Tab.** As part of the negotiations leading up to the GMP, the Construction Manager shall provide to the Department tabulations of the
trade bids solicited and copies of all trade bids. In general, the bid tab shall be presented in tabular format that compares the bids received and any other relevant information (i.e. exclusions, past performance history, etc.). The bid tabulation shall include scope assessments and identify required leveling of the trade submitted. To the extent that the Construction Manager’s award recommendation is based on scoping adjustments, the Construction Manager shall clearly identify the scoping adjustment and the need for such adjustments. Such bid tabulation shall include LSDBE utilization information in addition to price and other information. Such bid tabulations as well as copies of the bids shall be submitted to the Department’s Program Manager. The Construction Manager represents and warrants that the bid tabs so submitted shall fairly represent the results of the subcontractor bidding process and that the Construction Manager shall not misrepresent any such data to the Department or its Program Manager.

4.4.4. **Value Engineering.** Based on the trade bids received, the Construction Manager shall prepare a written report of suggested value engineering strategies necessary to reconcile the costs of constructing the Project budget. The Construction Manager shall meet with the Department’s representatives to discuss any value engineering and changes in scope necessary to ensure that the Department’s schedule and programmatic requirements are met and that the budget is not exceeded. The Construction Manager shall coordinate with the Architect to implement and price any approved value engineering strategies.

**Section 4.5. Basis of Guaranteed Maximum Price.**
The Construction Manager shall include with the GMP Proposal a written statement of its basis, which shall include:

4.5.1. GMP Basis Documents which shall include a list of the Drawings and Specifications, including all addenda thereto, and General, Supplementary and other Conditions which were used in preparation of the GMP Proposal and on which the GMP is based.

4.5.2. A list of Unit Prices and Allowance Items and a statement of their basis; provided, however, that only such allowances as are agreed to by the Department shall be included.

4.5.3. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the GMP Proposal to supplement the information contained in the Drawings and
Specifications, noting in particular any exclusions. The assumptions and clarifications shall take precedence over the Drawings and Specifications. The Construction Manager shall prepare a separate memorandum that highlights any differences between the then approved drawings and the modifications made in the assumptions and clarifications. Such memorandum shall specifically address any changes in the Project's aesthetics, functionality or performance.

4.5.4. The proposed GMP, including a statement of the detailed cost estimate organized by trade categories, allowances, Contingency, and other items and the fee that comprise the GMP.

4.5.5. An update to the Project’s schedule to which the Construction Manager will agree to be bound. This update shall be prepared in the same level of detail and in the same manner as the Baseline Schedule.

4.5.6. A subcontracting plan setting forth the names and estimated dollar volume of the work that will be perform by local, small, and disadvantaged business enterprises, as certified by the Department of Small and Local Business Development, upon which the GMP is based.

4.5.7. Construction Manager’s Key Personnel.

4.5.8. Construction Manager’s Designated Representative.

Section 4.6. Department Review of GMP Proposal.
The Construction Manager shall meet with the Department to review the GMP Proposal and the written statement of its basis. In the event that the Department discovers any inconsistencies or inaccuracies in the information presented, the Department shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP Proposal, its basis or both.

Section 4.7. Department Acceptance of GMP Proposal.
The Department and the Construction Manager shall meet to negotiate the terms of the GMP Proposal. If the GMP Proposal is acceptable to the Department, the Department shall submit the resulting GMP Amendment for review and approval by the Council for the District of Columbia (the “Council”) in the event it exceeds the previously approved Project Budget by more than $1 million. In such event, the GMP shall not be effective until so approved and executed by the Parties.

Section 4.8. GMP Amendment.
In the event an acceptable GMP Proposal is not developed and a GMP Amendment is not
executed, the Agreement will be terminated. In the event the Agreement is terminated pursuant to this Section, the Department shall be free to use any of the documents and information developed through the date of termination to retain a new contractor to complete the Project.

Section 4.9. Assignment Upon Failure to Reach GMP.
In the event that the Department and the Construction Manager are unable to agree upon a GMP, the Department shall have the right to terminate this Agreement, and if requested by the Department, the Construction Manager shall assign any trade Subcontracts to the Department upon such terms and conditions and at the time requested by the Department. In such event, the Construction Manager shall forfeit fifty percent (50%) of the Preconstruction Fee.

Section 4.10. Certification.
As part of the GMP Proposal submitted in accordance with this Article, the Construction Manager agrees to specifically acknowledge and declare that the Contract Documents are sufficiently complete to have enabled the Construction Manager to determine the Cost of the Work therein in order to enter into the GMP Amendment and to enable the Construction Manager to agree to construct the Work outlined therein in accordance with applicable laws, statutes, building codes and regulations to the best of Construction Manager’s knowledge, and otherwise to fulfill all its obligations hereunder. The Construction Manager shall further acknowledge that it has visited the site, examined all conditions affecting the Work, is fully familiar with all of the conditions thereon and affecting the same, and, has carefully examined all drawings and specifications provided to it.

Section 4.11. Preconstruction Phase Deliverables.
The deliverables set forth in Exhibit C are required during the Preconstruction Phase. In the event that the Construction Manager fails to provide any deliverable so listed, and unless such failure is the result of any event of Force Majeure, the Construction Manager shall pay to the Department liquidated damages for each deliverable that is not timely submitted as set forth in Article 13 after receiving written notice from either the COTR or the Contracting Officer of failure to submit such deliverable.

Section 4.12. Unsafe Materials and Hazardous Materials

4.12.1. The Construction Manager 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 Construction Manager believes that anything in the Agreement would require that it use or bring onto the site asbestos, PCBs, or any Hazardous Material that is not customarily used in a facility of the type and similar to the Project,
it shall immediately inform the Department and seek direction before proceeding.

4.12.2. The Construction Manager shall abate Hazardous Materials on the site as necessary to complete the Work contemplated by this Agreement. The Construction Manager shall comply with all laws, including, without limitation, the requirements of the EPA and all jurisdictional agencies as well as all laws relating to safety, health welfare, and protection of the environment, in removing, treating, encapsulating, passivating, and/or disposing of Hazardous Materials, including, but not limited to, removal, treatment, encapsulation, passivation, and/or disposal of the Hazardous Materials. If any notices to governmental authorities are required, the Construction Manager shall also give those notices at the appropriate times. The Construction Manager shall ensure abatement subcontractors and disposal sites are appropriately licensed and qualified.

4.12.3. The Construction Manager shall be entitled to submit a Change Request in accordance with Article 4 of the SCP in the event the Construction Manager encounters Hazardous Materials beyond those contemplated in the Contract Documents.

4.12.4. The Construction Manager shall keep detailed records documenting Work done so that the Department may independently verify compliance with all laws, the number of units actually removed, treated, and/or disposed of, and the appropriate unit price(s) applicable to the Work.
Section 5.1. General.

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

5.1.1. **Unrenovated Portions of the Structure.** In constructing the Project, the Construction Manager shall ensure that unrenovated portions of existing structures, if any, including, but not limited to, the mechanical, plumbing, electrical systems and other building systems are not adversely affected. All unrenovated portions of the structures should function, at a minimum, at the level of functionality that existed immediately prior to the construction of the Project. If any unrenovated portion of the Project functions at a lower level of functionality as a result of the Construction Manager’s Work, the Construction Manager shall be back-charged the costs incurred by the Department in addressing the decreased functionality.

Section 5.2. Design Completion.

5.2.1. **Third Party Contractors.** The Department will hire third party contractors for plan review and for testing and material inspections. The Construction Manager shall coordinate and work with the Project Manager and third party plan reviewer during the building permit process.
Section 5.3. Subcontracting and Administration

5.3.1. It is contemplated that all or substantially all of the construction of the Project will be carried out by trade Subcontractors and that those trade subcontracts will be awarded through the competitive bid process contemplated in Section 4.4. The Construction Manager shall enter into a written agreement with each subcontractor. The trade subcontractors will be under written contract with the Construction Manager. All subcontracts and agreements for the supply of equipment or materials awarded for the Project shall be fixed-price contracts unless otherwise expressly authorized by the Department, in writing. It is understood and agreed, however, that certain trade packages (such as the mechanical and electrical packages) may be awarded on a design-assist or design-build basis and that such trade packages may be awarded on such other basis subject to the Department’s consent as to the bidding procedures and economic structure with regard to those packages. The Construction Manager and its affiliates may not carry out trade work with its own forces without the Department's written permission, which permission may be withheld or conditioned by the Department in its sole and absolute judgment.

5.3.2. In addition to the open book reporting requirements set forth in Section 5.10, the Construction Manager shall provide to the Department a copy of all quotes or proposals submitted by potential subcontractors.

5.3.3. The Construction Manager shall develop a purchasing strategy to address the expedited schedule and conditions of this Project and shall include appropriate provisions in the subcontracts to minimize the cost impact associated with such conditions. Such strategies may include, but are not limited to, (i) obtaining from subcontractors unit price quotes for typical coordination items; (ii) setting aside allowances for coordination work; and (iii) such other techniques as may be employed by the Construction Manager.

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

5.3.5. The Department may, in its sole discretion, reject any or all bids and proposals received for any bid package, and may require the Construction Manager to obtain new or revised bids or proposals.

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

5.3.7. The Department must approve all Subcontractors and suppliers. The Department may elect to review the form of any subcontract or agreement with a material supplier to insure that such contract incorporates the contractual provisions required by this Agreement.

5.3.8. The Construction Manager shall manage the Change Order process with all subcontractors to verify the validity, purpose, and cost.

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

5.3.9.1. that, to the extent of the work or supply within the agreement’s scope, the Subcontractor or supplier is bound to the Construction Manager for the performance of all obligations which the Construction Manager owes the Department under the Agreement;

5.3.9.2. 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;

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

5.3.9.4. that the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Construction Manager is terminated for default;

5.3.9.5. that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Construction Manager to suspend or stop work;

5.3.9.6. that the Subcontractor or supplier shall maintain records of all Work it is requested or authorized to do on a time and material or cost-plus basis, or with respect to claims that it has asserted on a time and materials or cost-plus basis, during the Project and for a period of time specified in the General Conditions and requiring the Subcontractor or supplier to make those records available for review or audit by the Department during that time;

5.3.9.7. 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);

5.3.9.8. that, if the Department terminates the Agreement for convenience, the Construction Manager may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) days’ written notice to the Subcontractor or supplier, and that the Subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in Article 6 of the SCP;

5.3.9.9. 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 Construction Manager files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;
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;

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

a provision requiring that all Subcontractors at all tiers comply with the provisions of Article 12 (Economic Inclusion Goals); provided, however, that the Construction Manager 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 Construction Manager from using its best efforts to achieve the LSDBE subcontracting goal on an aggregate basis for the Project;

a provision which allows the Construction Manager to withhold payment from the Subcontractor if the Subcontractor does not meet the requirements of the Subcontract;

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

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

5.3.11. The Construction Manager 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.

5.3.12. The Construction Manager shall not substitute or replace any Subcontractor or supplier approved by the Department without the Department's prior written consent.

5.3.13. 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.

5.3.14. 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 Construction Manager fails to cure the problem within five (5) calendar days after the Department gives it written notice of the failure to pay, the Department may make payments to the Subcontractor or supplier and Construction Manager by joint check.

5.3.15. The Construction Manager shall be required to provide an evaluation of each of its subcontractors’ performance by completing and submitting to the Department the Subcontractor Performance Evaluation Form set forth as Exhibit N, as follows:

(a) Within ninety (90) days of initiating the Construction Phase; and

(b) Within thirty (30) days after Final Completion of the Project.

Section 5.4. Weekly Progress Meetings & Schedule Updates.
The Construction Manager shall schedule and conduct, at a minimum, weekly progress meetings following a Construction Manager generated agenda at which the Department, the
Architect, the Program Manager, the Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes. In addition, the Construction Manager shall submit bi-weekly Schedule updates which shall reflect actual conditions of Project progress as of the date of the update. The update shall reflect the actual progress of construction, identify any developing delays, regardless of their cause, and reflect the Construction Manager'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 Construction Manager shall identify the causes of any potential delay and state what, in the Construction Manager's judgment, must be done to avoid or reduce that delay. The Construction Manager shall point out, in its narrative, changes that have occurred since the last update, including those related to major changes in the scope of work, activities modified since the last update, revised projections of durations, progress and completion, revisions to the schedule logic or assumptions, and other relevant changes. Any significant variance from the previous schedule or update shall also be identified in a narrative, together with the reasons for the variance and its impact on Project completion. All Schedule updates shall be in a native format reasonably acceptable to the Department (e.g., Primavera). The Department may make reasonable requests during the Project for changes to the format or for further explanation of information provided. Submission of updates showing that Substantial Completion or Final Completion of the Project will be achieved later than the applicable scheduled completion date shall not constitute requests for extension of time and shall not operate to change the scheduled completion date(s). The Department’s receipt of, and lack of objection to, any schedule update showing Substantial Completion or Final Completion later than the dates agreed upon in the Project Schedule shall not be regarded as the Department’s agreement that the Construction Manager may have an extension of time, or as a waiver of any of the Department’s rights, but merely as the Construction Manager’s representation that, as a matter of fact, Substantial Completion or Final Completion of the Project may not be completed by the agreed upon date in the Project Schedule. Changes to the scheduled completion dates may be made only in the circumstances and only by the methods set forth in this Agreement.

Section 5.5. Written Reports.

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

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

5.5.2. **Cost Update.** The monthly update shall reflect, by Guaranteed Maximum Price line item, the original line item amount, approved,
pending, and projected Change Order amounts, the cost incurred to date, the projected cost to complete the Work of the line item, and any variance between the actually approved budgeted balance of the line item and the projected cost to complete. A clear distinction must be made between approved Change Orders and those merely requested or anticipated. The report shall explain all variances including “buy-outs” or final actual costs including those below their respective Guaranteed Maximum Price line item. In addition, the report must disclose any instances in which the Construction Manager 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 exceeding the Guaranteed Maximum Price will operate to increase the Guaranteed Maximum Price or waive the Department's right to enforce the Guaranteed Maximum Price. If the report reflects budget overruns, it must also include a recovery plan.

5.5.3. **Economic Inclusion Report.** The monthly report shall include a detailed summary of the Construction Manager’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 Construction Manager’s overall performance with respect to the goals; (ii) a listing of subcontracts and agreements with material suppliers during the month and the percentage of those subcontracts and agreements with material suppliers awarded to LSDBEs; (iii) a listing of subcontracts during the month and the estimated percentage of the labor hours to be worked by District of Columbia residents pursuant to those subcontracts; and (iv) a description of the major subcontracting and supply opportunities that will be solicited during the next three (3) months and the actions being taken to meet the subcontracting goals.

5.5.4. **Cash Flow Update.** If there have been any changes to the anticipated cash flow for the Project, such changes shall be disclosed and explained in the monthly report. If there are no such changes, the report shall so state.

5.5.5. **Quality Assurance Report.** The monthly report shall include a detailed summary of the steps that are being employed to ensure quality construction and workmanship. Each report shall 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.

5.5.6. **Progress Photos.** The monthly report shall include updated progress photos that shall detail changes in the Work during the month.

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

**Section 5.6. Cost Control System.**

The Construction Manager shall use a system of cost control for the Work in a format consistent with the GMP Drawings & Specifications and approved by the Department, which shall include, without limitation, regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. Construction Manager shall identify variances between actual and estimated costs and report the variances to the Department and the Program Manager at regular intervals.

**Section 5.7. Key Personnel.**

5.7.1 To carry out its duties, the Construction Manager shall provide at least the key personnel identified in Exhibit F to this Agreement ("Key Personnel"), who shall carry out the functions identified in Exhibit F. Among other things, the Key Personnel shall include the: (i) the Project Executive; (ii) the Field Superintendent; (iii) the Project Manager who will supervise the Project; and (iv) the individual that will manage quality control and interact with the Department’s quality control representative. The Construction Manager will not be permitted to reassign any of the Key Personnel unless the Department approves the proposed reassignment and the proposed replacement.

The Construction Manager’s obligation to provide adequate staffing is not limited to providing the Key Personnel, but is determined by the needs of the Project. The Construction Manager shall not replace any of the Key Personnel without the Department’s prior written approval, which shall not be unreasonably withheld. If any of the Key Personnel become unavailable to perform services in connection with the Agreement due to death, disability or separation from the employment of the Construction Manager.
or any affiliate of the Construction Manager, then the Construction Manager 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.

5.7.2. The Construction Manager’s Key Personnel shall be subject to Replacement Fees for their removal or reassignment by the Construction Manager. The Key Personnel subject to the Replacement Fees provisions shall be identified in Exhibit F as subject to the Replacement Fee provisions. In the event there is no delineation in Exhibit F of those members of the Construction Manager’s Key Personnel subject to the Replacement Fee provisions of this Agreement, then all of the Key Personnel shall be subject to the Replacement Fee provisions of this Agreement.

5.7.3. 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 Construction Manager in the event that a member of the Key Personnel has been removed or replaced by the Construction Manager without the prior written consent of the Department. In the event the Department exercises the right to remove, replace or to reduce the scope of services of the Construction Manager, the Department shall have the right to enforce the terms of this Agreement and to keep-in-place those members of the Construction Manager’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 Construction Manager’s team approved by the Department.

Section 5.8. Qualified Personnel/Cooperation.
The Construction Manager 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 Construction Manager shall enforce strict discipline, good order and harmony among its employees and its Subcontractors and shall remove from the site any person who is unfit for the work or fails to conduct herself or himself in a proper and cooperative manner. If the Department requests removal of any person as unfit or as having behaved inappropriately, the Construction Manager shall promptly comply.

Section 5.9. Warranty.
The Construction Manager shall provide assistance to the Department and the Client Agency during any applicable warranty period. The Construction Manager warrants to the
Department that materials and equipment furnished under the Contract Documents will be of good quality and new unless otherwise required or permitted by the Contract Documents, that for the one (1) year period following the Substantial Completion Date the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. The Construction Manager’s warranty excludes remedies for damage or defect caused by abuse, modifications not executed by the Construction Manager, improper or insufficient maintenance, improper operation, or normal wear and tear from normal usage. The Construction Manager shall use commercially reasonable efforts to schedule a joint inspection of the Project during the eleventh month after Substantial Completion is achieved. During such inspection, the Construction Manager and a representative of the Department shall walk the Project to identify any necessary warranty work.

Section 5.10. Open Book Reporting.
The Construction Manager shall maintain an open book reporting system with the Department, allowing the Department or its consultants access to the Construction Manager’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 Construction Manager.

Section 5.11. Claims for Additional Time

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

5.11.2. The Construction Manager 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 5.11.3, the delay shall be deemed Non-Excusable and the Construction Manager 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 Construction Manager to an extension of time:

5.11.2.1. Delays due to job site labor disputes, work stoppages, or suspensions of work;

5.11.2.2. Delays due to adverse weather, unless the Construction Manager establishes that the adverse weather was of a nature and duration in
excess of averages established by data from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for the Project locale for the ten (10) years preceding the effective date of the Agreement. For purposes of this clause, weather shall only be deemed “adverse” if the weather in question was more severe than that encountered at the Project site over the last ten (10) years for the month in question. Such determinations shall be made based on the number of rain/snow days or the cumulative precipitation total for the month in question. Notwithstanding the foregoing, named storms shall conclusively be deemed “adverse”;

5.11.3. Delays due to the failure of the Construction Manager or Subcontractors or material suppliers at any tier to perform in timely or proper fashion, without regard to concepts of negligence or fault; or

5.11.2.4. Delays due to Site Conditions whether known or unknown as of the effective date of the Agreement, foreseeable or unforeseeable at that time, naturally occurring or man-made; provided, however, that delays due to differing Site Conditions as permitted by Article 4, Section A of the SCP, or Hazardous Materials Remediation shall be deemed an Excusable Delay.

5.11.3. The Construction Manager shall be entitled to an adjustment in the Substantial Completion Date due to an Excusable Delay. The term “Excusable Delay” shall mean:

5.11.3.1. Delays due to adverse weather other than those that are classified as a Non-Excusable delay in accordance with Section 5.11.2.2 of this Agreement; the Construction Manager sends a written notice within three (3) days from such adverse weather and the Department approves such request.

5.11.3.2. Delays due to acts of God, war, unavoidable casualties, civil unrest, and other similar causes of delay that are beyond the control of the Construction Manager; provided, however, that in no event shall a Non-Excusable Delay or the action or inaction of the Construction Manager, or any of its employees, agents, Subcontractors or material suppliers be deemed an Excusable Delay; or

5.11.3.3. Delays caused by differing Site Conditions as permitted by Article 4, Section A of the SCP, or Hazardous Materials Remediation as contemplated in Section 5.11.2.4 of this Agreement;
5.11.3.4. Delays due to suspensions of work by the Department;

5.11.3.5. Delays caused by the Client Agency or separate contractors of the Client Agency to the extent such delays are not concurrent with delays caused by the Construction Manager or any of its employees, agents, subcontractors or material suppliers;

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

5.11.4. If the Construction Manager wishes to make a claim for an adjustment in time allotted per the Project Schedule, written notice as provided herein shall be given. The Construction Manager’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.

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


5.12.1. The Construction Manager will be required to provide a safe and efficient site, with controlled access. As part of this obligation, the Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the
Project, and shall comply with the requirements set forth in Article 16, Section F of the SCP.

5.12.2 Safety Plan. Prior to the start of construction activities, the Construction Manager shall prepare a safety plan for the construction phase conforming to OSHA 29 CFR 1926 (such plan, the “Safety Plan”). This Safety Plan developed by the Construction Manager shall describe the proposed separation and the specific nature of the safety measures to be taken including fences and barriers that will be used as well as the site security details. The Safety Plan will be submitted to the Department and Client Agency for their review and approval prior to the commencement of construction. Once the Safety Plan has been approved, the Construction Manager shall comply with it at all times during construction. The Construction Manager shall be required to revise the Safety Plan as may be requested by the Department or Client Agency. The cost of revising and complying with the plan shall not entitle the Construction Manager to an increase in the GMP. In the event the Construction Manager fails to provide the Safety Plan, the Construction Manager will not be permitted to commence the Construction Phase until the Safety Plan is submitted and in no event shall any resulting delay constitute an Excusable Delay. Additionally, the Construction Manager shall comply with the requirements of Article 27, Section A of the SCP.

5.12.3 Safety Barriers/Fences. As part of its responsibility for Project safety, the Construction Manager shall install such fences and barriers as may be necessary to separate the construction areas of the site from those areas that are then being used by Client Agency for educational purposes. The Construction Manager shall describe in the Safety Plan the proposed separation and the specific nature of the fences and barriers that will be used. The Construction Manager’s storage/laydown area will be limited to the limits of disturbance shown on the approved construction plans. Additionally, the Construction Manager is responsible for safety of equipment on site and must follow guidelines spelled out in Section 5.12.2.

5.12.4 Site Security. The Construction Manager shall be responsible for site security and shall be required to provide such watchmen as are necessary to protect the site from unwanted intrusion.

5.12.5 Exculpation. The right of the Department and Client Agency to comment on the Safety Plan and the nature and location of the required fences and barriers shall in no way absolve the Construction Manager from the obligation to maintain a safe site.
5.12.6 **Temporary Power.** The Construction Manager 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 Construction Manager shall also be responsible for the cost of all temporary construction necessary on the site.

Section 5.13. **Workhours, Site Office, and Coordination with Client Agency and Community**

5.13.1. **Workhours.** The Construction Manager shall comply with the Noise Ordinance and neither it nor its subcontractors shall undertake work on the Project site other than at the times and sound level permitted by the Noise Ordinance.

5.13.2. **Site Office.** Throughout the Project, the Construction Manager shall provide and maintain a fully-equipped construction office for the Project site.

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

5.13.4. **Wheel Washing Stations.** The Construction Manager shall provide wheel washing stations on site so as to prevent the accumulation of dirt and other refuse on the streets surrounding the Project site.

5.13.5. **Outreach Plan.** The Construction Manager shall keep the Department informed of the construction activities and their potential impact on the community and shall develop a community outreach plan (the “Outreach Plan”). The Construction Manager shall submit the Outreach Plan to the Department prior to its implementation which shall be subject to the Department’s review and approval.

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

5.13.7. The Construction Manager shall be responsible for all demolition, including razing existing park features, necessary to complete the Project.

Section 5.14. Close-out & FF&E.


5.14.2. **Punchlist.** Promptly after Substantial Completion, the Construction Manager shall coordinate with the Architect to develop a punchlist. Once the punchlist is prepared, the Construction Manager shall inspect the work along with representatives from the Department. The punchlist shall be revised to reflect additional work items that are discovered during such inspection. The Construction Manager shall correct all punchlist items no later than ninety (90) days after Substantial Completion is achieved.

5.14.3. **Warranties & Manuals.** Subsequent to Substantial Completion and no later than fifteen (15) days following Substantial Completion, the Construction Manager shall prepare and submit the following documentation: (i) a complete set of product manuals (O&M), training videos, warranties, etc.; (ii) attic stock; (iii) an equipment schedule; (iv) a proposed schedule of maintenance for the renovated building; (v) environmental, health and safety documents for the renovated building; and (vi) all applicable inspection certificates/permits (boiler, elevator, emergency evacuation plans, health inspection, etc.) for the renovated building. No later than thirty (30) days following Substantial Completion, the Construction Manager shall prepare and submit: (x) a complete set of its Project files; (y) a set of record drawings; and (z) the building information modeling file(s).

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

5.14.5. **Training.** The Construction Manager shall provide training to Client Agency staff on all of the building systems. The Construction
Manager shall be required to schedule such training sessions and shall use commercially reasonable efforts to ensure all such training occurs prior to Final Completion.

5.14.6. The Construction Manager shall assist Client Agency in relocating FF&E and other items as necessary within the renovated building, as well as for cleaning and other move-in services as directed by the Department. The GMP shall include an allowance and scope of work for these activities. This allowance is in addition to cleaning services that would otherwise be required by the Construction Manager, including, but not limited to, the obligation to deliver a broom clean building at the end of construction.

Section 5.15. Salvaged and Stored Items.
The Construction Manager shall be responsible for salvaging and storing all items as identified by the Department in accordance with all applicable District laws and regulations, after notifying the Department and receiving the Department’s permission to proceed.

Section 5.16. Sediment and Erosion Control.
The Construction Manager 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 5.17. Quality Control.

5.17.1. General Obligation. The Construction Manager shall be responsible for all activities necessary to manage, control, and document the Work to ensure compliance with Contract Documents. The Construction Manager’s responsibility includes ensuring adequate quality control services are provided by the Construction Manager’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.

5.17.2. Quality Control Plan. Within forty five (45) days after the construction documents are approved, the Construction Manager shall develop a quality control plan for the Project (the “Quality Control Plan”). A draft of the Quality Control Plan shall be submitted to the Department and shall be subject to the Department’s review and approval. The Quality Control Plan shall be tailored to the specific products/type of construction activities contemplated by the GMP Basis Documents, and in general, shall include a table of contents, quality
control team organization, duties/responsibilities of quality control personnel, submittal procedures, inspection procedures, deficiency correction procedures, documentation process, and a list of any other specific actions or procedures that will be required for key elements of the Work.

5.17.3. **Implementation.** During the Construction Phase, the Construction Manager shall perform regular quality control inspections and create reports based on such inspections pursuant to the Quality Control Plan. The quality control reports shall be provided to the Department electronically on a monthly basis. The Construction Manager 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 5.18. Acceleration.**

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

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

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

Section 5.20. Conformance with Laws.
It shall be the responsibility of the Construction Manager to perform under the Agreement in conformance with the Department’s Procurement Regulations and all statutes, laws, codes, ordinances, regulations, rules, requirements, orders, and policies of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Construction Manager to determine the Procurement Regulations, statutes, laws, codes, ordinances, regulations, rules, requirements and orders that apply and their effect on the Construction Manager’s obligations thereunder. Given the requirements for the Project, the Department may, at its sole discretion, (i) apply for a variance to the requirement of adhering to the Green Building Act on the Project and (ii) consider deferring the scope of work associated with storm water management to a later phase of the Project.

Section 5.21. Construction Phase Deliverables.
The deliverables set forth on Exhibit C are required during the Construction Phase.

Section 5.22. Close-Out Deliverables.
The deliverables set forth in Exhibit M are required during the Project’s Close-Out and prior to Final Payment, as set forth in Section 10.12.
1) a complete set of product manuals (O&M), training videos, warranties, etc.
2) as built record drawings.
3) attic stock and schedule.
4) equipment schedule.
5) proposed schedule of maintenance.
6) environmental, health & safety documents.
7) all applicable inspection certificates/permits (boiler, elevator, emergency evacuation plans, health inspection, etc.).
8) a complete set of its Project files.

Section 5.23 Licensing, Accreditation and Registration.
The Construction Manager and all of its subcontractors and subconsultants (regardless of tier) shall comply with all applicable District of Columbia, state, and federal licensing, accreditation, and registration requirements and standards necessary for the performance of the Agreement. Without limiting the generality of the foregoing, all drawings shall be signed and sealed by a professional Architect or engineer licensed in the District of Columbia.

Section 5.24 Protection of Existing Elements.
The Construction Manager shall ensure the protection of all existing features, public utilities, and other existing structures during construction. The Construction Manager shall ensure the protection of existing, site improvements, trees and shrubs from damage during construction. Protection extends to the root systems of existing vegetation. The Construction Manager shall not store materials or equipment, or drive machinery, within drip line of existing trees and shrubs.

Section 5.25 Prolog.
The Construction Manager shall utilize the Department’s Prolog system to submit any and all documentation required to be provided by the Construction Manager for the Project, including, but not limited to: (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) invoices/applications for payment (full package including all forms required by DGS); (v) certified payrolls (in addition to upload via LCP Tracker); (vi) drawings and specifications; (vii) punchlist; and (viii) other documents as may be designated by the Department. The Construction Manager also shall require all subcontractors and subconsultants to utilize Prolog for the Project.

Article 6 - DESIGNATED REPRESENTATIVES

Section 6.1. Department’s Designated Representative.
The Department designates the individual(s) identified in Exhibit 1 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 I, 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, Contract Modifications or Change Directives, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or performance of the Work of the Construction Manager. In order for the Department to effectively manage the Project and assure that the Construction Manager does not receive conflicting instructions regarding the Work, the Construction Manager shall promptly notify the Department’s representative upon receiving any instructions or other communication in connection with the Construction Manager’s Work from any employee of the Department or other purported agent of the Department other than the Department’s designated representative.

Section 6.2. Construction Manager’s Designated Representative.

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

Article 7 - COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

Section 7.1. Compensation

7.1.1. The Department shall compensate and make payments to the Construction Manager for Preconstruction Services in accordance with this Article 7 - and Article 10 - . For Preconstruction Services, the Construction Manager’s compensation shall be as set forth in the Project Information Section of this Agreement (the “Preconstruction Fee”). The Preconstruction Fee shall be the Construction Manager’s sole compensation for Preconstruction Phase Services. The Preconstruction Fee shall include, but not be limited to, amounts necessary to compensate the Construction Manager for:

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

7.1.2. Deleted

Section 7.2. Payments

7.2.1. Payments for Preconstruction Phase Services shall be made monthly over the anticipated duration of the Design & Preconstruction Phase following presentation and acceptance of the Construction Manager’s invoice and shall be in proportion to services performed. In no event, however, will the aggregate of the Construction Manager’s monthly invoices for Preconstruction Phase Services exceed the Preconstruction Fee.

7.2.2. Payments are due and payable in accordance with Article 10 - of this Agreement. Amounts unpaid after the date of which payments due shall bear interest in accordance with the Quick Payment Act.

Article 8 - COMPENSATION FOR CONSTRUCTION PHASE SERVICES

Section 8.1. Compensation.

8.1.1. The Department shall compensate and make payments to the Construction Manager for Construction Phase Services in accordance
with this Article 8 - and Article 10 - . For the Construction Phase Services, the Construction Manager’s compensation shall be as set forth in the Project Information Section of this Agreement (the “Construction Management Fee”). The Construction Manager acknowledges and agrees that the percentage of the total amount of the Construction Management Fee set forth in the Project Information Section of this Agreement is at risk (the “At Risk Portion”), and the Construction Manager shall only be entitled to the At Risk Portion as set forth below. Unless and until the Construction Manager’s entitlement to any subset of the At Risk Portion is determined by the Department, the Construction Manager shall only be entitled to bill for the portion of the Construction Management Fee that is not at risk (the “Base Construction Management Fee”). The Base Construction Management Fee shall be billed in accordance with Article 10 - , to be paid in equal monthly installments over the anticipated duration of the Construction Phase. To the extent that the duration of the Agreement is extended, the then remaining amounts of the Base Construction Management Fee will be re-allocated such that the then existing portion of the Base Construction Management Fee shall be evenly spread over the then remaining duration of the Construction Phase.

8.1.2. **Award Fee Pool.** The At Risk Portion shall be used to establish and fund an award fee pool ("the Award Fee Pool"). Within sixty (60) days after approval and full execution of this Agreement, the Department shall appoint a committee that will determine entitlement to the Award Fee Pool (such committee, the “Award Fee Evaluation Committee”). The Award Fee Evaluation Committee will consist of: (i) the Department’s Deputy Director for Capital Construction; (ii) a senior representative from Client Agency; and (iii) a senior member of the Program Management team that is not involved in the day-to-day management of this Project that is acceptable to both Parties.

8.1.2.1. The Construction Manager may earn the At Risk Portion of the Construction Management Fee in accordance with **Exhibit O**.

**Section 8.2. Maximum Cost of General Conditions.**

The Construction Manager shall not be entitled to recover more than the amount set forth in the Project Information Section of this Agreement for the Cost of General Conditions (such amount, the “Maximum Cost of General Conditions”). If, as a result of any Change Order(s), Contract Modification(s) or Change Directive(s): (i) the Project durations extends 30 days or more beyond the Substantial Completion Date; and (ii) the Construction Manager can demonstrate to
the satisfaction of the Department that such additional Costs of General Conditions are reasonable and not due to any fault of the Construction Manager, its Subcontractors, materialmen, consultants or anyone making claims thereunder, the Construction Manager may request a Change Order or Contract Modification to adjust the Maximum Cost of General Conditions. To the extent the Construction Manager incurs Costs of General Conditions in excess of the Maximum Cost of General Conditions, the Construction Manager shall not be entitled to reimbursement for such amounts unless the Department authorizes, in writing, an increase to the Maximum Cost of General Conditions. Nonetheless, in such an event, if the Construction Manager exceeds the Maximum Cost of General Conditions, the Construction Manager shall continue to be required to adequately staff the Project.

Section 8.3. Initial Not-to-Exceed Amount.

Unless and until the GMP Amendment is executed and approved by the Council for the District of Columbia, this Agreement shall have an initial not-to-exceed amount as set forth in the Project Information Section of this Agreement (the “Initial NTE”). In no event shall the Construction Manager be entitled to recover more than the Initial NTE unless the Construction Manager is authorized to exceed the Initial NTE by the Department in advance and in writing. Prior to expending or committing any portion of the Initial NTE, the Construction Manager shall obtain the Department’s written approval of such expenditure or commitment, as well as a determination as to whether the work will qualify as a “capital” expense under the Department’s financial guidelines. In making such a request, the Construction Manager shall submit an itemized breakdown of the work that the Construction Manager seeks to release using funds from the Initial NTE as well as the associated costs of such work.

Section 8.4. Project Budget.

The Department has established a budget for the Project as set forth in the Information Section of this Agreement (such budget, the “Project Budget”). Such Project Budget includes any and all amounts which may be due to the Construction Manager pursuant to this Agreement, and in no event shall the Construction Manager be entitled to recover more than the Project Budget unless the Construction Manager is authorized to exceed the Project Budget by the Department in advance and in writing.

Section 8.5. No Adjustments to Fee.

It is the Department’s intent to engage the Construction Manager to develop a GMP that meets the programmatic requirements set forth in Exhibit A by the Client Agency and the Project Budget as set forth herein (i.e. built to budget), to allow for Substantial Completion of the Work to be achieved no later than the Substantial Completion Date. The Construction Manager shall be entitled to an adjustment to the Construction Management Fee at the time the GMP is established to the extent, and only to the extent, that: (i) the Department makes additions to the scope that, when measured relative to the program, cause the GMP to exceed the Project Budget by more than ten percent (10%); or (ii) the Department makes additions to the scope provided for herein which
(other than for punchlist or warranty work) which requires the Construction Manager’s services at the Project beyond July 15, 2020. With regard to Change Orders issued after the GMP is established, the Construction Manager shall be entitled to an increase in the Construction Management Fee to the extent, and only to the extent, that: (i) the Department has added a new programmatic element to the Project; or (ii) the Department made additions to the GMP scope which (other than punchlist or warranty work) require the Construction Manager’s services at the Project to extend 30 days or more beyond the Substantial Completion Date.

Section 8.6. Markup on Trade Work.
The maximum markup for change order work shall be in accordance with Section 17.11 of Article 17.

Article 9 - COST OF THE WORK FOR CONSTRUCTION PHASE

Section 9.1. Cost of the Work.
The term “Cost of the Work” shall mean the costs necessarily incurred by the Construction Manager in the proper performance of the Work and shall include only the following:

9.1.1. Payments made by the Construction Manager to Subcontractors and suppliers, other than design subconsultants, but only in accordance with the subcontracts and supply agreements;

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

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

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

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

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

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

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

9.1.6. All fees and other costs necessarily incurred to carry out testing and inspection required by the Agreement or applicable laws, or otherwise to maintain proper quality assurance. The costs the Construction Manager incurs to schedule and coordinate any additional testing and inspections the Department may decide to conduct itself shall be within Cost of the Work unless the additional testing establishes that the Work tested was defective or otherwise failed to satisfy requirements set forth in the Agreement, in which case the Construction Manager shall pay the costs, without reimbursement;

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

9.1.8. The Cost of General Conditions, subject however to the Maximum Cost of General Conditions; and

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

Section 9.2. Cost of General Conditions.
The Construction Manager’s general conditions costs shall be reimbursable at cost and without mark-up. Only the following items, however are reimbursable (any other items or expenses are non-reimbursable and the Construction Manager shall use its fee to cover any additional cost items):

9.2.1. Cost of Construction Staff, as defined below. Only staff stationed in the field is reimbursable; however, exceptions may be made for Project executive personnel, purchasing scheduling, cost estimating, local participation oversight and reporting and accounting services if such functions are normally provided by the Construction Manager’s regional and/or home office personnel and/or if Construction Manager deems that such functions are more efficiently performed at the regional and/or home office(s). The term “Construction Staff” shall mean the Project executive, project managers and superintendents assigned to the project, administrative and professional staff performing scheduling, cost estimating and accounting services assigned on a full-time basis to the Project site;

9.2.2. Fringe Benefits associated with construction staff;

9.2.3. Payroll taxes and payroll insurance associated with construction staff;

9.2.4. Staff costs associated with obtaining permits and approvals;

9.2.5. Out-of-house consultants;

9.2.6. Field office for the Construction Manager including but not limited to: (i) trailer purchase and/or rent; (ii) field office installation, relocation and removal; (iii) utility connections and charges during the Construction Phase; (iv) furniture; and (v) office supplies;

9.2.7. Office equipment including but not limited to: (i) computer hardware and software; (ii) fax machines; (iii) copying machines; (iv) telephone installation, system and use charges; and (v) job radios;
9.2.8. Local delivery and overnight delivery costs; and
9.2.9. First aid facility.

**Section 9.3. Costs Not to Be Reimbursed.**

All costs not specifically listed in Section 9.1 as being within the Cost of the Work are excluded from the Cost of the Work and shall not be reimbursable. In particular, but without limitation, the Cost of the Work does not include any of the following:

9.3.1. Any personnel or labor costs other than those provided for in Section 9.1.2(a) or 9.2.1;
9.3.2. Fees for any permits or licenses the Construction Manager requires to conduct its general business operations;
9.3.3. Capital expenses and interest on capital employed for the Work;
9.3.4. Direct or indirect costs of any kind, except those expressly included in Section 9.1;
9.3.5. Sales or use taxes, unless the Construction Manager establishes that applicable law required payment of such taxes;
9.3.6. Costs due to the errors or omissions of the Construction Manager or its Subcontractors or suppliers at all tiers, negligent or otherwise;
9.3.7. Costs due to breach of the Agreement by the Construction Manager or its Subcontractors or material suppliers at all tiers, including, without limitation, costs arising from defective or damaged Work or its correction, disposal of materials or equipment erroneously supplied, and repairs to property damaged by the Construction Manager or its Subcontractors or material suppliers at all tiers;
9.3.8. Any costs incurred in performing work of any kind before Notice to Proceed, unless specifically authorized by a duly authorized Contracting Officer of the Department in advance and in writing;
9.3.9. The cost of home or regional offices, it being understood that compensation for such costs included in the Construction Management Fee and Award Fee; and
9.3.10. Except as provided in Section 9.1.10 of this Agreement, costs due to the errors or omissions of the Construction Manager or its Subcontractors or suppliers at all tiers, negligent or otherwise.

Section 9.4. Discounts, Rebates And Refunds.

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

9.4.2. Amounts that accrue to the Department in accordance with the provisions of Section 9.4.1 shall be credited to the Department as a deduction from the Cost of the Work.

Section 9.5. Facilitating Tax Exempt Purchases.
The Department expects that the Project will qualify as tax-exempt under applicable laws. Upon request, the Department will provide the Construction Manager with the necessary information relating to the tax exemption. In the event any savings are attributable to the tax-exempt status of the Project, the Construction Manager shall not be entitled to share in such savings.

Section 9.6. Accounting Records.
The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Agreement. The Construction Manager’s accounting and control systems shall be satisfactory to the Department. The Department, its representatives, and the Department’s accountants shall be afforded access to the Construction Manager’s records, books, correspondence, instruction, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve such documentation relating to the Project for a period of three years after final payment, or for such longer period as may be required by law.

Section 9.7. Excluded Cost Elements.
It is the Department’s intent that the Construction Manager provide a turnkey solution for the implementation of the Project, and the Project Budget set herein has been developed based on such framework. The Construction Manager shall advance the Project in a manner consistent with
the Project Budget with the understanding that only the following cost elements shall be excluded from the Project Budget set forth herein:

(1) Design by Architect/Engineer and its sub-consultants
(2) 3rd Party Material Testing;
(3) Commissioning;
(4) 3rd Party Inspections;
(5) Costs of active Client Agency equipment; and
(6) 3rd Party Plan Review.

**Article 10 - CONSTRUCTION PHASE PAYMENTS**

**Section 10.1. Progress Payments.**
The Construction Manager shall be compensated in a series of progress payments and a Final Payment, for Work completed in accordance with the Agreement, and for which proper Applications for Payment have been submitted and approved. The amount of each progress payment shall be as follows:

The Cost of Work completed to date

Plus Cost of Work for Pay Period x 70% of Construction Management Fee (i.e. Construction Management Fee not at risk)

Current approved estimated

Cost of Work through Final Completion

Plus Any subset of the At Risk Portion of the Construction Management Fee to which the Department has determined the Construction Manager to be Entitled

Minus Applicable retainage

Minus Amounts previously paid by the Department

**Section 10.2. Retention.**
The Department shall withhold from each progress payment an amount equal to ten percent
(10%) of the payment related to: (i) each Subcontract and supply agreement; (ii) the Preconstruction Fee; (iii) Construction Management Fee; (iv) General Conditions Costs; and (v) the Cost of the Work related to each item of Self-Performed Work, until such time as fifty percent (50%) of the then currently budgeted cost associated with each such item has been invoiced, at which point the Department may cease retaining against such item; provided, however, that retention shall not be held on the costs of bonds, insurances, and those elements of the general requirements which consist of a single, insolated effort such as dumpster disposal and safety carpentry. The Department may elect to increase the retention on any trade Subcontractor up to ten percent (10%) in the event the Department determines that the situation so warrants. The Department, in its sole and absolute discretion, may elect to reduce the retainage relating to a particular trade Subcontractor, or the Cost of the Work related to a specific item of Self-Performed Work to zero upon: (a) satisfactory completion of such Work; (b) submission of all required warranties, certifications, and operating or maintenance instructions with respect to that Work; and (c) execution of appropriate waivers of lien and releases of claims. However, in no event shall the total retainage held by the Department be reduced to an amount that is less than two and one-half percent (2.5%) of the GMP.

Section 10.3. Documents Required with Application for Payment.

Each Application for Payment shall be accompanied by the Construction Manager’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 Construction Manager shall nevertheless maintain complete documentation of the costs. An executed Release of Liens and Claims in the format required by the Contracting Officer must accompany each Application for Payment.

Section 10.4. Stored Materials.

The Department shall not be required to pay for materials stored at the site or stored at other locations absent prior written authorization to do so, which authorization may be withheld at the Department's sole discretion. If the Department expressly agrees to pay for materials stored at the site but not yet incorporated into the Work, the Application for Payment may also include a request for payment of the cost of such materials, if the materials have been delivered to the site, and suitably stored. Such requests shall be documented by appropriate invoices and bills of sale. Payment for stored materials shall be conditioned also on the Construction Manager’s representation that it has inspected the material and found it to be free from defect and otherwise in conformity with this Agreement, and on satisfactory evidence that the materials are insured under the builder’s risk policy. Further, if the Construction Manager requests the Department to allow payments for storage of materials offsite, the Construction Manager 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 10.5. Construction Manager’s Certification.

Each Application for Payment shall be accompanied by the Construction Manager's signed certification that:

Section 10.5.1. all amounts paid to the Construction Manager on the previous Application for Payment that were attributable to Subcontractor Work or to materials or equipment being supplied by any supplier have been paid over to the appropriate Subcontractors and suppliers;

Section 10.5.2. that all amounts currently sought for Subcontractor Work or supply of materials or equipment are currently due and owing to the Subcontractors and material or equipment suppliers;

Section 10.5.3. that all Work, materials or equipment for which payment is sought is, to the best of the Construction Manager's knowledge, free from defect and meets all of the requirements set forth in the Agreement: and that

Section 10.5.4. that the Construction Manager’s subcontracts include the clauses required by subparagraphs (1) through (4) of D.C. Official Code §2-221.02(d) (2017); and

Section 10.5.5. The Construction Manager shall not include in an Application for Payment amounts for Work for which the Construction Manager does not intend to pay.

Section 10.6. Lien Waivers.

Each Application for Payment shall be accompanied by written waivers of the right to file a mechanic’s lien and all other claims, in a form substantially similar to Exhibit K for the Construction Manager 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 Construction Manager shall also submit unconditional waivers of liens for itself and all Subcontractors and material suppliers at all tiers with respect to Work or materials or equipment for which payment has been previously made, and additional forms of waiver acknowledging receipt of final payment under the Agreement, and providing final release of such liens.

Section 10.7. Warranty of Title.

By submitting an Application for Payment, the Construction Manager 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 Construction Manager. 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 Construction Manager until Substantial Completion, unless otherwise agreed by the Department, in writing.
Section 10.8. Submission.

On the twenty-fifth day of each month the Construction Manager 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 Construction Manager 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 Construction Manager may protest and pursue a claim as provided in this Agreement and the SCP.

Section 10.8.1 Invoice Submittal. The Construction Manager shall create and submit payment requests in an electronic format through the DC Vendor Portal, https://vendorportal.dc.gov. The Construction Manager shall submit proper invoices on a monthly basis. To constitute a proper invoice, the Construction Manager shall enter all required information into the Portal after selecting the applicable purchase order number which is listed on the Construction Manager’s profile.

Section 10.9. Right to Withhold Payments.

The Department will notify the Construction Manager within fifteen (15) days after receiving any Application for Payment of any defect in the Application for Payment or the Construction Manager’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 Construction Manager, in whole or part, as appropriate, if:

10.9.1. the Work is defective and such defects have not been remedied; or

10.9.2. the Department has determined that the Construction Manager’s progress has fallen behind the Project Schedule, and the Construction Manager fails, within ten (10) calendar days of the Department’s written demand, to provide the Department with a realistic and acceptable Recovery Plan in accordance with Section 5.18; or

10.9.3. the Construction Manager's monthly schedule update reflects that the Construction Manager has fallen behind the Project Schedule, and the Construction Manager fails to include, in the same monthly report, a realistic and acceptable Recovery Plan in accordance with Section 5.18; or

10.9.4. the Construction Manager has failed to provide reports in full compliance with Section 5.5 of this Agreement; or
10.9.5. the Construction Manager 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

10.9.6. 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 Construction Manager, and the Construction Manager, upon notice, has failed to remove the lien, by bonding it off or otherwise, within ten (10) calendar days; or

10.9.7. 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 GMP would not be adequate to cover actual or liquidated damages arising from the anticipated delay; or

10.9.8. the Department has reasonable evidence that the Work cannot be completed for the unpaid balance of the GMP; or

10.9.9. the Construction Manager is otherwise in substantial breach of this Agreement (including, without limitation, failures to comply with LSDBE Utilization requirements.

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

Section 10.10. Payment Not Acceptance.

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

Section 10.11. Department Not Obligated to Others.

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

Section 10.12. Final Payment.

A final payment (“Final Payment”) shall be made by the Department to the Construction Manager when: (i) Final Completion has been achieved; (ii) all deliverables set forth in Section 5.14, and Exhibit M have been delivered to and are accepted by the Department; (iii) the Construction Manager provides the Department a complete set of product manuals (O&M), training videos, and warranties, as applicable; and (iv) a complete final Application for Payment
and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Department and, to the extent the Department determines appropriate, the Department’s accountants. The Department shall make Final Payment not more than thirty (30) days after the Department verifies the amount of the final payment set forth in a complete final Application for Payment.

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

10.12.1.1. Take the sum of the Cost of the Work substantiated by the Construction Manager’s final accounting and the Preconstruction Fee and the Construction Management Fee as adjusted to reflect whether the goals established in Section 8.1.2 have been met; but not more than the GMP.

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

10.12.1.3. Subtract the aggregate of previous payments made by the Department. (If the aggregate of previous payments made by the Department exceeds the amount due the Construction Manager, the Construction Manager shall promptly reimburse the difference to the Department).

10.12.1.4. The Final Payment shall take into account any savings accruing to the Department or the Construction Manager.

10.12.2. The Department will review and report in writing on the Construction Manager’s final accounting within 30 days after delivery of the final accounting to the Department by the Construction Manager. Based upon Department’s determination of the Cost of the Work, and provided the other conditions of Section 10.12.1 have been met, the Department will, within fifteen (15) days after the Department’s determination, notify the Construction Manager of any amount that the Department will withhold and the reasons therefor. The time periods stated in this Paragraph 9.12 supersede those for typical progress payments.

10.12.3. If the Department determines that the Cost of the Work is that claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 3 of the SCP. Pending a final resolution of the disputed amount, the Department shall pay the
Construction Manager the amount that the Department determines to be appropriate.

Article 11 - INSURANCE

Section 11.1. Insurance Required by the Project

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

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

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

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

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

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

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

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

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

11.1.1.4 Crime Insurance (3rd Party Indemnity) - The Contractor shall provide a 3rd Party Crime policy to cover the dishonest acts of Contractor’s employees which result in a loss to the District. The policy shall provide a limit of $25,000 per occurrence.

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

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

**11.1.7 Professional Liability Insurance (Errors & Omissions)** - The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of $1,000,000 per claim or per occurrence for each wrongful act and $2,000,000 annual aggregate. The Contractor warrants that any applicable retroactive date precedes the
date the Contractor first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services.

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

11.1.1.9 Commercial Umbrella or Excess Liability - The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits equal to the greater of (i) the limits set forth in the Contractor’s umbrella or excess liability policy or (ii) $5,000,000 per occurrence and $5,000,000 in the annual aggregate, following the form and in excess of all liability policies. All liability coverages must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the “other insurance” provision must be amended in accordance with this requirement and principles of vertical exhaustion. 

Construction Projects Controlled by the District

For construction projects controlled by the District, the District will procure the following policies with the District listed as the first named insured. Since the District will control the placement of the policies, the District should not
contractually bind itself to secure coverage broader than the minimum that satisfy the interests of the Contractor.

Builders Risk – The District shall purchase and maintain builders risk insurance at 100% replacement cost upon the entire Work at the site and portions of the Work stored off the site with the District’s approval, and contingent transit coverage for portions of the Work in transit. This insurance shall include the interests of the District, the Contractor and the Subcontractors in the Work and shall insure against all risk of physical damage subject to standard exclusions. Losses not covered by the District’s insurance or Contractor's insurance shall be borne pursuant to the provisions of the Contract. The builders risk policy will have a deductible of not more than $50,000. Losses within the deductible will be paid by the Contractor or the responsible Subcontractor. If not covered under the builders risk insurance or otherwise provided in the Contract Documents, the Contractor shall effect and maintain similar property insurance on portions of the Work stored off the site or in transit.

11.2. PRIMARY AND NONCONTRIBUTORY INSURANCE.

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

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

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

11.5. CONSTRUCTION MANAGER’S PROPERTY. Construction Manager and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.
11.6. MEASURE OF PAYMENT. The District shall not make any separate measure or payment for the cost of insurance and bonds. The Construction Manager shall include all of the costs of insurance and bonds in the contract price.

11.7. NOTIFICATION. The Construction Manager shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The Construction Manager shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. The Construction Manager will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract.

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

The Government of the District of Columbia

Franklin Austin, CPPB, CPM
Contracts & Procurement Division
Department of General Services
1250 U Street NW –3rd Floor
Washington, DC 20009
(202) 727-7128
Franklin.Austin5@dc.gov

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

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

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

ARTICLE 12 - ECONOMIC INCLUSION REQUIREMENTS

Section 12.1 LSDBE Utilization.

Section 12.1.1 If the Construction Manager subcontracts any Work, 35% of the subcontracted effort must be subcontracted to small business enterprises (SBEs). For subcontracted work, pass through entities will not count toward this goal. In order to count toward the subcontracting requirement, the SBE must perform at least thirty five percent (35%) of the work that is being counted toward the goal with its own forces. The Local, Small and Disadvantaged Business Enterprise (“LSDBE”) certification shall be, in each case, as of the effective date of the applicable subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal. The Construction Manager has developed a Subcontracting Plan that is attached hereto as Exhibit D. The Construction Manager shall comply with the terms of the SBE Subcontracting Plan in making purchases and administering its subcontracts and supply agreements.

Section 12.1.2 Mandatory Subcontracting Plan and Requirements.

Section 12.1.2.1 Unless the Director of the Department of Small and Local Business Development (DSLBD) has approved a waiver in writing in accordance with D.C. Official Code § 2-218.51, for all contracts in excess of $250,000, at least 35% of the dollar volume of the contract shall be subcontracted to qualified small business enterprises (SBEs).

Section 12.1.2.2 If there are insufficient SBEs to completely fulfill the requirement of paragraph 12.1.2.1, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.

Section 12.1.2.3 A prime contractor that is certified by DSLBD as a small, local or
disadvantaged business enterprise shall not be required to comply with the provisions of sections 12.1.2.1 and 12.1.2.2.

**Section 12.1.2.4** Except as provided in 12.1.2.5 and 12.1.2.6, a prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

**Section 12.1.2.5** A prime contractor that is a certified joint venture and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A certified joint venture prime contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

**Section 12.1.2.6** Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.

**Section 12.1.2.7** A prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the on-site work with its own organization and resources if the contract is $1 million or less.

**Section 12.1.2.8** **Subcontracting Plan**

The Construction Manager shall perform at least 35% of the contracting effort with its own forces, and if such Construction Manager subcontracts any work, 35% of the subcontracted effort must be subcontracted to CBEs in accordance with the provisions of section 12.1.2 of this clause. For subcontracted work, pass through entities will not count toward this goal. In order to count toward the subcontracting requirement, the SBE must perform at least thirty five percent (35%) of the work that is being counted toward the goal with its own forces. The LSDBE certification shall be, in each case, as of the effective date of the subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal. The Construction Manager has developed a Subcontracting Plan that is attached hereto as **Exhibit D**. The Construction Manager shall comply with the terms of the Subcontracting Plan in making purchases and administering its Subcontracts and Supply Agreements.
The Subcontracting Plan shall be submitted as part of the proposal and may only be amended after award with the prior written approval of the CO and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the plan after award shall inure to the benefit of the District. Each subcontracting plan shall include the following:

(1) The name and address of each subcontractor;
(2) A current certification number of the small or certified business enterprise;
(3) The scope of work to be performed by each subcontractor; and
(4) The price that the prime contractor will pay each subcontractor.

Section 12.1.2.9 Copies of Subcontracts

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

Section 12.1.2.10 Subcontracting Plan Compliance Reporting

Section 12.1.2.10.1 If the Construction Manager has a subcontracting plan required by law for this contract, the Contractor shall submit a quarterly report to the CO, CA, District of Columbia Auditor and the Director of DSLBD. The quarterly report shall include the following information for each subcontract identified in the subcontracting plan:

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

Section 12.1.2.10.2 If the fully executed subcontract is not provided with the quarterly report, the prime contractor will not receive credit toward its subcontracting requirements for that subcontract.

Section 12.1.2.11 Annual Meetings
Upon at least 30-days written notice provided by DSLBD, the Construction Manager shall meet annually with the CO, CA, District of Columbia Auditor and the Director of DSLBD to provide an update on its subcontracting plan.

Section 12.1.2.12 DSLBD Notices

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

Section 12.1.2.13 Enforcement and Penalties for Breach of Subcontracting Plan

Section 12.1.2.13.1 A contractor shall be deemed to have breached a subcontracting plan required by law, if the contractor (i) fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information in a reasonably timely manner; (ii) submits a monitoring or compliance report or other required subcontracting information containing a materially false statement; or (iii) fails to meet its subcontracting requirements.

Section 12.1.2.13.2 A contractor that is found to have breached its subcontracting plan for utilization of CBEs in the performance of a contract shall be subject to the imposition of penalties, including monetary fines in accordance with D.C. Official Code § 2-218.63.

Section 12.1.2.14 If the CO determines the Contractor’s failure to be a material breach of the contract, the CO shall have cause to terminate the contract under the default provisions in clause 8 of the SCP, Default.

Section 12.1.2.15 Neither the Construction Manager nor a Subcontractor may remove a Subcontractor or tier-Subcontractor if such Subcontractor or tier-Subcontractor is certified as an LSDBE company unless the Department approves of such removal, in writing. The Department may condition its approval upon the Construction Manager 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 12.2 Equal Employment Opportunity and Hiring of District Residents

Section 12.2.1 The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs. In accordance with the District of Columbia Administrative Issuance System, Mayor’s Order 85-85 dated June 10, 1985, the forms for
completion of the Equal Employment Opportunity Information Report are incorporated herein as **Exhibit O**. A contract award cannot be made to any contractor that has not satisfied the equal employment requirements.

**Section 12.2.2** The Construction Manager shall ensure that at least fifty-one percent (51%) of the Construction Manager’s team and every subconsultant’s and subcontractor’s employees hired after the effective date of the Agreement, or after such subconsultant or subcontractor enters into a contract with the Construction Manager, 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 Construction Manager 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 12.2.3** intentionally omitted

**Section 12.2.4** Thirty five percent (35%) of all apprentice hours worked on the Project shall be worked by District residents.

**Section 12.3 Economic Inclusion Reporting Requirements**

**Section 12.3.1** Upon execution of the Agreement, the Construction Manager and all its member firms, if any, and each of its Subcontractors shall submit to the Department a list of current employees and apprentices that will be assigned to the Agreement, the date they were hired and whether or not they live in the District of Columbia.

**Section 12.3.2** The Construction Manager and its constituent entities shall comply with subchapter X of Chapter II Title 2, and subchapter II of Chapter 11 of Title 1 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The Construction Manager and all member firms and Subcontractors shall execute a First
Section 12.3.3 The Construction Manager shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

Section 12.3.4 The Construction Manager shall be responsible for: (i) including the provisions of Section 11.3 in all subcontracts; (ii) collecting the information required in Section 11.3 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in the reports required to be submitted by the Construction Manager pursuant to Section 11.3.

Section 12.4 Compliance with the Apprenticeship Act. The Construction Manager agrees to comply with the requirements of the Apprenticeship Act of 1946, D.C. Code §§ 32-1431, et seq., as amended. The Construction Manager shall ensure that all of its subcontractors selected to perform work on the Project on a craft-by-craft basis shall be required to comply with this Act. All terms and conditions of the Act, D.C. Apprenticeship Council Rules and Regulations, as well as any federal requirements, shall be implemented. The Prime Contractor shall be liable for any subcontractor non-compliance.

Article 13 - LIQUIDATED DAMAGES

Section 13.1 Delay in Submission of Deliverables
The Construction Manager acknowledges that the Department is engaging the Construction Manager to provide an extensive level of preconstruction support services to minimize the potential for cost overruns, schedule delays or the need for extensive Value Engineering/re-design late in the Project and that the certain preconstruction deliverables are key to identify the value of such services. Subject to the terms set forth in Section 4.11, if the Construction Manager fails to provide any of the deliverables set forth in Exhibit C, the Construction Manager shall pay to the Department liquidated damages in the amount set forth in the Project Information Section of this Agreement for each such deliverable that is not timely submitted.

Section 13.2 Removal or Replacement of Key Personnel
Subject to the terms of Section 5.7, in each instance where the Construction Manager removes or reassigns one of the key personnel listed in Exhibit F as being subject to liquidated damages, other than (a) for reasons where such personnel become unavailable due to death, disability or separation from the employment of the Construction Manager or any affiliate of the Construction Manager or any affiliate of the Construction Manager, or (b)
with the prior written consent of the Department, then the Construction Manager shall owe to the Department the amount set forth in the Project Information Section of this Agreement as liquidated damages and not a penalty, to reimburse the Department for its administrative costs arising from the Construction Manager’s failure to provide the Key Personnel. The foregoing liquidated damages amount shall not bar recovery of any other damages, costs or expenses other than the Department’s internal administrative costs.

**Section 13.3 Delay in Substantial Completion.**
If the Construction Manager fails to achieve Substantial Completion of the Project by the Substantial Completion Date, the Parties acknowledge and agree that the actual damage to the Department for the delay will be impossible to determine, and in lieu thereof, the Construction Manager shall pay to the Department, as fixed, agreed and liquidated delay damages in the amount set forth in the Project Information Section of this Agreement per day for each calendar day of delay for failure to meet the applicable Substantial Completion Date.

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

**Section 13.4 Early Completion.** In the event the Construction Manager achieves Substantial Completion of the Project prior to the Substantial Completion Date, the Construction Manager shall maintain the completed Project, at its own expense, until such time that the Department agrees to occupy and use the Project for its intended use.

**ARTICLE 14 - MISCELLANEOUS PROVISIONS**

**Section 14.1. Ownership and Use of Documents.** The Drawings, Specifications and other documents prepared by the Architect/Engineer and copies thereof furnished to the Construction Manager, are for use solely with respect to this Project. They are not to be used by the Construction Manager, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Department, and the Architect/Engineer. The referenced Drawing, Specifications and other documents shall become the property of the Department.
Section 14.2 Assignment.

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

Section 14.3 Buy American Act Provision.

The Construction Manager shall comply with the provisions of the Buy American Act (41 U.S.C. § 10a), including, but not limited to, the purchase of steel, provided that the approved design has specified Buy American Act compliant product. Before proceeding with the purchase of any non-compliant item, the Construction Manager shall request a determination from the Department with respect to a waiver for this requirement.

14.3.1 In accordance with the Buy American Act (41 U.S.C. § l0a-l0d), and Executive Order 10582, December 17, 1954 (3 CFR, 1954-58 Comp., p. 230), as amended by Executive Order 11051, September 27, 1962 (3 CFR, l059—63 Comp., p. 635), the Construction Manager agrees that only domestic construction material will be used by the Construction Manager, subcontractors, material men and suppliers in the performance of the Agreement, except for non-domestic material listed in the Agreement.

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

“Components” as used in this Section, means those articles, materials and supplies incorporated directly into the end products.

“Domestic end product”, as used in this section, means, (1) an unmanufactured end product mined or produced in the United States, or (2) an end product
manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States, exceeds 50 percent of the cost of all its components.

Components of foreign origin of the same class or kind as the products shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

“End Products”, as used in this Section, means those articles, materials, and supplies to be acquired for public use under this Contract.

The Construction Manager shall deliver only domestic end products, except those:

i. For use outside the United States;

ii. That the District determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

iii. For which the District determines that domestic preference would be inconsistent with the public interest; or

iv. For which the District determines the cost to be unreasonable.

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

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

14.4 Davis-Bacon Act Provision. The Construction Manager agrees that the construction work performed under this Agreement shall be subject to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-7). The wage rates
applicable to this Project are attached as Exhibit G. The Construction Manager 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 14.5 The Quick Payment Clause

14.5.1 Interest Penalties to Contractors

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

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

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

14.5.2 Payments to Subcontractors

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

a) Pay the subcontractor for the proportionate share of the total payment received from the District that is attributable to the subcontractor for work performed under the contract; or

b) Notify the District and the subcontractor, in writing, of the Contractor’s intention to withhold all or part of the subcontractor’s payment and state the reason for the nonpayment.

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

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

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

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

14.5.3 Subcontractor Quick Payment Clause Flow-Down Requirements

14.5.3.1 The Contractor shall include in each subcontract under this contract a provision requiring the subcontractor to include in its contract(s) with any lower-tier subcontractor or supplier the payment and interest clauses required under 14.4.2.1 and 14.4.2.2 hereinabove and paragraphs (1) and (2) of D.C. Official Code §2-221.02(d).

14.5.4 Requirements for Change Order payments

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

(i) Agrees with the prime contractor and, if applicable, the subcontractor on a price for the additional work;
(ii) Obtains a certification from the Chief Financial Officer that there are sufficient funds to compensate the prime contractor and, if applicable, the subcontractor for the additional work;

(iii) Has made a written, binding commitment with the prime contractor to pay for the additional work within 30 days after the prime contractor submits a proper invoice for the additional work to the contracting officer; and

(iv) Gives written notice of the funding certification from the Chief Financial Officer to the prime contractor;

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

(i) Within 5 business days of receipt of the notice required under subparagraph (A)(iv) of this paragraph, provide the subcontractor with notice of the approved amount to be paid to the subcontractor based on the portion of the additional work to be completed by the subcontractor;

(ii) Pay the subcontractor any undisputed amount to which the subcontractor is entitled for any additional work within 10 days of receipt of payment for the additional work from the District; and

(iii) If the prime contractor withholds payment from a subcontractor, notify the subcontractor in writing and state the reason why payment is being withheld and provide a copy of the notice to the contracting officer; and

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

Section 14.6 Contract Work Hours And Safety Standards Act Provision. The Construction Manager agrees that the applicable work performed under this Agreement shall be subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333).

Section 14.6 False Claims Act. Construction Manager shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to DC government, including the prescriptions set forth in District of Columbia Code §22-2514 and §§2-381.01 et seq. In the event that it is discovered that the Construction Manager has made
a false, fraudulent or unsupported statement or claim to the Department, the Department may terminate this Agreement without liability.

Section 14.7 Interpretation of Contract and Order of Precedence. All of the documents comprising the Agreement should be read as complementary, so that what is called for by one is called for by all. Ambiguities shall be construed in favor of a broader scope of Work for the Construction Manager, as the intent of the Agreement is, with specific identified exceptions, to require the Construction Manager to assume entire responsibility for construction of the Project. If there is any inconsistency among the documents comprising the Agreement, the order of precedence among them is as follows, with the first listed document having the highest priority:

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

Section 14.8 Independent Contractor. In carrying out all its obligations under the Agreement, the Construction Manager 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 Construction Manager shall have exclusive authority to manage, direct, and control the Work, and shall be responsible for all construction means, methods, techniques, sequences, and procedures, as well as for the Project safety.

Section 14.9 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 14.10 Media Releases. Neither the Construction Manager, 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 14.11 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 14.12 Notices. All notices or communications required or permitted under the Agreement shall be in writing and shall be hand delivered or sent by telecopier or by recognized overnight carrier to the intended recipient at the address stated below, or to such
other address as the recipient may have designated in writing. Any such notice or communication shall be deemed delivered as follows: if hand delivered, on the day so delivered, if sent by telecopier, on confirmation of successful transmission, and if sent by recognized overnight carrier, the next business day.

If to the Department:
George Lewis, Associate Director
and Chief Contracting Officer
Department of General Services
2000 14th Street, NW, 8th Floor
Washington, DC 20009

If to Smoot Construction Company
Omar McIntosh, Vice President
5335 Wisconsin Avenue, NW
Washington DC 20015

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

Section 14.13 Limitations. The Construction Manager agrees that any statute of limitations applicable to any claim or suit by the Department arising from this Agreement or its breach shall be controlled by applicable District of Columbia law.

Section 14.14 Survival. All agreements warranties, and representations of the Construction Manager contained in the Agreement or in any certificate or document furnished pursuant to the Agreement shall survive termination or expiration of the Agreement.

Section 14.15 No Waiver. If the Department waives any power, right, or remedy arising from the Agreement or any applicable law, the waiver shall not be deemed to be a waiver of the power, right, or remedy on the later recurrence of any similar events. No act, delay, or course of conduct by the Department shall be deemed to constitute the Department's waiver, which may be effected only by an express written waiver signed by the Department.

Section 14.16 Remedies Cumulative. Unless specifically provided to the contrary in the Agreement, all remedies set forth in the Agreement are cumulative and not exclusive of any other remedy the Department may have, including, without limitation, at law or in equity. The Department's rights and remedies will be exercised at its sole discretion, and shall not be regarded as conferring any obligation on the Department's to exercise those rights or remedies for the benefit of the Construction Manager or any other person or entity.
Section 14.17 Headings/Captions. The headings or captions used in this Agreement or its table of contents are for convenience only and shall not be used in interpreting the Agreement.

Section 14.18 Entire Agreement; Modification. The Agreement supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to the Agreement shall be effective against the Department unless made in writing signed by both the Department and the Construction Manager, unless otherwise expressly provided to the contrary in the Agreement. Notwithstanding the foregoing, nothing herein shall be construed to limit the Department’s ability to unilaterally modify the Agreement.

Section 14.19 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 14.20 Anti-Deficiency Act. The Department's obligations and responsibilities under the terms of the Agreement and the Contract Documents are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) the D.C. Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act. Neither the Agreement nor any of the Contract Documents shall constitute an indebtedness of the Department, nor shall it constitute an obligation for which the Department is obligated to levy or pledge any form of taxation, or for which the Department has levied or pledged any form of taxation. IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE AGREEMENT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.

Section 14.21 Time. Time, if stated in a number of days, will be calendar days and thus include Saturdays, Sundays, and holidays, unless otherwise stated herein.

Article 15 - TERMINATION OR SUSPENSION
Section 15.1 All terminations or suspensions arising out of or under this Agreement shall be in accordance with the terms of the collective SCP.

Section 15.2 Failure to Agree Upon GMP. The Department shall have the right to terminate this Agreement in the event that the Department and the Construction Manager are unable to agree upon a GMP for the Project and the Department shall have the right, but not the obligation, to assume any of the Construction Manager’s trade subcontracts upon such terms and conditions as requested by the Department. The Department’s decision to terminate under this Section shall be made in the Department’s sole and absolute judgment and shall not be subject to review by any reviewing body, including, but not limited to, arbitrators appointed under this Agreement or any court of competent jurisdiction.

Section 15.3 Termination for Default. The Department may terminate the Agreement for default if the Construction Manager fails to perform any of its duties or obligations under the Agreement. In particular, but without limitation, the Department may terminate the Agreement if:

1. The Construction Manager fails to perform the Work diligently, in accordance with the Project Schedule or to make such progress in the Work as the Department reasonably believes is necessary to complete the Project within the time required by the Agreement; or

2. The Construction Manager 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 Construction Manager has abandoned the Work, or has failed to pay laborers, mechanics, materialmen, Subcontractors or suppliers when payment is due; or

4. The Construction Manager becomes insolvent, makes an assignment for the benefit of creditors, files a voluntary petition under any chapter of the Bankruptcy Code or has an involuntary petition filed against it under any chapter of the Bankruptcy Code, or the Construction Manager has a receiver appointed, or files for dissolution or otherwise is dissolved; or

5. The Construction Manager fails to pay its debts in a timely manner or becomes insolvent, the Department reasonably determines that the Construction Manager does not have the financial ability to carry out its obligations under the Agreement.
and the Construction Manager fails to give the Department prompt and reasonable assurances of its ability to perform.

(6) In the event the Construction Manager fails to meet the Substantial Completion Date for more than thirty (30) days, the Construction Manager consents to a Termination for Default.

Section 15.3.1 If the Department terminates the Agreement for default, the Department will have the right to take over the Work, to accept assignment of some or all Subcontracts or agreements with material suppliers, to take possession of the Project, to take and use all tools, equipment and supplies then being used in connection with the Work, and to finish the Project by whatever method it deems expedient, including accepting assignment of all outstanding Subcontracts and Supply Agreements.

Section 15.4 Termination for Convenience. The Department may, upon seven (7) calendar days written notice to the Construction Manager, terminate the Contract in whole or specified part, for its convenience, for any reason. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions. The termination for convenience that arises out of or under this Agreement shall be in accordance with the terms of the collective SCP.

Section 15.5 Continued Responsibility After Termination. If the Construction Manager is terminated, for default, for Convenience or otherwise, the Construction Manager shall remain responsible for defects or non-conformities in all Work performed to the date of the termination.

Article 16 -OTHER CONDITIONS AND SERVICES

This Agreement and the rights and obligations of the Department and Construction Manager herein are subject to the approval of the Council for the District of Columbia.

Article 17 – CHANGES IN THE WORK

Section 17.1 Changes Authorized. In accordance with the collective SCP, the Department may, without invalidating the Agreement, and without notice to or approval of any surety, order changes in the Work, including additions, deletions or modifications. Any such change must be conveyed by the Department to the Construction Manager via written Change Directive or Change Order.
Section 17.2 Executed Change Directive/Contract Modification/Change Order Required. Only a written Change Directive, Contract Modification, or change order, executed by the Department, may make changes to the Agreement. In particular, but without limitation, a written Change Directive or Change Order executed by the Department is the only means by which changes may be made to the Substantial or Final Completion Dates, the Preconstruction Fee, the Construction Management Fee, or the Guaranteed Maximum Price.

Section 17.3 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 Construction Manager a written Change Directive, either directing the Construction Manager 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 Construction Manager believes that Substantial or Final Completion Dates and/or the Guaranteed Maximum Price should be adjusted to take the Change Order or Change Directive into account.

(2) Within ten (10) calendar days of receiving a Change Directive, the Construction Manager shall provide the Department with a written statement of all changes in the Agreement, including, without limitation, any changes to the Substantial or Final Completion Dates or the Guaranteed Maximum Price to which it believes it is entitled as a result of the Change Directive. If additional time is sought, a schedule analysis supporting the requested extension should be included. The schedule analysis should include a written narrative explanation. If a change in the Guaranteed Maximum Price is sought (or if the Department has requested a deduct change), the statement should include a breakdown, by line item, of the estimated cost changes attributable to the proposed change. The Department may request, and the Construction Manager shall provide, further cost breakdowns, clarifications, documentation or back-up if the Department reasonably believes such additional information is needed to understand and evaluate the request. The additional information required may include cost and pricing data in accordance with the Department’s regulations. Any requested adjustment to the Guaranteed Maximum Price shall be limited to increased Cost of the Work due to the Change Directive. The Construction Manager is not entitled to any markup on any kind of Change Orders except as authorized in Section 17.8, and if so authorized, any mark-up shall be in accordance with Section 17.11.

(3) If the Department has not yet directed the Construction Manager 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 Construction Manager to proceed, the Construction Manager shall immediately proceed with the changed Work and, the Department and the Construction Manager shall use their good faith best efforts to reach an agreement upon the modifications to the Substantial or Final Completion Dates, and/or the Guaranteed Maximum Price that are justified by the Change Directive. If the Department and the Construction Manager reach agreement, the agreement shall be set forth in a Change Order and the Construction Manager 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 Construction Manager’s detailed statement pursuant to Section 17.3.2, and such other documentation as the Department may request, the Construction Manager may assert a claim in accordance with the Agreement. In such a case, and subject to adjustment via the claims and disputes process, the Department shall unilaterally grant the Construction Manager such adjustments, if any, to the Substantial or Final Completion Dates, the Guaranteed Maximum Price, and/or the Preconstruction or Construction Management Fee as the Department has judged to be appropriate.

Section 17.4 Notice of Change Event. The Construction Manager must give the Department written notice of any Change Event within ten (10) calendar days of the date on which the Construction Manager knew, or reasonably should have known, of the Change Event. To the extent available, the notice must state the nature of the Change Event and describe, generally, all changes in the Agreement to which the Construction Manager believes it is entitled. Such notice is an express condition precedent to any claim or request for adjustment to the Substantial or Final Completion Dates, or the Guaranteed Maximum Price arising from the Change Event and, if the notice is not given within the required time, the Construction Manager will have waived the right to any adjustment to the Substantial or Final Completion Dates, or the Guaranteed Maximum Price arising from the Change Event.

Section 17.5 Detailed Change Request. Within twenty (20) days after giving notice of a Change Event, the Construction Manager shall submit a written Change Request to the Department describing, in reasonable detail, all adjustments it seeks to the Substantial or Final Completion Dates or the Guaranteed Maximum Price as a result of the Change Event. The Change Request shall include the same information as described in Section 17.3 with respect to any Agreement changes the Construction Manager seeks due to the Change Event, and the amount of any requested adjustment to the Guaranteed Maximum Price shall be limited in accordance with that Section 17.3.

Section 17.6 Changes to GMP. Subject to the condition precedent that the Construction Manager have complied with the notice and documentation provisions of this Article, and subject
to the limitations stated in this Agreement, the Construction Manager is entitled to an adjustment to the Guaranteed Maximum Price in the following cases:

(1) If the Department issues a Change Directive or Change Order that directs the Construction Manager to proceed with work which is beyond the scope of Work included within this Agreement; or

(2) The Construction Manager encounters Differing Site Conditions or Hazardous Materials not identified in the Preconstruction Phase.

Section 17.7 Deductive Change Orders. The Department reserves the right to issue deductive Change Orders (reducing the Guaranteed Maximum Price or modifying the Substantial or Final Completion Dates to an earlier date) when changes are effected, by Change Directive or otherwise, which will decrease the cost of completing the Work or the time within which it can be completed.

Section 17.8 No Adjustments to Fee. The Construction Manager understands and agrees that the Preconstruction Fee and Construction Management Fee shall not be increased or decreased as a result of any Change Orders or Change Directive. In furtherance of this understanding, the Construction Manager agrees that it shall not be entitled to an increase in the Preconstruction Fee, Maximum Cost of General Conditions, or the Construction Management Fee by virtue of changes authorized by the Department unless such changes fall outside the general scope of work contemplated by this Agreement. The term general scope of work shall mean a state-of-the-art recreation center facility that is consistent with the Department’s program of requirements and incorporates sustainable design initiatives. Without limiting the generality of the foregoing, it is understood and agreed that the Construction Manager shall not be entitled to any additional fees or general conditions unless (i) the Department makes additions to the scope provided for in this Agreement that cause the GMP, either individually or in the aggregate, to increase by more than ten percent (10%); or (ii) the Department makes additions to the scope provided for herein which (other than for punchlist or warranty work) require the Construction Manager’s services for the Project to extend beyond Final Completion Date.

Section 17.9 Executed Change Orders Final. The Construction Manager agrees that any Change Order executed by the Department and Construction Manager constitutes its full and final adjustment for all costs, delays, disruptions, inefficiencies, accelerations, schedule impacts, or other consequences arising from the change in question, whether a Change Directive, or a Change Event, or from any claimed cumulative effect of changes made to the date of the Change Order, and that no further adjustments in compensation or time shall be sought or made with respect to the Change Directive or the Change Event giving rise to the Change Order. Although the Parties anticipate that most Change Orders will not require an adjustment to the Cost of General Conditions, if the Work described in a Change Order requires an increase or decrease in the
Maximum Cost of General Conditions (i.e. because such a Change requires additional field staff or other equipment that would be classified as General Conditions Costs), the Change Order shall contain an increase to the Construction Management Fee adjusting such amount. The cost of processing a Change Order shall not be considered an event that will require an increase in the Maximum Cost of General Conditions.

Section 17.10 Failure to Agree. If the Construction Manager claims entitlement to a change in the Agreement, and the Department does not agree that any action or event has occurred to justify any change in time or compensation, or if the Parties fail to agree upon the appropriate amount of the adjustment in time or compensation, the Department will unilaterally make such changes, if any, to the Agreement, as it determines are appropriate pursuant to the Agreement. The Construction Manager shall proceed with the Work and the Department's directives, without interruption or delay, and shall make a claim as provided in Article 19 herein. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Contract and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

Section 17.11 Mark-Up on Trade Work. The maximum mark up for Change Order work shall be as follows:

(1) For Work performed by a Subcontractor with its own forces, the Subcontractor shall be entitled to a mark-up of not more than fifteen percent (15%) (Covering home office overhead, the cost of insurance and bonds, field supervision, general conditions and profit) on the Direct Costs of the Work. For Work that the Department permits the Construction Manager to self-perform, the Construction Manager shall also be entitled to a mark-up of not more than fifteen percent (15%) of the Direct Cost of the Work. With regard to any such Work that is self-performed by the Construction Manager, the markup contemplated in this Section 17.11.1 shall be the Construction Manager’s exclusive compensation and it shall not be entitled to the markup contemplated in Section 17.11.3;

(2) Intervening tier Subcontractors shall be entitled to a mark-up of five percent (5%) (Covering home office overhead, the cost of insurance and bonds, field supervision, general conditions and profit) on Work Performed by lower-tier Subcontractors;

(3) To the extent permitted by Section 17.8, the Construction Manager shall be entitled to an increase in its Construction Management Fee at a rate of [INSERT%] [%] on work performed by Subcontractors. Such markup shall cover the same cost elements that were included in the Construction Management Fee;

(4) In no event shall the maximum mark-up on the Direct Cost of the Work exceed
twenty five percent (25%). Direct Cost of the Work shall mean labor, material and
other costs reasonably and necessarily incurred in the proper performance of the
Work as approved by the Department and shall include, but not be limited
to: (Direct Cost of the Work does not, however, include home office overhead, field
supervision, general conditions or profit of either the Subcontractor or the
Construction Manager. No personnel above the level of a working foreman shall
be considered a Direct Cost of the Work).

(a) **Labor.** Payment will be made for direct labor cost plus indirect labor cost
such as insurance, taxes, fringe benefits and welfare provided such costs
are considered reasonable. Indirect costs shall be itemized and verified by
receipted invoices. If verification is not possible, up to eighteen percent
(18%) of direct labor costs may be allowed.

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

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

(d) **Materials.** Incorporated and unincorporated materials as permitted under
Section 9.1.
Article 18 – BONDS

Section 18.1. Performance Bond and Payment Bond. The Construction Manager shall, before commencing the Construction Phase, provide to the Department a payment bond and performance bond, each with a penal sum equal to the full value of the GMP. In addition to the delivery of the performance and payment bonds, the Construction Manager must deliver to the Contracting Officer a copy of the executed Agreement of Indemnity under which the bonds were issued. Such bond shall remain in full force and effect until Final Completion is achieved and the Department shall be able to draw upon such bond regardless of the amount paid by the Department to the Construction Manager, even if such amount exceeds the penal value of such bond. Unless otherwise directed by the Department, the Construction Manager shall require all Subcontractors whose Subcontract prices exceed One Hundred Thousand Dollars ($100,000) to provide payment and performance bonds, with a penal sum equal to one hundred percent (100%) of the subcontract price. Further, the Construction Manager must deliver to the Contracting Officer copies of its subcontractor’s Agreements of Indemnity. All bonds must be in a form acceptable to the Department, its lenders or bond trustee, and issued by a surety authorized to do business in the District of Columbia and bonding company listed on the United States Department of Treasury’s Listing of Approved Sureties. All subcontractors’ bonds must include a dual obligee rider, naming the Construction Manager and the Department as dual obligees. If the Guaranteed Maximum Price is increased pursuant to the terms of the Agreement, the Department may require that the amount of the bonds be increased in the amount of one hundred percent (100%) of the increase, and the Construction Manager shall promptly comply. The Construction Manager 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 Construction Manager shall promptly provide substitute security acceptable to the Department. If the Construction Manager 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 19 – CLAIMS & DISPUTE RESOLUTION

All claims or disputes arising out of this Agreement shall be governed by the terms of the collective SCP.
IN WITNESS WHEREOF, the Parties have executed this Agreement (DCAM-19-CS-RFP-0062) as of the date last written below.

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

By: __________________________
Name: _________________________
Title: __________________________
Date: __________________________

Smoot Construction Co. Washington DC

Omar McIntosh, Regional, Vice President

By: __________________________
Name: Omar S. McIntosh
Its: Regional Executive/Sr. Vice President
Date: June 4, 2020
Exhibit A

Programmatic Requirements
(See following page)
2.0 Scope of Work

Under this RFP, the Department will engage a CMAR to provide any and all construction services required to complete the Project. The Project shall be complete, operating and ready for use on or before the Substantial Completion Date and within the Project’s budget as specified in Part 1, Section 1.3 and Section 1.5 of this RFP.

The Project will be located at 14th and K Streets, NW, Washington, DC.

Generally, the Construction Manager’s responsibilities shall include, but will not be limited to, the following:

a) To confirm the construction of the Project in accordance with the RFP Documents.
b) To provide all construction management services necessary to implement the goals of the Project inclusive of, but not limited to, the following: civil, architectural, electrical, structural, and mechanical design services as required for the Project (by the A/E); construction management services inclusive of budgeting, value engineering (“Value Engineering”), scheduling, project administration, management and coordination of subcontractors.
c) To conduct subsurface investigations work if and as required for the Project.
d) To furnish and provide all materials, management, personnel, equipment, hazardous material abatement, supervision, labor and other services necessary to complete the Project.
Exhibit B

Preliminary Schedule
(See following page)
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### Milestones

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<td>Complete Trade Bidding</td>
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### Subcontractor Procurement

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### Submittals

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**Construction**

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</tr>
<tr>
<td>------------</td>
<td>----------------------------------------</td>
<td>-------</td>
<td>--------</td>
</tr>
<tr>
<td>A120</td>
<td>Salvage &amp; Store Bluestone</td>
<td>12-Mar</td>
<td>9-Apr</td>
</tr>
<tr>
<td>A121</td>
<td>Salvage &amp; Store Light fixtures</td>
<td>12-Mar</td>
<td>9-Apr</td>
</tr>
<tr>
<td>A122</td>
<td>Salvage &amp; Store Benches</td>
<td>12-Mar</td>
<td>9-Apr</td>
</tr>
<tr>
<td>A123</td>
<td>Tree Removal Phase I - Cafe</td>
<td>16-Mar</td>
<td>23-Mar</td>
</tr>
<tr>
<td>A1490</td>
<td>Tree Removal Phase II - Fountain</td>
<td>9-Apr</td>
<td>17-Apr</td>
</tr>
<tr>
<td>Utilities</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A1180</td>
<td>Test Pit existing utilities</td>
<td>27-Feb</td>
<td>5-Mar</td>
</tr>
<tr>
<td>A1190</td>
<td>Cut, Cap and Make Safe all utilities</td>
<td>9-Mar</td>
<td>12-Mar</td>
</tr>
<tr>
<td>A1990</td>
<td>Water tie-in Eye St</td>
<td>5-May</td>
<td>13-May</td>
</tr>
<tr>
<td>A1720</td>
<td>Sanitary tie-in Eye St</td>
<td>12-May</td>
<td>19-May</td>
</tr>
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<td>Hardscape</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A2370</td>
<td>Site lighting rough-in</td>
<td>15</td>
<td>24-Oct</td>
</tr>
<tr>
<td>A2370</td>
<td>New Concave paths (NW-NE-SW-SE)</td>
<td>20</td>
<td>25-Aug</td>
</tr>
<tr>
<td>Fountain</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A2340</td>
<td>Excavate &amp; place new fountain vaults</td>
<td>10</td>
<td>1-Oct</td>
</tr>
<tr>
<td>A2350</td>
<td>Install new fountain piping</td>
<td>10</td>
<td>15-Oct</td>
</tr>
<tr>
<td>A2420</td>
<td>Electrical rough-in</td>
<td>10</td>
<td>1-Oct</td>
</tr>
<tr>
<td>A2510</td>
<td>Sanitary tie-in to K St</td>
<td>19</td>
<td>3-Jun</td>
</tr>
<tr>
<td>A2380</td>
<td>Set subgrade and pour new slab</td>
<td>10</td>
<td>15-Jun</td>
</tr>
<tr>
<td>A2480</td>
<td>Set new coping</td>
<td>10</td>
<td>29-Jun</td>
</tr>
<tr>
<td>A2490</td>
<td>Set Bluestone panels</td>
<td>20</td>
<td>28-Jul</td>
</tr>
<tr>
<td>Playground</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A2580</td>
<td>Install Playground features</td>
<td>15</td>
<td>1-Sep</td>
</tr>
<tr>
<td>Commodities</td>
<td>Barry Statue</td>
<td>15</td>
<td>1-Sep</td>
</tr>
<tr>
<td>A2620</td>
<td>Remove protection</td>
<td>20</td>
<td>1-Sep</td>
</tr>
<tr>
<td>A2640</td>
<td>Refurbish Commodore Barry Statue</td>
<td>20</td>
<td>29-Sep</td>
</tr>
<tr>
<td>A2650</td>
<td>Refurbish fences &amp; benches</td>
<td>10</td>
<td>13-Oct</td>
</tr>
<tr>
<td>Landscape</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A2330</td>
<td>Soil extraction</td>
<td>20</td>
<td>21-Apr</td>
</tr>
<tr>
<td>A2350</td>
<td>Soil import</td>
<td>30</td>
<td>3-Jun</td>
</tr>
<tr>
<td>A2350</td>
<td>Irrigation Installation SW-NW-NE-SE</td>
<td>45</td>
<td>6-Aug</td>
</tr>
<tr>
<td>A2351</td>
<td>Trees &amp; shrubs SW-NW-NE-SE</td>
<td>35</td>
<td>5-Nov</td>
</tr>
<tr>
<td>Site Lighting</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A2520</td>
<td>3rd Street Planter</td>
<td>20</td>
<td>23-Sep</td>
</tr>
<tr>
<td>A2320</td>
<td>14th Street Planter</td>
<td>15</td>
<td>15-Oct</td>
</tr>
<tr>
<td>A2351</td>
<td>13th Street Pavers</td>
<td>5</td>
<td>30-Sep</td>
</tr>
<tr>
<td>A2350</td>
<td>Eye St Pavers</td>
<td>3</td>
<td>2-Sep</td>
</tr>
<tr>
<td>A2330</td>
<td>14th Street Pavers</td>
<td>15</td>
<td>22-Oct</td>
</tr>
<tr>
<td>A2450</td>
<td>K St Pavers</td>
<td>5</td>
<td>29-Oct</td>
</tr>
<tr>
<td>Site Furnishings</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A2590</td>
<td>Install Site Lighting</td>
<td>15</td>
<td>16-Sep</td>
</tr>
<tr>
<td>A2650</td>
<td>Install Benches</td>
<td>5</td>
<td>23-Sep</td>
</tr>
<tr>
<td>A2610</td>
<td>Install Site furnishings</td>
<td>5</td>
<td>30-Sep</td>
</tr>
<tr>
<td>Activity ID</td>
<td>Activity Name</td>
<td>Start</td>
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</tr>
<tr>
<td>------------</td>
<td>--------------------------------</td>
<td>-----------</td>
<td>-----------</td>
</tr>
<tr>
<td>A1990</td>
<td>Excavate, reinforce and pour footings</td>
<td>23-Mar-20</td>
<td>06-Apr-20</td>
</tr>
<tr>
<td>A2000</td>
<td>Pour Slab on grade</td>
<td>05-May-20</td>
<td>12-May-20</td>
</tr>
<tr>
<td>A1990</td>
<td>Install 12&quot; RCP for BMPs</td>
<td>21-Apr-20</td>
<td>05-May-20</td>
</tr>
<tr>
<td>A2020</td>
<td>Install Structural Steel &amp; Metal Deck</td>
<td>06-Apr-20</td>
<td>21-Apr-20</td>
</tr>
<tr>
<td>A2030</td>
<td>Install roofing membrane</td>
<td>21-Apr-20</td>
<td>28-Apr-20</td>
</tr>
<tr>
<td>A1990</td>
<td>Install CMU backup walls</td>
<td>12-May-20</td>
<td>19-May-20</td>
</tr>
<tr>
<td>A2010</td>
<td>Exterior framing &amp; sheathing</td>
<td>19-May-20</td>
<td>03-Jun-20</td>
</tr>
<tr>
<td>A2070</td>
<td>Install Air &amp; Vapor Barrier</td>
<td>03-Jun-20</td>
<td>10-Jun-20</td>
</tr>
<tr>
<td>A2080</td>
<td>Install Metal Wall Panels</td>
<td>10-Jun-20</td>
<td>24-Jun-20</td>
</tr>
<tr>
<td>A2240</td>
<td>Install Storefront Windows &amp; Skylight</td>
<td>10-Jun-20</td>
<td>09-Jul-20</td>
</tr>
<tr>
<td>A2250</td>
<td>Install steel fascia</td>
<td>09-Jul-20</td>
<td>23-Jul-20</td>
</tr>
<tr>
<td>A2260</td>
<td>Install Stone veneer</td>
<td>23-Jul-20</td>
<td>06-Aug-20</td>
</tr>
<tr>
<td>A2090</td>
<td>Install Roof top HVAC units</td>
<td>20-Apr-20</td>
<td>06-May-20</td>
</tr>
<tr>
<td>A2100</td>
<td>HVAC R1 walls</td>
<td>20-Apr-20</td>
<td>06-May-20</td>
</tr>
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<td>A2040</td>
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<td>19-May-20</td>
<td>27-May-20</td>
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<td>Plumbing R1 walls</td>
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<td>27-May-20</td>
</tr>
<tr>
<td>A2130</td>
<td>Electrical R1 ceilings</td>
<td>10-Jun-20</td>
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<td>Plumbing R1 ceilings</td>
<td>10-Jun-20</td>
<td>17-Jun-20</td>
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<td>A2120</td>
<td>HVAC R1 ceilings</td>
<td>10-Jun-20</td>
<td>17-Jun-20</td>
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<tr>
<td>A2280</td>
<td>Start-up HVAC</td>
<td>20-Jul-20</td>
<td>30-Jul-20</td>
</tr>
<tr>
<td>A2290</td>
<td>Commission MEP</td>
<td>06-Aug-20</td>
<td>13-Aug-20</td>
</tr>
<tr>
<td>A2110</td>
<td>Frame Ceilings</td>
<td>03-Jun-20</td>
<td>10-Jun-20</td>
</tr>
<tr>
<td>A2160</td>
<td>Hang, Tape, Finish walls</td>
<td>03-Jun-20</td>
<td>10-Jun-20</td>
</tr>
<tr>
<td>A2150</td>
<td>Ceiling Close-ins</td>
<td>10-Jun-20</td>
<td>17-Jun-20</td>
</tr>
<tr>
<td>A2170</td>
<td>Install Ceilings</td>
<td>17-Jun-20</td>
<td>09-Jul-20</td>
</tr>
<tr>
<td>A2190</td>
<td>Install Doors, Frames &amp; Hardware</td>
<td>09-Jul-20</td>
<td>16-Jul-20</td>
</tr>
<tr>
<td>A2110</td>
<td>Prime, First Coat walls &amp; ceilings</td>
<td>16-Jul-20</td>
<td>23-Jul-20</td>
</tr>
<tr>
<td>A2270</td>
<td>Install wood ceiling</td>
<td>23-Jul-20</td>
<td>06-Aug-20</td>
</tr>
<tr>
<td>A2210</td>
<td>Install flooring</td>
<td>06-Aug-20</td>
<td>27-Aug-20</td>
</tr>
<tr>
<td>A2230</td>
<td>Final Paint</td>
<td>11-Sep-20</td>
<td>18-Sep-20</td>
</tr>
<tr>
<td>A2220</td>
<td>Install Kitchen Equipment/Millwork</td>
<td>27-Aug-20</td>
<td>11-Sep-20</td>
</tr>
<tr>
<td>A1970</td>
<td>Excavate, reinforce &amp; pour footings &amp; sump tube</td>
<td>06-Jul-20</td>
<td>23-Jul-20</td>
</tr>
<tr>
<td>A2500</td>
<td>Joist and deck installation</td>
<td>23-Jul-20</td>
<td>20-Aug-20</td>
</tr>
</tbody>
</table>
Exhibit C

Preconstruction Phase Deliverables
(See following page)
Section 1.1. Preconstruction Services.
The Preconstruction Phase will start from the issuance of the notice to proceed through the execution of the GMP amendment (“GMP Amendment”). The Department will issue a notice to proceed for preconstruction services (the “Letter Contract”). During the Preconstruction Phase, the Construction Manager shall provide such preconstruction services as are necessary to properly advance the Project. Without limiting the generality of the foregoing, during the Preconstruction Phase, the Construction Manager shall: (i) work with the Department’s Architect and any design consultants to provide constructability reviews of the design for the Project in consultation with Client Agency, the Department and its Program Manager; (ii) obtain bids from trade subcontractors to perform the work described in the Construction Documents and provide bid tabulations to the Department; (iii) engage in any value engineering and scoping exercises necessary to return the cost of the work to the Project Budget; (iv) engage in preconstruction activities, including identifying any long-lead items; (v) develop a GMP proposal for the Project; and (vi) enter into a GMP for the Project. Throughout the Preconstruction Phase, the Construction Manager shall schedule and attend regular meetings with the Department, the Program Manager and the Architect. A list of preconstruction deliverables is set forth in Exhibit C.

Section 3.1.1 Additional Preconstruction Services. In addition to those items enumerated above, the Construction Manager shall provide such preconstruction services as are necessary to properly advance the Project. These services shall include, but are not limited to, condition assessments, conservator studies, archeological studies, recommended testing, additional geotechnical testing, and monitoring of historic assets. The cost of these additional Preconstruction Services are not included in the pre-construction fee, and if required will be added to the cost of construction work.

Section 1.2. Baseline Schedule, Building System Assessment, and Construction Management Plan.

Section 3.2.1 Baseline Schedule.
Within seven (7) days after the Letter Contract is issued, the Construction Manager shall prepare and submit a preliminary schedule for the Project (including the preconstruction phase activities and the construction phase activities) (the “Baseline Schedule”). The Baseline Schedule shall be subject to review and approval by the Department and the Construction Manager shall incorporate such adjustments to the Baseline Schedule as may be reasonably requested by the Department. This schedule shall be prepared in a Critical Path Method (“CPM”) and be developed in a sufficient level of detail so as to permit the affected parties (i.e. the Department, the Architect and the Construction Manager) to properly plan the Project and shall show: (i) key design milestones and bid packages; (ii) release dates for long lead items; (iii) release dates for key subcontractors; and (iv) Substantial and Final Completion Dates. The preliminary schedule shall include durations and logic ties for those building systems that the Construction Manager is recommending for replacement. The Baseline Schedule must also be submitted in Primavera 6 native format or the latest version of the software and shall be updated by the Construction Manager, at a minimum, on a monthly basis. The preliminary schedule is attached hereto as Exhibit B.

During the Preconstruction Phase, the Construction Manager 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 Construction Manager’s best projection of the effect of such delays on the Project Schedule. The
Department’s receipt of, and lack of objection to, any schedule update showing a later Substantial
Completion or Final Completion shall not be regarded as the Department’s agreement that the
Construction Manager may have an extension of time, or as a waiver of any of the Department’s rights,
but merely as the Construction Manager’s representation that, as a matter of fact, the Project may not
be completed by the applicable Substantial or Final Completion Date. The Project Schedule shall be
maintained and continuously updated during the Preconstruction and Construction Phases.

Section 3.2.3 Construction Management Plan. The Construction Manager shall submit a draft of its
collection management plan (“Construction Management Plan”) no later than thirty (30) days prior to
the start of on-site work to include, but is not limited to, noise control, hours for construction and
deliveries, truck routes, trash and debris removal plan, traffic and parking control, communications
procedures, emergency procedures, quality control procedures, dust control, public street cleaning and
repair, planned occupancy of public ways, erosion control, tree protection plan, vibration monitoring,
temporary fire protection measures, project signage, pest control, construction staging plan, and
construction logistics plan.

Section 1.3. Constructability Reviews

1.3.1. It is contemplated that the Construction Manager will have met
with representatives of the Department, DPR, NPS and the Architect as
well as other stakeholders to better develop the Department’s
requirements for the Project following contract award. During the
Preconstruction Phase, the Construction Manager will be required to
provide constructability reviews of the design documents for the
Project.

1.3.2. The Construction Manager shall meet with the representatives of the
Department, Architect and Client Agency throughout the Preconstruction
Phase as the design progresses and these and other stakeholders provide
input in and approve the design direction at appropriate times. The GMP
Basis Documents and all interim design submissions shall be subject to
review and approval by the Department, and the Construction Manager
shall be required to provide input on these documents to address concerns
raised by the Department and/or other project stakeholders and such
reviews shall not entitle the Construction Manager to an increase in the
Preconstruction Fee.

1.3.2.1. Preliminary Budget Estimate. Within fourteen (14) days of the
Notice to Proceed, the Construction Manager shall submit a detailed cost
estimate of the proposed design (such estimate, the “Preliminary Budget
Estimate”). With regard to building systems (i.e. roofs, doors, HVAC,
security, IT, etc.), the cost estimate shall be prepared on a “system” basis
that identifies the key building systems or functions and allocates an
estimated cost for each such system. The Construction Management
Fee, the Cost of General Conditions, and Contingencies shall be broken
out in separate line items. The primary purpose of such cost estimate is to aid the Department and Client Agency in understanding the costs associated with key elements of the Project so as to better prioritize and manage the use of the funding allocated to this Project.

1.3.2.2. **Baseline Budget and Program.** The Department shall provide the Construction Manager with the approved baseline budget and program. Such approval shall be provided (or signed by) the Department. In the event the Construction Manager does not receive such approval within fourteen (14) days after submitting the Preliminary Budget Estimate, it shall so advise the COTR, the Department’s Deputy Director for Capital Construction and the Contracting Officer in writing of such failure and request direction. If the Construction Manager fails to provide such notice, the Construction Manager will be proceeding at its own risk and will be responsible for costs associated with budget revisions. Only the Department shall have the authority to increase the Project budget, and absent such direction, the Construction Manager shall proceed throughout the Project on the assumption that the budget remains as originally directed by the Department pursuant to this Section 3.3.2.2.

1.3.2.3. **Constructability/Sole Source/Long-Lead Time Memorandum.** The Construction Manager shall prepare a memorandum identifying key construction concerns related to the Project. Such memorandum shall: (i) assess the constructability issues related to the Project, including site logistics; (ii) identify any items where the design is predicated on a single manufacturer and, if so, identify at least two (2) comparable products; and (iii) identify any long-lead delivery items that could adversely affect the Baseline Schedule. To the extent any such long-lead items are identified, the memorandum shall make recommendations for addressing such items. Department may release funding for hazardous materials abatement and selective demolition, and funding for long-lead items in advance of the Construction Phase. If the Construction Manager believes an earlier release is required for long-lead items in order to meet the Project Schedule, it shall advise the Department and make a recommendation as to the requested release date. Similarly, if the Construction Manager believes that additional work must be released in advance of the establishment of a GMP for the Project, it shall advise the Department and make a recommendation as to the scope of work to be released as well as to the requested release date. Further, any decision to authorize an early release shall be made by the Department in its sole and absolute discretion.

1.3.2.4. **Permits.** The Construction Manager shall be responsible for preparing and submitting permit applications for construction trades that are necessary for the construction of the Project. The Construction Manager shall develop a list of the required permits and shall track the progress of all such permits through the review process. The
Construction Manager shall update the Department with the status of each permit that is required for the Project. The Construction Manager shall engage such permit expediters as the Construction Manager deems necessary or appropriate in light of the Project’s schedule. The Construction Manager shall hire a permit expeditor to help facilitate the review, and approval of the Building Permit. The Construction Manager shall work with the Architect/Engineer and the expeditor to ensure the necessary building permits (including, but not limited to demolition permits, foundation to grade permits, superstructure permits, utility permits, public space permits, and any other permits required for the execution of the Work) are received in a timely manner. The Construction Manager shall be responsible for paying all permits and fees associated with the Project, other than the building permit fees; provided, however, the Department reserves the right to direct the Construction Manager to pay for building permit fees from an Owner Allowance. Costs for a permit expeditor shall be considered part of the Cost of Work.
Exhibit D
SBE Subcontracting Plan
(See following page)
SBE SUBCONTRACTING PLAN

INSTRUCTIONS: All construction & non-construction contracts for government-assisted projects (agency contracts & private project with District subsidy) over $250,000, shall require at least 35% of the amount of the contract (total amount of agency contract or total private project development costs) be subcontracted to Small Business Enterprises (SBE), if insufficient qualified SBEs to Certified Business Enterprises (CBE). The SBE Subcontracting Plan must list all SBE and CBE subcontracts at every tier. Once the SBE Subcontracting Plan is submitted for agency contracts, options & extensions, it can only be amended with DSLBD’s consent.

SUBMISSION OF SBE SUBCONTRACTING PLAN:
- For agency solicitations - submit to agency with bid/proposal.
- For agency options & extensions - submit to agency before option or extension exercised.
- For private projects - submit to DSLBD, agency project manager and District of Columbia Auditor, with each quarterly report. As private projects may not have awarded all contracts at the time the District subsidy is granted, the SBE Subcontracting Plan may be submitted simultaneously with each quarterly report and list all SBE/CBE subcontracts executed by the time of submission.

CREDIT: For each subcontract listed on the SBE Subcontracting Plan, credit will only be given for the portion of the subcontract performed, at every tier, by a SBE/CBE using its own organization and resources. COPIES OF EACH FULLY EXECUTED SUBCONTRACT WITH SBEs and CBEs (AT EVERY TIER) MUST BE PROVIDED TO RECEIVE CREDIT.

EXEMPTION: If the Beneficiary (Prime Contractor or Developer) is a CBE and will perform the ENTIRE government-assisted project with its own organization and resources and will NOT subcontract any portion of the services and goods, then the CBE is not required to subcontract 35% to SBEs.

BENEFICIARY (✓ which applies X Prime Contractor or ☐ Developer) INFORMATION:

<table>
<thead>
<tr>
<th>Company: Smoot Construction</th>
<th>Contact # 202.243.6688</th>
<th>Email address: <a href="mailto:cstowe@smoosmoot.com">cstowe@smoosmoot.com</a></th>
</tr>
</thead>
<tbody>
<tr>
<td>Street Address: 5335 Wisconsin Ave NW, Suite 940, Washington DC 20015</td>
<td></td>
<td></td>
</tr>
<tr>
<td>✓ all that applies, Company is:</td>
<td>☐ a SBE ☐ a CBE ☒ CBE Certification Number: LR51491062021</td>
<td></td>
</tr>
<tr>
<td>☐ WILL perform the ENTIRE agency contract or private project with its own organization and resources</td>
<td></td>
<td></td>
</tr>
<tr>
<td>☒ WILL subcontract a portion of the agency contract or private project</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Company’s point of contact for agency contract or private project:
- Point of Contact: Omar McIntosh
- Title: Sr. Vice President
- Contact # 202.243.6688
- Email address: omcintosh@smoosmoot.com
- Street Address: 5335 Wisconsin Avenue NW, Suite 940, Washington, DC 20015

GOVERNMENT-ASSISTED PROJECT (✓ which applies X Agency Contract or ☐ Private Project) INFORMATION:

<table>
<thead>
<tr>
<th>Solicitation Number: DCAM-19-CS-RFP-0062</th>
<th>Solicitation Due Date: 10/09/2019</th>
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</thead>
<tbody>
<tr>
<td>Agency: DGS</td>
<td>Total Dollar Amount of Contract: $13,563,460.80</td>
</tr>
<tr>
<td>Design-Build must include total contract amount for both design and build phase of project.</td>
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</tr>
<tr>
<td>35% of Total Dollar Amount of Contract: $4,747,211.30</td>
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</tr>
<tr>
<td>Total Amount of All SBE/CBE subcontracts: $4,747,211.30 (include every lower tier)</td>
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</tr>
</tbody>
</table>

PRIVATE PROJECT

- District Subsidy: |
- Agency Providing Subsidy: |
- Amount of District Subsidy: |
- Date District Subsidy Provided: |
- Project Name: |
- Project Address: |
- Total Development Project Budget: $ (include pre-construction and construction costs) |
- 35% of Total Development Project Budget: $ |
- Total Amount of All SBE/CBE subcontracts: $ (include every lower tier) |
## SBE Subcontracting Plan

### SBE/ CBE Subcontractors

**SBE/ CBE Subcontractors (for each tier):**

<table>
<thead>
<tr>
<th>SBE/ CBE Company</th>
<th>Address/Telephone No./ Email</th>
<th>Subcontractor Tier (1st, 2nd, 3rd, etc.)</th>
<th>Description of Subcontract scope of work to be performed with SBE/CBE's own organization &amp; resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smoot Construction</td>
<td>5335 Wisconsin Ave NW, Suite 940, Washington, DC 20015, 202.243.6688, <a href="mailto:omcintosh@srsrnoot.com">omcintosh@srsrnoot.com</a></td>
<td>1ST</td>
<td>Serve as Design-Builder to design and construct the new Benjamin Banneker High School which includes design, preconstruction and construction services to build a new 21st century learning environment to accommodate an increased enrollment of approximately 800 students within the next decade. Smoot will lead the joint venture (51% majority partner) with Davis Construction. DSLBD certification pending.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Period of subcontract:</th>
<th>November 2019-December 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price to be paid to the SBE/CBE Subcontractor:</td>
<td>TBD</td>
</tr>
</tbody>
</table>

**SBE/ CBE Subcontractor Information:** (For design-build projects, the SBE Subcontracting Plan is not required to be submitted for preconstruction services; however, a full SBE Subcontracting Plan (35% of the contract amount including total design and build costs) is required to be submitted before entering into a guaranteed maximum price or contract authorizing construction.)

<table>
<thead>
<tr>
<th>Select Tier</th>
<th>Subcontractor Tier (1st, 2nd, 3rd, etc.)</th>
<th>Description of Subcontract scope of work to be performed with SBE/CBE's own organization &amp; resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>1ST</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Serve as Design-Builder to design and construct the new Benjamin Banneker High School which includes design, preconstruction and construction services to build a new 21st century learning environment to accommodate an increased enrollment of approximately 800 students within the next decade. Smoot will lead the joint venture (51% majority partner) with Davis Construction. DSLBD certification pending.)

**SBE/ CBE Point of Contact**

Name: Chrystal H. Stowe
Title: Director of Community Programs
Telephone Number: 202.243.6688
Email Address: cstowe@srsrnoot.com

NOTE: This is a design-build project. We will submit a full SBE subcontracting plan showing 35% SBE participation on specific bid packages before entering into a guaranteed maximum price for construction. While work scope descriptions cannot be provided at this early design stage, we have identified SBEs that will be notified about subcontracting opportunities as part of our bidder outreach efforts. This list is preliminary and will be revised after bid package development.

Chrystal H. Stowe of Smoot Construction Co. swear or affirm the above is true and accurate

**Signature:**

**Date:** 06/04/2020

---

**DCAM-19-CS-RFP-0062**

CmaR Services for Franklin Park

---

**26**
### AGENCY CONTRACTING OFFICER'S AFFIRMATION OR AGENCY PROJECT MANAGER'S AFFIRMATION

The Below Agency Contracting Officer or Agency Project Manager Affirms the following (✓ to affirm):

- If the Beneficiary is a CBE, DSLBD was contacted to confirm Beneficiary’s CBE certification;
- The fully executed Contract (Base or Option or Extension or Multi-Year) or subsidy document, between the Beneficiary and Agency, was emailed to DSLBD @ Compliance.Enforcement@dc.gov within five (5) days of signing;
- FOR AGENCY CONTRACT the SBE Subcontracting Plan, submitted by Beneficiary, was emailed to DSLBD @ Compliance.Enforcement@dc.gov within five (5) days of signing the contract between the Beneficiary and Agency.

**Name of Agency Contracting Officer or Agency Project Manager**

**Title of Agency Contracting Officer or Agency Project Manager**

---

**Signature**

**Date**
### FRANKLIN PARK
**PRELIMINARY SBE SUBCONTRACTING PLAN** - Goals by Trade Division

<table>
<thead>
<tr>
<th>CONSTRUCTION TRADE DIVISION</th>
<th>ESTIMATED VALUE</th>
<th>ESTIMATED SBE/CBE VALUE</th>
<th>% SBE/CBE</th>
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<tbody>
<tr>
<td>DIVISION 1 - GENERAL CONDITIONS</td>
<td>$625,000</td>
<td>$625,000</td>
<td>TBD</td>
</tr>
<tr>
<td>DIVISION 1 - SITE REQUIREMENTS</td>
<td>TBD</td>
<td>$300,000</td>
<td>TBD</td>
</tr>
<tr>
<td>DIVISION 2 - DEMOLITION/SITEWORK</td>
<td>TBD</td>
<td>$1,340,000</td>
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<tr>
<td>DIVISION 3 - CONCRETE</td>
<td>TBD</td>
<td>$400,000</td>
<td>TBD</td>
</tr>
<tr>
<td>DIVISION 4 - MASONRY</td>
<td>TBD</td>
<td>$50,000</td>
<td>TBD</td>
</tr>
<tr>
<td>DIVISION 5 - METALS</td>
<td>TBD</td>
<td>$75,000</td>
<td>TBD</td>
</tr>
<tr>
<td>DIVISION 6 - WOOD &amp; PLASTICS</td>
<td>TBD</td>
<td>$350,000</td>
<td>TBD</td>
</tr>
<tr>
<td>DIVISION 7 - THERMAL/MOISTURE PROTECT</td>
<td>TBD</td>
<td>$60,000</td>
<td>TBD</td>
</tr>
<tr>
<td>DIVISION 8 - DOORS &amp; WINDOWS</td>
<td>TBD</td>
<td>$300,000</td>
<td>TBD</td>
</tr>
<tr>
<td>DIVISION 9 - FINISHES</td>
<td>TBD</td>
<td>$150,000</td>
<td>TBD</td>
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<tr>
<td>DIVISION 10 - SPECIALTIES</td>
<td>TBD</td>
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<td>TBD</td>
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<tr>
<td>DIVISION 11 - EQUIPMENT</td>
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<td>TBD</td>
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<td>DIVISION 14 - HOISTING</td>
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<tr>
<td>DIVISION 15 - MECHANICAL</td>
<td>TBD</td>
<td>$195,000</td>
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<tr>
<td>DIVISION 16 - ELECTRICAL</td>
<td>TBD</td>
<td>$550,000</td>
<td>TBD</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$13,563,460.80</strong></td>
<td><strong>$4,747,211.30</strong></td>
<td><strong>35%</strong></td>
</tr>
</tbody>
</table>

*For illustration purposes only. Bid packages not developed.*
Exhibit E

Closeout & FF&E

(See following page)
Section 1.1. Close-out & FF&E.

1.1.1. Deleted.

1.1.2. Punchlist. Promptly after Substantial Completion, the Construction Manager shall coordinate with the Architect to develop a punchlist. Once the punchlist is prepared, the Construction Manager shall inspect the work along with representatives from the Department. The punchlist shall be revised to reflect additional work items that are discovered during such inspection. The Construction Manager shall correct all punchlist items no later than ninety (90) days after Substantial Completion is achieved.

1.1.3. Warranties & Manuals. Subsequent to Substantial Completion and no later than fifteen (15) days following Substantial Completion, the Construction Manager shall prepare and submit the following documentation: (i) a complete set of product manuals (O&M), training videos, warranties, etc.; (ii) attic stock; (iii) an equipment schedule; (iv) a proposed schedule of maintenance for the renovated building; (v) environmental, health and safety documents for the renovated building; and (vi) all applicable inspection certificates/permits (boiler, elevator, emergency evacuation plans, health inspection, etc.) for the renovated building. No later than thirty (30) days following Substantial Completion, the Construction Manager shall prepare and submit: (x) a complete set of its Project files; (y) a set of record drawings; and (z) the building information modeling file(s).

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

1.1.5. Training. The Construction Manager shall provide training to Client Agency staff on all of the building systems. The Construction Manager shall be required to schedule such training sessions and shall use commercially reasonable efforts to ensure all such training occurs prior to Final Completion.

1.1.6. The Construction Manager shall assist Client Agency in relocating FF&E and other items as necessary within the renovated building, as well as for cleaning and other move-in services as directed by the Department. The GMP shall include an allowance and scope of work for these activities. This allowance is in addition to cleaning services that would otherwise be required by the Construction Manager, including, but not limited to, the obligation to deliver a broom clean building at the end of construction.
Exhibit F

Key Personnel
(See following page)
Organizational Chart

Jeff Tilton, CQM  
Project Executive

Project Management
Shawn Miller  
Project Manager

Kyle Smith, CQM  
Quality Control Manager

Field Management
Ben Easlick, LEED AP  
Sr. Project Superintendent

Executive Support

Chrystal Stowe, CCA  
Community Program Manager

Jackie Washington, LEED BD+C  
Sr. Preconstruction Services Manager

Adam McConnell  
Safety Manager

Single Point of Contact

Jeff Tilton  
Smoot Construction  
Project Executive

Office: 202.243.6688  
Mobile: 614.735.0033  
Email: jtilton@srsmooot.com
List Of All Personnel Proposed For The Project

<table>
<thead>
<tr>
<th>Name</th>
<th>Role</th>
<th>Percentage of Time Assigned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jeff Tilton</td>
<td>Executive Support</td>
<td>As Needed</td>
</tr>
<tr>
<td>Shawn Miller</td>
<td>Project Manager</td>
<td>Preconstruction 70% Construction 100%</td>
</tr>
<tr>
<td>Jackie Washington</td>
<td>Preconstruction Manager</td>
<td>Preconstruction 100%</td>
</tr>
<tr>
<td>Chrystal Stowe</td>
<td>CBE/Workforce Compliance</td>
<td>Preconstruction 5%</td>
</tr>
<tr>
<td>Kyle Smith</td>
<td>Quality Control Manager</td>
<td>Construction 100%</td>
</tr>
<tr>
<td>Ben Eastlick</td>
<td>Sr. Project Superintendent</td>
<td>Construction 100%</td>
</tr>
<tr>
<td>Adam McConnell</td>
<td>Regional Safety Manager</td>
<td>Construction 25%</td>
</tr>
</tbody>
</table>
Exhibit G
Davis Bacon Act Provision
(See following page)
Superseded General Decision Number: DC20180002

State: District of Columbia

Construction Type: Building

County: District of Columbia Statewide.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.60 for calendar year 2019 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.60 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2019. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

<table>
<thead>
<tr>
<th>Modification Number</th>
<th>Publication Date</th>
</tr>
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<td>13</td>
<td>08/09/2019</td>
</tr>
<tr>
<td>14</td>
<td>08/16/2019</td>
</tr>
</tbody>
</table>
ASBESTOS WORKER/HEAT & FROST

INSULATOR........................$ 36.53 16.42+a
Includes the application of all insulating materials, protective coverings, coatings and finishes to all types of mechanical systems.

a. PAID HOLIDAYS: New Year’s Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Veterans’ Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day provided the employee works the regular work day before and after the paid holiday.

ASBESTOS WORKER: HAZARDOUS MATERIAL HANDLER.................$ 22.81 7.34+a
Includes preparation, wetting, stripping, removal, scrapping, vacuuming, bagging and disposing of all insulation materials, whether they contain asbestos or not, from mechanical systems.

a. PAID HOLIDAYS: New Year’s Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Veterans’ Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day provided the employee works the regular work day before and after the paid holiday.

FIRESTOPPER......................$ 28.01 7.78+a
Includes the application of materials or devices within or around penetrations and openings in all rated wall or floor assemblies, in order to prevent the passage of fire, smoke of other gases. The application includes all components involved in creating the rated barrier at perimeter slab edges and exterior cavities, the head of gypsum board or concrete walls, joints between rated wall or floor components, sealing of penetrating items and blank openings.

a. PAID HOLIDAYS: New Year’s Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Veterans’ Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day provided the employee works the regular work day before and after the paid holiday.
BRDC0001-002  04/28/2019

Rates    Fringes

BRICKLAYER.......................$ 32.00        11.57

CARP0197-011  05/01/2019

Rates    Fringes

CARPENTER, Includes Drywall
Hanging, Form Work, and Soft
Floor Laying-Carpet..............$ 29.00        12.71

CARP0219-001  05/01/2019

Rates    Fringes

MILLWRIGHT.......................$ 35.99        11.23

CARP0441-001  05/01/2018

Rates    Fringes

PILEDRIVERMAN....................$ 30.94        11.45

ELEC0026-016  06/03/2019

Rates    Fringes

ELECTRICIAN, Includes
Installation of
HVAC/Temperature Controls.......$ 46.25        18.74

ELEC0026-017  09/03/2018

Rates    Fringes

ELECTRICAL INSTALLER (Sound & Communication Systems)........$ 28.05        10.91

SCOPE OF WORK: Includes low voltage construction, installation, maintenance and removal of teledata facilities (voice, data and video) including outside plant, telephone and data inside wire, interconnect, terminal equipment, central offices, PABX, fiber optic cable and equipment, railroad communications, micro waves, VSAT, bypass, CATV, WAN (Wide area networks), LAN (Local area networks) and ISDN (Integrated systems digital network).

WORK EXCLUDED: The installation of computer systems in industrial applications such as assembly lines, robotics and computer controller manufacturing systems. The installation of conduit and/or raceways shall be installed by Inside Wiremen. On sites where there is no Inside Wireman employed, the Teledata Technician may install raceway or conduit not greater than 10 feet. Fire alarm work is excluded on all new construction sites or wherever
the fire alarm system is installed in conduit. All HVAC control work.

----------------------------------------------------------------

ELEV0010-001 01/01/2019

Rates Fringes
ELEVATOR MECHANIC.........$ 45.53 33.705+a+b


b. VACATIONS: Employer contributes 8% of basic hourly rate for 5 years or more of service; 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

----------------------------------------------------------------

IRON0005-006 06/01/2019

Rates Fringes
IRONWORKER, STRUCTURAL........$ 32.50 22.385

----------------------------------------------------------------

IRON0005-012 05/01/2019

Rates Fringes
IRONWORKER, REINFORCING........$ 28.95 21.08

----------------------------------------------------------------

LAB0011-009 06/01/2019

Rates Fringes
LABORER: Skilled...............$ 25.05 8.52

FOOTNOTE: Potmen, power tool operator, small machine operator, signalmen, laser beam operator, waterproofer (excluding roofing), open caisson, test pit, underpinning, pier hole and ditches, laggers and all work associated with lagging that is not expressly stated, strippers, operator of hand derricks, vibrator operators, pipe layers, or tile layers, operators of jackhammers, paving breakers, spaders or any machine that does the same general type of work, carpenter tenders, scaffold builders, operators of towmasters, scootcretes, buggymobiles and other machines of similar character, operators of tampers and rammers and other machines that do the same general type of work, whether powered by air, electric or gasoline, builders of trestle scaffolds over one tier high and sand blasters, power and chain saw operators used in clearing, installers of well points, wagon drill operators, acetylene burners and licensed powdermen, stake jumper, demolition.

----------------------------------------------------------------
### MARBLE/STONE MASON

<table>
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</thead>
<tbody>
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<td>$38.81</td>
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</tbody>
</table>

INCLUDING pointing, caulking and cleaning of All types of masonry, brick, stone and cement EXCEPT pointing, caulking, cleaning of existing masonry, brick, stone and cement (restoration work)

### TERRAZZO WORKER/SETTER

<table>
<thead>
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### TERRAZZO FINISHER

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<tbody>
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### TILE SETTER

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### TILE FINISHER

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</tr>
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<tbody>
<tr>
<td>$24.10</td>
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### GLAZIER

Glazing Contracts $2

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Glazing Contracts over $2

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<tbody>
<tr>
<td>$30.31</td>
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### PAINTER

Brush, Roller, Spray and Drywall Finisher

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### PLASTERER

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<table>
<thead>
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</thead>
<tbody>
<tr>
<td>$29.53</td>
<td>6.80</td>
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</table>
CEMENT MASON/CONCRETE FINISHER...

$ 28.45 11.28

FIREPROOFER

Handler.....................$ 16.50 4.89
Mixer/Pump.................$ 18.50 4.89
Sprayer.....................$ 23.00 4.89

Spraying of all Fireproofing materials. Hand application of Fireproofing materials. This includes wet or dry, hard or soft. Intumescent fireproofing and refractory work, including, but not limited to, all steel beams, columns, metal decks, vessels, floors, roofs, where ever fireproofing is required. Plus any installation of thermal and acoustical insulation. All that encompasses setting up for Fireproofing, and taken down. Removal of fireproofing materials and protection. Mixing of all materials either by hand or machine following manufactures standards.

PLUMBER..........................$ 43.92 18.95+a

a. PAID HOLIDAYS: Labor Day, Veterans' Day, Thanksgiving Day and the day after Thanksgiving, Christmas Day, New Year's Day, Martin Luther King's Birthday, Memorial Day and the Fourth of July.

PIPEFITTER, Includes HVAC

Pipe Installation.............$ 43.14 21.87+a


ROOFER..........................$ 30.25 13.24
<table>
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<td>SPRINKLER FITTER (Fire Sprinklers)..............</td>
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<tr>
<td>$35.60</td>
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<tr>
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<td>---------</td>
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<tr>
<td>SHEET METAL WORKER (Including HVAC Duct Installation).........</td>
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<tr>
<td>$40.77</td>
<td>21.35+a</td>
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<td>---------</td>
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<tr>
<td>LABORER: Common or General...... $13.04 2.80</td>
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<tr>
<td>LABORER: Mason Tender - Cement/Concrete.............. $15.40 2.85</td>
<td></td>
</tr>
<tr>
<td>LABORER: Mason Tender for pointing, caulking, cleaning of existing masonry, brick, stone and cement structures (restoration work); excludes pointing, caulking and cleaning of new or replacement masonry, brick, stone and cement.............. $11.67</td>
<td></td>
</tr>
<tr>
<td>POINTER, CAULKER, CLEANER, Includes pointing, caulking, cleaning of existing masonry, brick, stone and cement structures (restoration work); excludes pointing, caulking, cleaning of new or replacement masonry, brick, stone or cement......................... $18.88</td>
<td></td>
</tr>
<tr>
<td>WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.</td>
<td></td>
</tr>
</tbody>
</table>

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours
they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

---

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers
A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUMB198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers
Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all
rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers
Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

----------------------------------------------------------------

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

    Branch of Construction Wage Determinations
Wage and Hour Division
2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue,
N.W. Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====================================================================
END OF GENERAL DECISION™
Exhibit H

Construction Manager’s Designated Representative
(See following page)
Construction Manager’s Designated Representative

Jeff Tilton
Project Executive
jtilton@srsrnoot.com
Exhibit I
Department’s Designated Representative
(See following page)
The Program Managers are as follows:

Alphonso Fluelling  
The Department of General Services  
1250 U Street, N.W., 4th Floor  
Washington, DC 20009  
Alphonso.Fluelling@dc.gov

and

Shahrokh Ghahramani  
1250 U Street, N.W., 4th Floor  
Washington, DC 20009  
Shahrokh.Ghahramani@dc.gov
Exhibit J

The District of Columbia Department of General Services Standard Contract Provisions,
General Provisions for Construction Contract

(See following page)
ARTICLE 1. DEFINITIONS

A. “Government” as used herein means the District of Columbia Department of General Services, (DGS) that is a party to a contract.

B. “Executive” as used herein means the elected head of the Government as set forth in [Public Law 93-198 dated December 24, 1973, Title 4, Part B, Section 422(1)] (Or relevant local law).

C. “Contracting Officer” as used herein means the Government official authorized to execute and administrate the Contract on behalf of the Government. Within DGS, the Director is the Chief Contracting Officer. The Director may make delegations of procurement authority to additional contracting officers within DGS.


ARTICLE 2. SPECIFICATIONS AND DRAWINGS—The Contractor shall keep on the work site a copy of Contract drawings and specifications and shall at all times give the Contracting Officer access thereto.

Anything mentioned in the specifications and not shown on the Contract drawings, or shown on the Contract drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

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

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

1. The Contracting Officer shall be promptly notified in writing of any error, discrepancy or omission, apparent or otherwise.


4. Change Orders have priority over: Addenda, Contract drawings and Specifications.

5. Addenda have priority over: Contract drawings, Special Provisions and Specifications. A later dated Addendum has priority over earlier dated Addenda.

7. Shown and indicated dimensions have priority over scaled dimensions.

8. Original scale drawings and details have priority over any other different scale drawings and details.

9. Large scale drawings and details have priority over small scale drawings and details.

10. Any adjustment by the Contractor without a prior determination by the Contracting Officer shall be at his own risk and expense. The Contracting Officer will furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.

ARTICLE 3. CHANGES

A. DESIGNATED CHANGE ORDERS—The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract, including but not limited to changes

1. In the Contract drawings and specifications;

2. In the method or manner of performance of the work;

3. In the Government furnished facilities, equipment, materials or services; or

4. Directing acceleration in the performance of the work.

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

B. OTHER CHANGE ORDERS—Any other written order or an oral order (which term as used in this Section (B) shall include direction, instruction, interpretation, or determination) from the Contracting Officer which causes any such change, shall be treated as a Change Order under this Article, provided that the Contractor gives the Contracting Officer written notice stating the date, circumstances and sources of the order and that the Contractor regards the order as a Change Order.

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

If the Contractor intends to assert a claim for an equitable adjustment under this Article, he must, within 30 days after receipt of a written Change Order under (A) above or the furnishing of a written notice under (B) above, submit to the Contracting Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Contracting Officer. The statement of claim hereunder may be included in the notice under (B) above.
With respect to the notification requirements hereunder, time is of the essence. A failure to provide timely notice constitutes waiver of the claim. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under the Contract.

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

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

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

1. **Labor**—Payment will be made for direct labor cost plus indirect labor cost such as insurance, taxes, fringe benefits and welfare provided such costs are considered reasonable. Indirect costs shall be itemized and verified by receipted invoices. If verification is not possible, up to 18 percent of direct labor costs may be allowed. In addition, up to 20 percent of direct plus indirect labor costs may be allowed for overhead and profit.

2. **Bond**—Payment for additional bond cost will be made per bond rate schedule submitted to the Office of Contracting and Procurement with the executed Contract.

3. **Materials**—Payment for cost of required materials will be F.O.B. destination (the job site) with an allowance for overhead and profit.

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

5. **Contractor’s Equipment**—Payment for required equipment owned by the Contractor or an affiliate of the Contractor will be based solely on an hourly rate derived by dividing the current appropriate monthly rate by 176 hours. No payment will be made under any circumstances for repair costs, freight and transportation charges, fuel, lubricants, insurance, any other costs and expenses, or overhead and profit. Payment for such equipment made idle by delays attributable to the Government will be based on one-half the derived hourly rate under this subsection.

6. **Miscellaneous**—No additional allowance will be made for general superintendence, use of small tools and other costs for which no specific allowance is herein provided.
7. **Subcontract Work**—Payment for additional necessary subcontract work will be based on applicable procedures in 1. through 6., to which total additional subcontract work up to an additional 10 percent may be allowed for the Contractor’s overhead and profit.

**ARTICLE 4. EQUITABLE ADJUSTMENT OF CONTRACT TERMS**

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

A. **DIFFERING SITE CONDITIONS:**

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

2. Upon written notification, the Contracting Officer will investigate the conditions, and if he/she determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding loss of anticipated profits, will be made and the contract modified in writing accordingly. The Contracting Officer will notify the Contractor of his/her determination whether or not an adjustment of the contract is warranted.

3. No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice; a failure to notify the Contracting Officer of the changed conditions prior to work being disturbed by said conditions shall constitute a permanent waiver of all right to compensation related to the changed conditions by the Contractor.

4. No contract adjustment will be allowed under this clause for any effects caused on unchanged work.

B. **SUSPENSION OF WORK ORDERED BY THE CONTRACTING OFFICER:**

1. If the performance of all or any portion of the work is suspended or delayed by the Contracting Officer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the Contractor shall submit to the Contracting Officer in writing a request for equitable adjustment within seven (7) calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

2. Upon receipt, the Contracting Officer will evaluate the Contractor’s request. If the Contracting Officer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control or and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Contracting Officer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Contracting Officer will notify the Contract of his/her determination whether or not an adjustment of the contract is warranted.

3. No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed; a failure to submit a request for adjustment in the time
prescribed shall constitute waiver of all right to compensation related to the suspension of work by the Contractor.

4. No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term of condition of this contract.

C. SIGNIFICANT CHANGES IN THE CHARACTER OF WORK:

1. The Contracting Officer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the Contractor agrees to perform the work as altered.

2. If the alterations or changes in quantities significantly change the character of the work under the contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Contracting Officer may determine to be fair and reasonable.

3. If the alterations or changes in quantities significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

4. The term “significant change” shall be construed to apply only to the following circumstances:

   a. When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or

   b. When an item of work is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in the case of a decrease below 75 percent, to the actual amount of work performed.

ARTICLE 5. TERMINATION

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

   a) Fails to deliver the goods or complete the work or services within the time specified in the contract or any modification;

   b) Fails to make sufficient progress on contract performance so as to endanger performance of the contract within the time specified or in the manner specified in the contract;

   c) Fails or refuses to go forward with the work in accordance with the direction of the Contracting Officer;

   d) Expresses through word or conduct an intention not to complete the work in accordance with the directions of the Contracting Officer;

   e) Fails to perform any of the other provisions of the contract;

   f) Materially deviates from the representations and capabilities set forth in the Contractor’s response to the solicitation.

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

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

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

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

1. The delay in the completion the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, climatic conditions beyond the normal which could be anticipated, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers (the term subcontractors or suppliers shall mean subcontractors or suppliers at any tier); and

2. The Contractor, within 72 hours from the beginning of any such delay, (unless the Contracting Officer grants a further period of time before the date of final payment under the Contract) notifies the Contracting Officer in writing of the causes of delay.

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

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

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

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

**ARTICLE 6. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT**
A. The performance of work under the Contract may be terminated by the Government in accordance with this Article in whole, or in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.

B. After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

1. Stop work under the Contract on the date and to the extent specified in the Notice of Termination.

2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract as is not terminated.

3. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.

4. Assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

5. Settle all outstanding liabilities and all claims arising out of such termination of orders or subcontracts, with the approval or ratification of the Contracting Officer to the extent he may require, which approval or ratification shall be final for all purposes of this Article.

6. Transfer title to the Government and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer:

   a. The fabricated or unfabricated parts, work in progress, completed work, supplies, and other material procured as a part of, or acquired in connection with, the performance of the work terminated by the Notice of Termination, and

   b. The completed, or partially completed plans, drawings information and other property which, if the Contract had been completed, would have been required to be furnished to the Government.

7. Use his best efforts to sell, in the manner, at the terms, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in 6 above provided, however, that the Contractor:

   a. Shall not be required to extend credit to any purchaser, and

   b. May acquire any property under the conditions prescribed and at a price or prices approved by the Contracting Officer, and

   c. Provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under the Contract or shall otherwise be credited to the price or cost of the work covered by the Contract or paid in such other manner as the Contracting Officer may direct.
8. Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.

9. Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

10. The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the cost, or any item of reimbursable cost, under this Article.

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

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

C. After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than 90 days from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such 90 day period or authorized extension thereof. In the event the Contractor was terminated for default and it asserts that it is entitled to a termination for convenience, its certified request for the conversion of the default termination to one for convenience and its certified termination settlement proposal must be submitted to the Contracting Officer prior to the expiration of 90 days from the date of the default termination. With respect to a termination for convenience, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 90 day period or extension thereof. Nothing herein shall be construed to extend the time for the submission of a claim hereunder for a defaulted Contractor beyond 90 days from the date of the default termination. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the Government’s procedures in effect as of the date of execution of the Contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

D. Subject to the provisions of C above, and subject to any review required by the Government’s procedures in effect as of the date of execution of the Contract, the Contractor and Contracting
Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this Article, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in E below prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Article, shall be deemed to limit, restrict or otherwise determine or effect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.

E. In the event of the failure of the Contractor and the Contracting Officer to agree as provided in D above upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Article, the Contracting Officer shall, subject to any review required by the Government’s procedures in effect as of the date of execution of the Contract, determine, on the basis of information available to him, the amount, if any, due the Contractor by reason of the termination and shall pay to the Contractor the amounts determined by the Contracting Officer, as follows, but without duplication of any amounts agreed upon in accordance with D above:

1. With respect to all Contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:
   a. The cost of such work;
   b. The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in B 5. above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under the Contract, which amounts shall be included in the cost on account of which payment is made under E1.a. above; and
   c. A sum, as profit on E.1.a. above, determined by the Contracting Officer to be fair and reasonable; provided however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subparagraph and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and provided further that profit shall be allowed only on preparations made and work done by the Contractor for the terminated portion of the Contract but may not be allowed on the Contractor’s settlement expenses. Anticipatory profits and consequential damages will not be allowed. Any reasonable method may be used to arrive at a fair profit, separately or as part of the whole settlement.

2. The reasonable cost of the preservation and protection of property incurred pursuant to B.9; and any other reasonable cost incidental to termination of work under the Contract including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under the Contract.

F. The total sum to be paid to the Contractor under E.1. above shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further
reduced by the Contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under E.1. above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Government, or to a buyer pursuant to B.7 above.

G. The Contractor shall have the right of appeal, under Article 7 herein, from any determination made by the Contracting Officer under C. or E. above, except that, if the Contractor has failed to submit his claim within the time provided in C above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under C. or E. above, the Government shall pay to the Contractor the following:

1. If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or
2. If an appeal had been taken, the amount finally determined on such appeal.

H. In arriving at the amount due the Contractor under this Article there shall be deducted:

1. all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of the Contract;
2. any claim which the Government may have against the Contractor in connection with the Contract; and
3. the agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by the Contractor or sold, pursuant to the provisions of this Article and not otherwise recovered by or credited to the Government.

I. If the termination hereunder be partial, prior to the settlement of the terminated portion of the Contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made at such price or prices; however, nothing contained herein shall limit the right of the Government and the Contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the continued portion of the Contract when said Contract does not contain an established Contract price for such continued portion.

J. The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of the Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Article, such excess Shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum for the period from the date such excess is received by the Contractor to the date on which such excess is repaid to the Government; provided however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor’s claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.
K. Unless otherwise provided in the Contract or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under the Contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor, but without direct charge to the Government, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under the Contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs and other authentic reproductions thereof.

ARTICLE 7. DISPUTES

A. All disputes arising under or relating to this contract shall be resolved as provided herein.

B. Claims by a Contractor against the Government.

(1) Claim, as used in Section B of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

(a) All claims by a Contractor against the Government arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision.

(b) Within 120 days after receipt of a claim, the Contracting Officer shall issue a decision, whenever possible taking into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.

(c) Any failure by the Contracting Officer to issue a decision on a contract claim within the required time period shall be deemed to be a denial of the claim and shall authorize the commencement of an appeal on the claim as otherwise provided.

(d) (1) If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the Government for an amount equal to the unsupported part of the claim in addition to all costs to the Government attributable to the cost of reviewing that part of the Contractor’s claim.

(2) Liability under this section shall be determined within 6 years of the commission of the misrepresentation of fact or fraud.

(e) All cost data, pricing data, and task data of claims hereunder must be certified as accurate, complete, required, and necessary to the best of the Contractor’s knowledge and belief. Further, all task or work data in the claim must be described therein to the smallest unit of work or task. The Contracting Officer may require any additional certifications, descriptions or explanations of the claim.

(f) The parties agree that time is of the essence and all claims hereunder must be presented to the Contracting Officer for a final decision within thirty (30) days of the occurrence of the circumstances giving rise to such claim or within thirty (30) days of when the Contractor knew or should have known of the circumstances giving rise to such claim, otherwise compensation for that claim is waived.

(g) The parties agree that there shall be no claims for unabsorbed home office overhead.

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

(a) A description of the claim and the amount in dispute;

(b) Any data or other information in support of the claim;

(c) A brief description of the Contractor’s efforts to resolve the dispute prior to filing the claim; and

(d) The Contractor’s request for relief or other action by the Contracting Officer.

(e) The certification of the accuracy, completeness, requirement, and necessity of all aspects of the claim.

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

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

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

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

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

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

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

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

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

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

1. If such consideration is specifically authorized by the Contract;

2. If the Contractor furnishes satisfactory evidence that he has acquired title to such material, that it meets Contract requirements and that it will be utilized on the work covered by the Contract; and

3. If the Contractor furnishes to the Contracting Officer an itemized list.

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

All material and work covered by progress payments made shall thereupon become the sole property of the Government, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the Government to require the fulfillment of all of the terms of the Contract.
Upon completion and acceptance of all work, the amount due the Contractor under the Contract shall be paid upon presentation at a properly executed voucher and after the Contractor shall have furnished the Government with a release, if required, of all claims against the Government arising by virtue of the Contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release.

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

**ARTICLE 10. MATERIAL AND WORKMANSHIP**

A. **GENERAL**—Unless otherwise specifically provided in the Contract, all equipment, material and articles incorporated in the work covered by the Contract shall be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in the Contract, reference to any equipment, material, article or patented process, by trade name, make or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the Contractor may use any equipment, material, article or process which, in the judgment of the Contracting Officer, is equivalent to that named unless otherwise specified. The Contractor shall furnish to the Contracting Officer for his approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature and rating of the mechanical and other equipment which the Contractor contemplates incorporating in the work. Machinery and equipment shall be in proper condition. When required by the Contract or when called for by the Contracting Officer, the Contractor shall furnish to the Contracting Officer for approval full information concerning the material or articles which he contemplates incorporating in the work. When so directed, samples shall be submitted for approval at the Contractor’s expense, with all shipping charges prepaid. Machinery, equipment, material, and articles installed or used without required approval shall be at the risk of subsequent rejection and subject to satisfactory replacement at Contractor’s expense.

B. **SURPLUS MATERIALS USE**—Whenever specified in the Contract or authorized by the Contracting Officer that materials become the property of the Contractor, which by reference or otherwise shall include disposal of materials, it is understood that the Contractor accepts such materials “as is” with no further expense or liability to the Government. If such material specified in the Contract will have a potential or real interest of value, the Contractor shall make allowance in the Contract to show such value.

C. **GOVERNMENT MATERIAL**—No materials furnished by the Government shall be applied to any other use, public or private, than that for which they are issued to the Contractor. The full amount of the cost to the Government of all materials furnished by the Government to the Contractor and for which no charge is made, which are not accounted for by the Contractor to the satisfaction of the Contracting Officer, will be charged against the Contractor and his sureties and may be deducted from any monies due the Contractor, and this charge shall be in addition to and not in lieu of any other liabilities of the Contractor whether civil or criminal. Materials furnished by the Government for which a charge is made at a rate mentioned in the specifications will be delivered to the Contractor upon proper requisitions therefore and will be charged to his account.

D. **Plant**—The Contractor shall at all times employ sufficient tools and equipment for prosecuting the various classes of work to full completion in the manner and time required. The Contractor shall at all times perform work in sufficient light and shall provide proper illumination, including
lighting required for night work as directed, as a Contract requirement. All equipment, tools, formwork and staging used on the project shall be of sufficient size and in proper mechanical and safe condition to meet work requirements, to produce satisfactory work quality and to prevent injury to persons, the project or adjacent property. When methods and equipment are not prescribed in the Contract, the Contractor is free to use tools, methods and equipment that he satisfactorily demonstrates will accomplish the work in conformity with Contract requirements.

If the Contractor desires to use a method or type of tool or equipment other than specified in the Contract, he shall request approval to do so; the request shall be in writing and shall include a full description of proposed methods, tools and equipment and reason for the change or substitution. Approval of substitutions and changed methods will be on condition that the Contractor will be fully responsible for producing work meeting Contract requirements. If after trial use of the substituted methods, tools and equipment, the Contracting Officer determines that work produced does not meet Contract requirements, the Contractor shall complete remaining work with specified methods, tools and equipment.

E. CAPABILITY OF WORKERS- All work under the Contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require the Contractor to remove from the work any such employees as the Contracting Officer deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed by the Contracting Officer to be contrary to the public interest. Such request will be in writing:

F. CONFORMITY OF WORK AND MATERIALS—All work performed and materials and products furnished shall be in conformity, within indicated tolerances, with lines, grades, cross sections, details, dimensions, material and construction requirements shown or intended by the drawings and specifications.

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

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

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

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

1. May, by contract or otherwise, replace such material and correct such workmanship and charge the cost thereof to the Contractor, or

2. May terminate the Contractor’s right to proceed in accordance with Article 5 herein.

The Contractor shall furnish promptly, without additional cost to the Government, all facilities, labor and material reasonably needed for performing such safe and convenient inspection and test as may be required by the Contracting Officer. All inspections and tests by the Government shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be performed as described in the Contract. The Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready for inspection at the time specified by the Contractor.

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

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

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

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

ARTICLE 14. INDEMNIFICATION—

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

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

ARTICLE 16. CONDITIONS AFFECTING THE WORK

A. GENERAL—The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work and the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the work as specified without additional expense to the Government. The Government assumes no responsibility for any understanding or representation concerning conditions made by any of its officers or agents prior to the execution of the Contract, unless such understanding or representation by the Government is expressly stated in the Contract.

B. WORK AND STORAGE SPACE—Available work and storage space designated by the Government shall be developed as required by the Contract or restored at completion of the project by the Contractor to a condition equivalent to that existing prior to construction. No payment will be made for furnishing or restoration of any work and storage space. If no area is designated or the area designated is not sufficient for the Contractor’s operations, he shall obtain necessary space elsewhere at no expense or liability to the Government.

C. WORK ON SUNDAYS, LEGAL HOLIDAYS AND AT NIGHT—No work shall be done at any time on Sundays or legal holidays or on any other day before 7 a.m. or after 7 p.m., except with the written permission of the Contracting Officer and pursuant to the requirements of the Police Requirements of the Government.

D. EXISTING FEATURES—Subsurface and topographic information including borings data, utilities data and other physical data contained in the Contract or otherwise available, are not intended as representations or warranties but are furnished as available information. The Government assumes no expense or liability for the accuracy of, or interpretations made from, existing features. The Contractor shall be responsible for reasonable consideration of existing features above and below ground which may affect the project.

E. UTILITIES AND VAULTS—The Contractor shall take necessary measures to prevent interruption of service or damage to existing utilities within or adjacent to the project. It shall be the Contractor’s responsibility to determine exact locations of all utilities in the field.

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

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

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

**F. SITE MAINTENANCE**—The Contractor shall maintain the project site in a neat and presentable manner throughout the course of all operations, and shall be responsible for such maintenance until final acceptance by the Government. Trash containers shall be furnished, maintained and emptied by the Contractor to the satisfaction of the Contracting Officer. Excavated earthwork, stripped forms and all other materials and debris not scheduled for reuse in the project shall be promptly removed from the site.

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

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

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


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

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

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

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

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

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

ARTICLE 22. GRATUITIES AND GOVERNMENT EMPLOYEES NOT TO BENEFIT

A. If it is found by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any official, employee or agent of the District with a view toward securing the Contract or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract without liability and may pursue such other rights and remedies provided by law and under the Contract.

B. In the event the Contract is terminated as provided above, the Department shall be entitled:

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

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

C. Unless a determination is made as provided herein, no officer or employee of the Government will be admitted to any share or part of this contract or to any benefit that may arise therefrom, and any contract made by theContracting Officer or any Government employee authorized to execute contracts in which they or an employee of the Government will be personally interested shall be
void, and no payment shall be made thereon by the Government or any officer thereof, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. A Government employee shall not be a party to a contract with the Government and will not knowingly cause or allow a business concern or other organization owned or substantially owned or controlled by the employee to be a party to such a contract, unless a written determination has been made by the head of the procuring agency that there is a compelling reason for contracting with the employee, such as when the Government’s needs cannot reasonably otherwise be met. [DC Procurement Practices Act of 1985, D.C. Law 6-85, D.C. Official Code, section 2-310.01, and Chapter 18 of the DC Personnel Regulations] (Or relevant local law). The Contractor represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants not to employ any person having such known interests in the performance of the contract.

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

ARTICLE 24. BUY AMERICAN.

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

A. AGREEMENT—In accordance with the Buy American Act (41 USC 10a-10d), and Executive Order 10582. December 17, 1954 (3 CFR, 1954-58 Comp., p. 230), as amended by Executive Order 11051, September 27, 1962 (3 CFR, 1959-63 Comp., p. 635), the Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, material men and suppliers in the performance of the Contract, except for non-domestic material listed in the Contract.

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

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

D. FOREIGN MATERIAL – When steel materials are used in a project a minimal use of foreign steel is permitted. The cost of such materials cannot exceed on-tenth of one percent of the total project cost, or $2,500,000, whichever is greater.

ARTICLE 25. TAXES
A. FEDERAL EXCISE—Materials, supplies and equipment are not subject to the Federal Manufacturer’s Excise Tax, if they are furnished or used in connection with the Contract provided that title to such materials, supplies and equipment passes to the Government under the Contract. The Contractor shall in such cases furnish his subcontractors and suppliers with a purchaser’s certificate in the form prescribed by the U.S. Internal Revenue Service.

B. SALES AND USE TAXES—Materials which are physically incorporated as a permanent part of real property are not subject to Government Sales and Use Tax. The Contractor shall, when purchasing such materials, furnish his suppliers with a Contractor’s Exempt Purchase Certificate in the form prescribed in the Sales and Use Tax Regulations of the Government. Where the Contractor, subcontractor or material man has already paid the Sales and Use Tax on material, as prescribed above, the Sales and Use Tax Regulations of the Government permit the Contractor, subcontractor or material man to deduct the sales or use tax on the purchase price of the same on his next monthly return as an adjustment. However, the Contractor, subcontractor or material man must satisfy the Chief Financial Officer for the Government that no sum in reimbursement of such tax was included in the Contract or else that the Government has received a credit under the Contract in an amount equal to such tax.

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

The Contractor, subcontractor, or material supplier shall provide proof of compliance with the provisions of [D.C. Law 9-260] (Or relevant local law), as amended, codified in [D.C. Code46-103] (Or relevant local law), Employer Contributions, prior to award.

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

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

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

1. That performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the contractor, or

2. For which an equitable adjustment is provided or excluded under any other provision of the Contract.

No claim under this Article shall be allowed:

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

ARTICLE 27. SAFETY PROGRAM

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

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

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

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

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

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

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

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

1. Submit in writing to the Contracting Officer for his approval his program for complying with this Article for accident prevention.

2. Meet with the Contracting Officer’s Safety Representative after submission of the above program to develop a mutual understanding relative to the administration of the overall safety program.

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

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

ARTICLE 30. ADMINISTRATIVE LIQUIDATED DAMAGES---In addition to any other liquidated damages provided for in the Contract, the Contractor hereby agrees that the Government may assess administrative liquidated damages for the Contractor’s failure to submit when due any deliverable required by the Contract. Unless otherwise prescribed by the Contracting Officer, the rate of the administrative liquidated damages shall be $250 per day until the required deliverable is received and accepted by the Government. The Government’s remedies for failure to comply with the Contract terms and conditions are cumulative and not exclusive. Nothing herein shall be construed to limit the Government’s ability to terminate the Contractor for the failure to submit Contract deliverables when due.

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

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

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

C. The Contractor represents and warrants that it did not, directly or indirectly, engage in any collusive or other anti-competitive behavior in connection with the bid, negotiation or award of the Contract. Further, the Contractor represents and warrants that it will not either directly or indirectly, engage in any collusive or other anti-competitive behavior in connection with the performance and administration of the Contract. In the event the Department determines that there has been a violation of these provisions, it may terminate the contract without liability.

ARTICLE 32. NON-DISCRIMINATION IN EMPLOYMENT PROVISIONS.

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

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

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

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

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

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

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

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

ARTICLE 33. ETHICAL STANDARDS FOR DEPARTMENT’S EMPLOYEES AND FORMER EMPLOYEES---The Department expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed under the Contract. The Contractor may not assign to any former Department or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Subcontractor or vendor.

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

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

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

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

ARTICLE 38. SEVERABILITY. In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Contract, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Contract a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable; each part of this Contract is intended to be severable.

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

Project Name: 
Contract No.:  
Task Order No.:  
Work Performed:  
Contract Date: 
Contract Amount: 

Date: 
Release of Liens:

The undersigned (insert Consultant/Contractor), has been paid partial payments totaling the sum of (insert net amounts), which is _____% of the current contract value, in accordance with the contract terms for the above referenced project, and hereby indemnifies, waives, releases and holds the District of Columbia harmless for the above referenced project, including all claims, right to liens, and stop work notices upon said premises or the improvements thereon under the statutes of the jurisdiction in which the project is located.

In consideration of this payment due in the net amount of insert net amount due, in accordance with contract terms for the above referenced project. Hereby indemnifies, waives, and releases the District of Columbia for the above referenced project. All claims, right to liens, stop work notices upon said premises or the improvements thereon under the statutes of the jurisdiction in which the project is located.

The undersigned further represents and warrants, as of this date, that he/she is duly authorized to sign and execute this Release of Liens on behalf of (insert Consultant/Contractor); that (insert Consultant/ Contractor) has properly performed all work in accordance with the Contract Documents and that all consultants, subcontractors or material men have been paid for all labor, including fringe benefits, workers compensation, materials, equipment, services, taxes, insurance premiums, and bonds (if required), and that any materials supplied to or incorporated in this project were taken from fully paid or open stock with any exceptions noted below.

This letter must be signed and notarized below by authorized individuals.

Insert Consultants /Contractors name: ________________ 
By: ____________________
Print Name: ________________ 
Title: ________________ Date: ________________
DISTRICT OF COLUMBIA     ) ss

I, a Notary Public in and for the District of Columbia, hereby certify that, on this ___ day of
, 20___, personally appeared before me ____________________________, known to me (or satisfactorily
proven) to be the person who executed the foregoing Final Release of Liens and Claims, as
of (insert Consultant/Contactor name) who acknowledged having done so for the purposes therein
contained.

IN WITNESS WHEREOF, I have set my hand and official seal.

____________________________________
Notary Public, D.C.

My commission expires: ____________________________

[NOTARIAL SEAL]
FINAL RELEASE OF LIENS AND CLAIMS

Project Name: 
Contract No.: 
Task Order No.: 
Work Performed: 
Contract Date: 
Contract Amount: 
Date: 

Final Release of Liens and Claims:

The undersigned (insert Consultant/Contractor name), in consideration of payments received and upon receipt of the amount of a final payment of $_____________________ hereby indemnifies, waives, releases, and holds the District of Columbia harmless for the above referenced project, including all claims, right to liens, terminations, and stop notices upon said premises or the improvements thereon under the statutes of the jurisdiction in which the project is located.

The undersigned further represents and warrants, as of this date, that he/she is duly authorized to sign and execute this Release of Final Liens and Claims on behalf of (insert Consultant /Contractor; that (insert Consultant /Contractor) has properly performed all work and furnished all materials of the specified quality in accordance with all contract documents in an acceptable workmanlike manner to the Department of General Services/Construction Division, District of Columbia and that (insert Consultant /Contractor) has paid for all labor, including fringe benefits and workers compensation, all materials, equipment, services, taxes, insurance premiums, and bonds (if required) and that any materials supplied to or incorporated in this project have been paid.

(Insert Consultant/Contractor) is executing this Final Release of Liens and Claims for the express purpose of inducing the District to make final disbursement and payment to (insert Consultant/Contractor name) of $_____________________.

This letter must be signed and notarized below by authorized individuals.

Insert Consultants /Contractors name: ________________
By:___________________
Print Name: ________________
Title: ________________ Date: ________________
DISTRICT OF COLUMBIA

I, a Notary Public in and for the District of Columbia, hereby certify that, on this ___ day of
[72x676], 20            , personally appeared before me                                               , known to me (or satisfactorily
proven) to be the person who executed the foregoing Final Release of Liens and Claims, as
of (insert Consultant/Contactor name) who acknowledged having done so for the purposes therein
contained.

IN WITNESS WHEREOF, I have set my hand and official seal.

______________________________
Notary Public, D.C.

My commission expires: ________________________________

[NOTARIAL SEAL]
Exhibit L

Guaranteed Maximum Price (GMP) Amendment
(See following page)
GUARANTEED MAXIMUM PRICE AMENDMENT

THIS GUARANTEED MAXIMUM PRICE AMENDMENT ("Amendment") is entered into by and between the DISTRICT OF COLUMBIA GOVERNMENT, acting by and through its DEPARTMENT OF GENERAL SERVICES (the “Department”) and Smoot Construction Company of Washington DC (the “Construction Manager”) pursuant to the Agreement, dated ____________________________, 2020, between the District of Columbia government, by and through the Department and the Design-Builder, for Construction Management-at-Risk services for Franklin Park project to establish a Guaranteed Maximum Price and Contract Time for the Work as set forth below.

ARTICLE I
GUARANTEED MAXIMUM PRICE

Section 1.1 Guaranteed Maximum Price. Subject to additions and deductions which may be made only in accordance with the Agreement, the Design-Builder represents, warrants and guarantees to the Department that the total maximum cost to be paid by the Department for Design-Builder's complete performance of Franklin Park project under the Agreement, including, but not limited to, Final Completion of all Work, all services of Design-Builder under the Agreement, and all fees, compensation and reimbursements to Design-Builder, shall not exceed the total amount of [INSERT AMOUNT] Dollars ($[INSERT AMOUNT]) ("Franklin Park GMP"). Costs which would cause the Franklin Park GMP (as may be adjusted pursuant to the Contract Documents) to be exceeded shall be paid by the Design-Builder without reimbursement by the Department.

Section 1.2 Guaranteed Maximum Price Components. The Guaranteed Maximum Price is comprised of the maximum amount payable by the Department for:

1.2.1 the Cost of the Work for full and complete performance of the Work in strict accordance with the Contract Documents;

1.2.2 a Design-Build Fee for the Design-Builder, as defined in the Agreement, in the amount of [INSERT AMOUNT];

1.2.3 a Maximum Cost of General Conditions, as defined in the Agreement, in the amount of [INSERT AMOUNT];

1.2.4 a Design Fee, as defined in the Agreement, in the amount of [INSERT AMOUNT];
1.2.5 Allowances for incentive payments set forth in Section 7.1.2 of the Agreement, if earned by the Design-Builder, in the amount of [INSERT AMOUNT];

1.2.6 Allowances for incentive payments set forth in Section 11.2.3 of the Agreement, in the amount of [INSERT AMOUNT];

1.2.7 The Guaranteed Maximum Price is further broken down into line items and categories on Exhibits attached hereto.

Section 1.3 Basis for the GMP. The GMP is for the performance of the Work in accordance with the Contract Documents listed and attached to this Amendment and marked Exhibits through , as follows:

1.3.1 Exhibit: List of Drawings, Specifications, addenda and General, Supplementary and other Conditions of the Contract on which the Guaranteed Maximum Price is based.

1.3.2 Exhibit: A list of Unit Price Allowance items.

1.3.3 Exhibit: Assumptions and Clarifications made in preparing the Guaranteed Maximum Price, noting in particular any exclusions. The Assumptions and Clarifications shall take precedence over the Drawings and Specifications, but shall be subordinate to the Agreement and the terms of this Amendment.

1.3.4 Exhibit: The proposed Guaranteed Maximum Price, including a statement of the detailed cost estimate organized by trade categories, allowances, Contingency, and other items and the fee that comprise the Guaranteed Maximum Price.

1.3.5 Exhibit: A Construction Phase Schedule which shall include, but not be limited to, the Substantial and Final Completion Dates, upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the Substantial and Final Completion Dates are based (the “Project Schedule”). The Design-Builder shall achieve Substantial Completion of Franklin Park project no later than [DATE] (the “Franklin Park Substantial Completion Date”).

1.3.6 Exhibit: An LSDBE Utilization Plan setting forth the names and estimated dollar volume of the work that will be performed by small, local and disadvantaged business enterprises, as certified by the Department of Small and Local Business Development, upon which the GMP is based.

1.3.7 Exhibit: 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 Guaranteed Maximum Price is based.

Section 1.4 Incomplete Drawings and Specifications. Design-Builder and the Department acknowledge that the Drawings and Specifications are not complete and, as of the date hereof, that such Drawings and Specifications have reached the level of approximately % complete design development documents. The Design-Builder, however, has been actively involved in the design process and hereby represents that it has a sufficient understanding of the Project to agree to a Guaranteed Maximum Price to Fully Complete the Project. The Construction Manager hereby acknowledges that the GMP Drawings and Specifications provides sufficient detail and information to provide a firm Guaranteed Maximum Price and that the Guaranteed Maximum Price proposed therein is intended to represent the Construction Manager’s offer to Fully Complete the Project. The Construction Manager and the Department agree to work together to complete the Drawings and Specifications as provided in this Agreement, consistent with the Guaranteed Maximum Price premises and assumptions and Project Schedule.

Section 1.5 Design Intent; Inferable Work. Construction Manager agrees that the Guaranteed Maximum Price is based on the current state of the design, which represents approximately [ ] percent complete design development documents. The GMP Drawings and Specifications include various clarifications and assumptions that are intended to further define the scope of Work that will be required to complete design. The Construction Manager has included within the Guaranteed Maximum Price sufficient amounts to cover aspects of the Work that are not shown on the GMP Drawings and Specifications. If the Department does not approve any such scope increase, the Construction Manager shall cause the Architect to develop a design that is consistent with the original design intent and shall complete the Work for an amount that does not exceed the GMP.

Section 1.6 Cost Overruns. Subject to additions or deductions which may be made in accordance with the Contract, the Design-Builder shall be solely liable and responsible for and shall pay any and all costs, fees and other expenditures in excess of the Guaranteed Maximum Price for and/or relating to the Work, without entitlement to reimbursement from the Department. Construction Manager shall not be entitled to any fee, payment, compensation or reimbursement under this Agreement or relating to the Work or Project other than as expressly provided in the Agreement.

Section 1.7 Allowances. The Guaranteed Maximum Price includes specific "Unit Price Allowance Amounts" for certain items as shown on the Schedule of Values and budgeted in the Guaranteed Maximum Price ("Allowance Items"). The only Allowance Items shall be those specifically identified as such in the Schedule of Values and in the Guaranteed Maximum Price. The Allowance Amounts represent all Costs of the Work of the Allowance Items, including, without limitation, costs of materials, labor, handling, transportation, loading and unloading and installation, as determined by Construction Manager.
ARTICLE 2
Intent, Interpretation and Correlation

Section 2.1 Intent of the Contract. The intent of the Contract is for the Construction Manager to perform and supply, and the Department hereby engages Construction Manager to and Construction Manager hereby agrees to perform and supply, the Work, including all necessary design services, scheduling, procurement, supervision, construction, and construction management services and supply all necessary labor, materials, equipment and related work and services necessary to fully complete the Work and obtain the intended results of the Contract Documents, including, but not limited to the requirements of the Project Schedule and the Guaranteed Maximum Price requirements set forth in Article 1 above. The enumeration of particular items in the Specifications and/or Drawings shall not be construed to exclude other items. The Contract Documents are complementary, and what is required by any one of the Contract Documents (including either a Drawing or Specification) as being necessary to produce the intended results shall be binding and required as a part of the Work as if required by all Contract Documents.

Section 2.2 Design-Builder’s Compliance with Contract Documents. Construction Manager agrees, accepts and assumes that the Department's decision will require implementation of the most stringent requirements among any conflicting provisions of the Contract Documents as being part of the Work. The Construction Manager agrees to be bound by all decisions by the Department to implement the most stringent of any conflicting requirements within the Contract Documents. Any failure by Construction Manager to seek such clarifications shall in no way limit the Department's ability to require implementation, including replacement of installed Work at a later date at Construction Manager's sole expense, to achieve compliance with the more stringent requirements. Without limiting the generality of the foregoing, the Construction Manager hereby agrees as follows:

2.2.1 The failure of the Department to insist in any one or more instances upon a strict compliance with any provision of this Contract, or to exercise any option herein conferred, shall not be construed as a waiver or relinquishment of the Department's right thereafter to require compliance with such provision of this Contract, or as being a waiver of the Department's right thereafter to exercise such option, and such provision or option will remain in full force and effect.

2.2.2 If there is any inconsistency in the Drawings or any conflict between the Drawings and Specifications, Construction Manager shall provide the better quality or greater quantity of Work or materials, as applicable, unless the Department directs otherwise in writing.

2.2.3 Construction Manager shall be responsible for dividing the Work among the appropriate Subcontractors and Vendors. No claim will be entertained by the Department based upon the organization or arrangement of the Specifications and/or the Drawings into areas, sections, subsections or trade disciplines.
2.2.4 Detail drawings shall take precedence over scale drawings, and figured dimensions on the Drawings shall govern the setting out of the Work.

2.2.5 Unless the Specifications expressly state otherwise, references to documents and standards of professional organizations shall mean the latest editions published prior to the Effective Date.

2.2.6 Technical words, abbreviations and acronyms in the Contract Documents shall be used and interpreted in accordance with customary usage in the construction industry.

2.2.7 Whenever consent, permission or approval is required from any party pursuant to the provisions of the Contract Documents, such consent, permission or approval shall, unless expressly provided otherwise in this Agreement, be given or obtained, as applicable, in writing.

ARTICLE 3
SPECIAL PROVISIONS

Section 3.1 Substantial Completion Date. The Parties agree and acknowledge that the Substantial Completion Date was extended to July 15, 2021 for the Work.

Section 3.2 Administrative Term. The Parties agree and acknowledge that the Administrative Term was extended to November 15, 2021.

Section 3.3 Preconstruction Fee. Notwithstanding the Agreement, the Parties agree and acknowledge that the Preconstruction Fee and Design-Build Fee are separate lump-sum amounts. The Preconstruction Fee was never intended to be a defined percentage of the Design-Build Fee.

ARTICLE 4
OTHER PROVISIONS

Section 4.1 Construction Manager’s Responsibilities. The Construction Manager also expressly acknowledges that this Project and the Work will proceed on a "fast-track" method of construction, i.e., construction will commence without final Drawings and Specifications in place. More specifically, while Drawings and Specifications are complete for certain portions of Work, the design process will continue for other portions during construction based on the Guaranteed Maximum Price premises and assumptions. The Construction Manager has been, and will continue to be, an active participant in the design process. Given such participation, the Construction manager represents that it is familiar with the scope and quality of those aspects of the Project that have not yet been fully designed, and has taken such scope and quality matters into consideration in preparing each component of the Guaranteed Maximum Price. The Construction Manager agrees to work with the Department in managing the construction and design work to complete the design process. The Construction Manager shall manage the Project, including coordinating redesign or value engineering necessary or advisable for certain aspects of the Project at any stage of the design process in
order to bring the cost of such Work within or below, but not in excess of, the respective allowances or the budgeted or allocated amounts for other items contained in the Guaranteed Maximum Price. Once the Drawings and Specifications are complete, it is recognized by the Construction Manager and the Department that the scope of the Guaranteed Maximum Price may include Work not expressly indicated on the Contract Documents, but which is reasonably inferable from the Contract Documents, and such Work shall be performed without any increase in the Guaranteed Maximum Price or extension of Contract Time, except if and to the extent otherwise expressly provided in this Agreement.
ARTICLE 5  
MISCELLANEOUS PROVISIONS

Section 5.1 Prior Agreement Unaffected. Except as expressly agreed to herein, all of the terms, conditions, representations and warranties set forth in the Agreement shall remain unaffected and in full force and effect.

Section 5.2 Integrated Agreement. This Amendment and any attachment hereto set forth the entire agreement and understanding of the parties regarding the transactions contemplated hereby and supersede all prior oral and written agreements, arrangements and understandings relating to the subject matter hereof. There are no oral or written agreements or understandings, representations or warranties among the parties other than those set forth herein.

Section 5.3 Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be considered one and the same instrument.

Section 5.4 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.

IN WITNESS WHEREOF, each of the parties to this Amendment has caused it to be executed by its duly authorized representative on the date set forth above.

DISTRICT OF COLUMBIA GOVERNMENT,  
by and through its DEPARTMENT OF  
GENERAL SERVICES

By: ________________________________  
Name: ______________________________  
Title: _______________________________  
Date: _______________________________

Smoot Construction Company of Washington DC  
Mr. Omar McIntosh, Regional Senior Vice President

By: ________________________________  
Name: ______________________________  
Its: _________________________________  
Date: _______________________________
Exhibit M
Close-Out Deliverables
(See following page)
Section 1.1. Close-Out Deliverables.
The deliverables set forth in *Exhibit M* are required during the Project’s Close-Out and prior to Final Payment, as set forth in *Error! Reference source not found.*.

1) a complete set of product manuals (O&M), training videos, warranties, etc.
2) as built record drawings.
3) attic stock and schedule.
4) equipment schedule.
5) proposed schedule of maintenance.
6) environmental, health & safety documents.
7) all applicable inspection certificates/permits (boiler, elevator, emergency evacuation plans, health inspection, etc.).
8) a complete set of its Project files.
Exhibit N

Subcontractor Performance Evaluation Form

(See following page)
PAST PERFORMANCE EVALUATION FORM
DCAM-19-CS-RFP-0062
Construction Management-at-Risk Franklin Park
(Flat appropriate box)

OFFEROR __________________

<table>
<thead>
<tr>
<th>Performance Elements</th>
<th>Excellent</th>
<th>Good</th>
<th>Acceptable</th>
<th>Poor</th>
<th>Unacceptable</th>
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<tr>
<td>Timeliness of Performance</td>
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<td>Cost Control</td>
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<td>Business Relations</td>
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<td>Customer Satisfaction</td>
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</tbody>
</table>

1. Name and Title of Evaluator: ________________________________________________
2. Signature of Evaluator: _____________________________________________________
3. Name of Organization: _____________________________________________________
4. Telephone Number of Evaluator: _____________________________________________
   E-mail address of Evaluator: _________________________________
5. State type of service received: _____________________________________________
6. State Contract Number, Amount and Period of Performance ________________________

7. Remarks on Excellent Performance: Provide data supporting this observation. (Continue on separate sheet if needed)
8. Remarks on unacceptable performance: Provide data supporting this observation. (Continue on separate sheet if needed)

Please submit completed evaluation to [specialist name]@dc.gov
RATING GUIDELINES

Summarize Contractor performance in each of the rating areas. Assign each area a rating of 0 (Unacceptable), 1 (Poor), 2 (Acceptable), 3 (Good), 4(Excellent), or ++ (Plus). Use the following instructions a guidance in making these evaluations.

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<th>Cost Control</th>
<th>Timeless of Performance</th>
<th>Business Relations</th>
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<tbody>
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<td>-Compliance with contract requirements</td>
<td>-Within budget (over/ under target costs)</td>
<td>-Meet Interim milestones</td>
<td>-Effective management</td>
</tr>
<tr>
<td>-Accuracy of reports</td>
<td>-Current, accurate, and complete billings</td>
<td>-Reliable</td>
<td>-Businesslike correspondence</td>
</tr>
<tr>
<td>-Appropriateness of personnel</td>
<td>-Relationship of negated costs to actual</td>
<td>-Responsive to technical directions</td>
<td>-Responsive to contract requirements</td>
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<td>-Technical excellence</td>
<td>-Cost efficiencies</td>
<td>-Completed on time, including wrap-up and</td>
<td>-Prompt notification of contract problems</td>
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<td>-Change order issue</td>
<td>-contract administration</td>
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<td>-No liquidated damages assessed</td>
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<td>-Effective small/disadvantaged business</td>
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<td>-Subcontracting program</td>
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0. Zero  Nonconformances are comprises the achievement of contract requirements, despite use of Agency resources. Cost issues are comprising performance of contract requirements. Delays are comprising the achievement of contract requirements, Despite use of Agency resources. Response to inquiries, technical/ service/administrative issues is not effective and responsive.

1. Unacceptable  Nonconformances require major Agency resources to ensure achievement of contract requirements. Cost issues require major Agency resources to ensure achievement of contract requirements. Delays require major Agency resources to ensure achievement of contract requirements. Response to inquiries, technical/ service/administrative issues is marginally effective and responsive.

2. Poor  Nonconformances require minor Agency resources to ensure achievement of contract requirements. Costs issues require minor Agency resources to ensure achievement of contract requirements. Delays require minor Agency resources to ensure achievement of contract requirements. Responses to inquiries, technical/ service/administrative issues is somewhat effective and responsive.

3. Acceptable  Nonconformances do not impact achievement of contract requirements. Cost issues do not impact achievement of contract requirements. Delays do not impact achievement of contract requirements. Responses to inquiries, technical/ service/administrative issues is usually effective and responsive.

4. Good  There are no quality problems. There are no cost issues. There are not delays. Responses to inquiries, technical/ service/administrative issues is effective and responsive.

5. Excellent  The contractor has demonstrated an exceptional performance level in some or all of the above categories.
Exhibit O

Award Fee Determination
(See following page)
2.11.4 Award Fee Determination. The CMAR shall be entitled to the At Risk Portion as follows:

a) If a GMP is agreed upon by the CMAR and the Department on or before July 31, 2020, the CMAR shall earn thirty three percent (33%) of the At Risk Portion (i.e. 10% of the Construction Management Fee).

b) The CMAR shall be eligible to earn up to thirty three percent (33%) of the At Risk Portion (i.e. 10% of the Construction Management Fee) based on the overall level of quality of the Project as delivered (such amount, the “Quality Incentive Amount”). Entitlement to this portion of the Award Fee Pool shall be determined by an award fee committee (the “Award Fee Evaluation Committee”), which will be appointed by the selected Offeror and the Department within sixty (60) days after award. The Award Fee Evaluation Committee will consist of: (i) the Department’s Deputy Director for Capital Construction; (ii) a senior representative from DPR; and (iii) a senior member of the Program Management team that is not involved in the day-today management of this Project that is acceptable to both the Department and the CMAR. Upon Substantial Completion, the Award Fee Evaluation Committee shall inspect the Project and assess the overall appearance, functionality and level of quality found in the Work. In making this determination, the Award Fee Evaluation Committee shall endeavor to reach a consensus among its members and ascribe one of the following four words to the overall success of the design intent: poor, fair, or excellent.

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

c) If the CMAR achieves Substantial Completion of the Project as stated in Section 1.5, the Construction Management Fee and the final amount due to the CMAR (inclusive of the earned portions of the Award Fee, the Base Construction Management Fee and the Cost of General Conditions) is less than One
Hundred Three percent (103%) or the GMP as originally established, the CMAR shall earn Twenty Five percent (33%) of the At Risk Portion (i.e. 10% of the Construction Management Fee). Entitlement to this portion of the Award Fee Pool shall be based on the final outcome of the Project. For the avoidance of doubt, the CMAR shall not be entitled to earn such portion of the Award Fee Pool even if the failure to deliver on-time or within the (103%) cost goal was caused by DPR, NPS, the Department, delays resulting from the permitting or zoning process, or an event of Force Majeure.
Exhibit P

Equal Employment Opportunity
(See following page)
SMOOT CONSTRUCTION COMPANY OF WASHINGTON D.C. SHALL NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT BECAUSE OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS.

SMOOT CONSTRUCTION COMPANY OF WASHINGTON D.C. AGREES TO AFFIRMATIVE ACTION TO ENSURE THAT APPLICANTS ARE EMPLOYED, AND THAT EMPLOYEES ARE TREATED DURING EMPLOYMENT WITHOUT REGARD TO THEIR ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. THE AFFIRMATIVE ACTION SHALL INCLUDE, BUT NOT BE LIMITED TO THE FOLLOWING: (A) EMPLOYMENT, UPGRADING, OR TRANSFER; (B) RECRUITMENT OR RECRUITMENT ADVERTISING; (C) DEMOTION, LAYOFF, OR TERMINATION; (D) RATE OF PAY, OR OTHER FORMS OR COMPENSATION; AND (E) SELECTION FOR TRAINING AND APPRENTICESHIP.

SMOOT CONSTRUCTION COMPANY OF WASHINGTON D.C. AGREES TO POST IN CONSPICUOUS PLACES THE PROVISIONS CONCERNING NON-DISCRIMINATION AND AFFIRMATIVE ACTION.

SMOOT CONSTRUCTION COMPANY OF WASHINGTON D.C. SHALL STATE THAT ALL QUALIFIED APPLICANTS WILL RECEIVE CONSIDERATION FOR EMPLOYMENT PURSUANT TO SUBSECTION 1103.2 THROUGH 1103.10 OF MAYOR’S ORDER 83-85; “EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS IN CONTRACTS.”

SMOOT CONSTRUCTION COMPANY OF WASHINGTON D.C. AGREES TO PERMIT ACCESS TO ALL BOOKS PERTAINING TO ITS EMPLOYMENT PRACTICES, AND TO REQUIRE EACH SUBCONTRACTOR TO PERMIT ACCESS TO BOOKS AND RECORDS.

SMOOT CONSTRUCTION COMPANY OF WASHINGTON D.C. AGREES TO COMPLY WITH ALL GUIDELINES FOR EQUAL EMPLOYMENT OPPORTUNITY APPLICABLE IN THE DISTRICT OF COLUMBIA.

SMOOT CONSTRUCTION COMPANY OF WASHINGTON D.C. SHALL INCLUDE IN EVERY SUBCONTRACT THE EQUAL OPPORTUNITY CLAUSES; SUBSECTION 1103.2 THROUGH 1103.10 SO THAT SUCH PROVISIONS SHALL BE BINDING UPON EACH SUBCONTRACTOR OR VENDOR.

Omar S. McIntosh, Regional Exec/Sr. VP
AUTHORIZED OFFICIAL AND TITLE

October 4, 2019
DATE

AUTHORIZED SIGNATURE NAME

SMOOT CONSTRUCTION COMPANY OF WASHINGTON D.C.
FIRM OR ORGANIZATION

5335 Wisconsin Avenue, N.W. Suite 940 • Washington D.C. 20015
202/243-6688 202/243-6689 (fax) www.smootconstruction.com
Exhibit Q

First Source Employment Agreement Plan & Revised Employment Plan
(See following page)
This First Source Employment Agreement (Agreement), in accordance with Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011 (D.C. Official Code §§ 2-219.01 – 2.219.05), and relevant provisions of the Apprenticeship Requirements Amendment Act of 2004 (D.C. Official Code § 2-219.03 and § 32-1431) is a required agreement between the District of Columbia Department of Employment Services (DOES) and EMPLOYER.

EMPLOYER, which includes the Beneficiary and all contractors and subcontractors, is working on a contract or project that has received:

☐ D.C. Government assistance valued between $300,000 and $5 million dollars, required to make a good faith effort to ensure that 51% of all new hires are District residents. (D.C. Official Code § 2-219(e)(1)(A))

☑ D.C. Government assistance valued at $5 million or more, required to have the following percentage of hours worked in each classification by DC residents; 20% of journey worker hours; 60% of apprentice hours; 51% of skilled laborer hours; 70% of common laborer hours for all jobs created by the Project. (D.C. Official Code §2-219.03 (1A)(A))
DOES is the first source for recruitment, referral, and placement of new hires or employees for all jobs created by the Government Assisted Project or Contract (Project).

The Parties agree to the terms and conditions of the Agreement as follows:

I. DEFINITIONS

The following definitions shall govern the terms used in this Agreement.

A. **Apprentice** means a worker who is employed to learn an apprenticeable occupation under the terms and conditions of approved apprenticeship standards.

B. **Beneficiary** means:
   1. The signatory to a contract executed by the Mayor which involves any District of Columbia government funds, or funds which, in accordance with a federal grant or otherwise, the District government administers and which details the number and description of all jobs created by a government-assisted Project for which the beneficiary is required to use the First Source Register;
   2. A recipient of a District government economic development action including contracts, grants, loans, tax abatements, land transfers for redevelopment, or tax increment financing that results in a financial benefit of $300,000 or more from an agency, commission, instrumentality, or other entity of the District government, including a financial or banking institution which serves as the repository for $1 million or more of District of Columbia funds.

C. **Contracting Agency** means any District of Columbia agency that awarded a government assisted Project totaling $300,000 or more.

D. **Direct labor costs** means all costs, including wages and benefits, associated with the hiring and employment of personnel assigned to a process in which payroll expenses are traced to the units of output and are included in the cost of goods sold.

E. **EMPLOYER** means any entity awarded a government assisted Project totaling $300,000 or more, including all individual contractor and subcontractor entities at any tier who work on the Project.

F. **First Source Employer Portal** is a website consisting of a connected group of static and dynamic web pages with the ability for Employers to enter data using the internet. The website is accessible by a Uniform Resource Locator (URL) and is maintained by DOES. The website provides reporting information to First Source EMPLOYERS.

G. **First Source Register** means the DOES Automated Applicant Files, which consists of the names of DC residents registered with DOES.

H. **Good faith effort** means an EMPLOYER has exhausted all reasonable means to comply with any affirmative action, hiring, or contractual goal(s) pursuant to the First Source law and Agreement.

I. **Government-assisted project or contract (Project)** means any construction or non-construction Project that receives funds or resources, valued at $300,000 or more, from the District of Columbia, or funds or resources which, in accordance with a federal grant or otherwise, the District of Columbia government administers, including contracts, grants, loans, tax abatements or exemptions, land transfers, land disposition and development agreements, tax increment financing, or any combination of the aforementioned.
J. **Hard to employ** means a District of Columbia resident who is confirmed by DOES as:
   1. An ex-offender who has been released from prison within the last 10 years;
   2. A participant of the Temporary Assistance for Needy Families program;
   3. A participant of the Supplemental Nutrition Assistance Program;
   4. Living with a permanent disability verified by the Social Security Administration or District vocational rehabilitation program;
   5. Unemployed for 6 months or more in the last 12-month period;
   6. Homeless;
   7. A participant or graduate of the Transitional Employment Program established by § 32-1331; or
   8. An individual who qualified for inclusion in the Work Opportunity Tax Credit Program as certified by the Department of Employment Services.

K. **Indirect labor costs** means all costs, including wages and benefits, that are part of operating expenses and are associated with the hiring and employment of personnel assigned to tasks other than producing products.

L. **Jobs** means any union and non-union managerial, non-managerial, professional, nonprofessional, technical or nontechnical position including: clerical and sales occupations, service occupations, processing occupations, machine trade occupations, bench work occupations, structural work occupations, agricultural, fishery, forestry, and related occupations, and any other occupations as the Department of Employment Services may identify in the Dictionary of Occupational Titles, United States Department of Labor.

M. **New Hire:** Individual(s) newly hired by the EMPLOYER to perform work on a government assisted Project.

N. **Transfer:** Existing EMPLOYER employee who has been moved from one Project to another Project.

O. **Journeyman** means a worker who has attained a level of skill, abilities and competencies recognized within an industry as having mastered the skills and competencies required for the occupation.

P. **Revised Employment Plan** means a document prepared and submitted by the EMPLOYER that includes the following:

1. A projection of the total number of hours to be worked on the Project by trade;

2. A projection of the total number of journey worker hours, by trade, to be worked on the Project and the total number of journey worker hours, by trade, to be worked by DC residents;

3. A projection of the total number of apprentice hours, by trade, to be worked on the Project and the total number of apprentice hours, by trade, to be worked by DC residents;

4. A projection of the total number of skilled laborer hours, by trade, to be worked on the Project and the total number of skilled laborer hours, by trade, to be worked by DC residents;

5. A projection of the total number of common laborer hours to be worked on the
6. A timetable outlining the total hours worked by trade over the life of the Project and an associated hiring schedule;

7. Descriptions of the skill requirements by job title or position, including industry-recognized certifications required for the different positions;

8. A strategy to fill the hours required to be worked by DC residents pursuant to this paragraph, including a component on communicating these requirements to contractors and subcontractors and a component on potential community outreach partnerships with the University of the District of Columbia, the University of the District of Columbia Community College, the Department of Employment Services, Jointly Funded Apprenticeship Programs, the District of Columbia Workforce Intermediary, or other government-approved, community-based job training providers;

9. A remediation strategy to ameliorate any problems associated with meeting these hiring requirements, including any problems encountered with contractors and subcontractors;

10. The designation of a senior official from the EMPLOYER(S) or general contractor who will be responsible for implementing the hiring and reporting requirements;

11. Descriptions of the health and retirement benefits that will be provided to DC residents working on the Project;

12. A strategy to ensure that District residents who work on the Project receive ongoing employment and training opportunities after they complete work on the job for which they were initially hired and a review of past practices in continuing to employ DC residents from one Project to the next;

13. A strategy to hire graduates of District of Columbia Public Schools, District of Columbia public charter schools, and community-based job training providers, and hard-to-employ residents; and

14. A disclosure of past compliance with the Workforce Act and the Davis-Bacon Act, where applicable, and the bidder or offeror's general DC resident hiring practices on projects or contracts completed within the last 2 years.

Q. **Tier Subcontractor** means any subcontractor selected by the primary contractor to perform portion(s) or all work related to the trade or occupation area(s) on a Project subject to this First Source Agreement.

R. **Washington Metropolitan Statistical Area** means the District of Columbia; Virginia Cities of Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas, and Manassas Park; the Virginia Counties of Arlington, Clarke, Fairfax, Fauquier, Loudon, Prince William, Spotsylvania, Stafford, and Warren; the Maryland Counties of Calvert, Charles, Frederick, Montgomery and Prince Georges; and the West Virginia County of Jefferson.

S. **Workforce Intermediary Pilot Program** means the intermediary between employers and training providers to provide employers with qualified DC resident job applicants. See DC Official Code § 2-219.04b.
II. GENERAL TERMS

A. Subject to the terms and conditions set forth herein, DOES will receive the Agreement from the Contracting Agency no less than 7 calendar days in advance of the Project start date. No work associated with the relevant Project can begin until the Agreement has been accepted by DOES.

B. The Beneficiary and/or EMPLOYER shall require all Project contractors and subcontractors, under a Project receiving government assistance or benefits valued at $300,000 or more, to enter into an Agreement with DOES.

C. Agreement will take affect once beneficiary/Employer awarded contract and start work on the government assisted Project and no work can begin prior to execution of the Agreement and will be fully effective through the duration, any extension or modifications of the Project and until such time as construction is complete and a certificate of occupancy is issued.

D. If an EMPLOYER began work prior to the execution of a First Source Employment Agreement, the EMPLOYER shall cease work on the Project and sign a First Source Employment Agreement to be bound by the applicable First Source Employment Agreement requirements, retroactively, from the start of work throughout the duration of the contract.

E. DOES will provide recruitment, referral, and placement services to the EMPLOYER, subject to the limitations in this Agreement.

F. DOES and the EMPLOYER agree that, for purposes of this Agreement, new hires and jobs created for the Project (both union and nonunion) include all of EMPLOYER'S job openings and vacancies in the Washington Metropolitan Statistical Area created for the Project as a result of internal promotions, terminations, and expansions of the EMPLOYER'S workforce, as a result of this Project.

G. This Agreement includes apprentices as defined in D.C. Official Code §§ 32-1401-1431.

DOES will make every effort to work within the terms of all collective bargaining agreements to which the EMPLOYER is a party. The EMPLOYER will provide DOES with written documentation that the EMPLOYER has provided the representative of any collective bargaining unit involved with this Project a copy of this Agreement and has requested comments or objections. If the representative has any comments or objections, the EMPLOYER will promptly provide them to DOES.

The EMPLOYER who contracts with the District of Columbia government to perform construction, renovation work, or information technology work with a single contract, or cumulative contracts, of at least $500,000, within a 12-month period will be required to register an apprenticeship program with the District of Columbia Apprenticeship Council as required by DC Code 32-1431.

H. If, during the term of this Agreement, the EMPLOYER should transfer possession of all or a portion of its business concerns affected by this Agreement to any other party by lease, sale, assignment, merger, or otherwise this First Source Agreement shall remain in full force and effect and transferee shall remain subject to all provisions herein. In addition, the EMPLOYER as a condition of transfer shall:

1. Notify the party taking possession of the existence of this EMPLOYER'S First Source Employment Agreement.

2. Notify DOES within 7 business days of the transfer. This notice will include the
name of the party taking possession and the name and telephone of that party's representative.

I. The EMPLOYER and DOES may mutually agree to modify this Agreement. Any modification shall be in writing, signed by the EMPLOYER and DOES and attached to the original Agreement.

J. To the extent that this Agreement is in conflict with any federal labor laws or governmental regulations, the federal laws or regulations shall prevail.

III. TRAINING

A. DOES and the EMPLOYER may agree to develop skills training and on-the-job training programs as approved by DOES; the training specifications and cost for such training will be mutually agreed upon by the EMPLOYER and DOES and will be set forth in a separate Training Agreement.

IV. RECRUITMENT

A. The EMPLOYER shall complete the attached Revised Employment Plan that will include the information outlined in Section I.P.

B. The EMPLOYER shall register and post all job vacancies with the Job Bank Services of DOES at www.dcnetworks.org a minimum of 10 days. Should you need assistance posting job vacancies, please contact Job Bank Services at (202) 698-6001.

C. The EMPLOYER shall notify DOES of all new jobs created for the Project within at least 7 business days (Monday - Friday) of the EMPLOYER'S identification/creation of the new jobs. The Notice of New Job Creation shall include the number of employees needed by job title, qualifications and specific skills required to perform the job, hiring date, rate of pay, hours of work, duration of employment, and a description of the work to be performed. This must be done before using any other referral source.

D. Job openings to be filled by internal promotion from the EMPLOYER'S current workforce shall be reported to DOES for placement and referral, if the job is newly created. EMPLOYER shall provide DOES a Notice of New Job Creation that details such promotions in accordance with Section IV.C.

E. The EMPLOYER will submit to DOES, prior to commencing work on the Project, a list of Current Employees that includes the name, social security number, and residency status of all current employees, including apprentices, trainees, and laid-off workers who will be employed on the Project. All EMPLOYER information reviewed or gathered, including social security numbers, as a result of DOES' monitoring and enforcement activities will be held confidential in accordance with all District and federal confidentiality and privacy laws and used only for the purposes that it was reviewed or gathered.

V. REFERRAL

A. DOES will screen applicants through carefully planned recruitment and training events and provide the EMPLOYER with a list of qualified applicants according to the number of employees needed by job title, qualifications and specific skills required to perform the job, hiring date, rate of pay, hours of work, duration of employment, and a description of the work to be performed as supplied by the EMPLOYER in its Notice of New Job Creation set forth above in Section IV.C.
B. DOES will notify the EMPLOYER of the number of applicants DOES will refer, prior to the anticipated hiring dates.

VI. PLACEMENT

A. EMPLOYER shall in good faith, use reasonable efforts to select its new hires or employees from among the qualified applicants referred by DOES. All hiring decisions are made by the EMPLOYER.

B. In the event that DOES is unable to refer qualified applicants meeting the EMPLOYER’S established qualifications, within 7 business days (Monday - Friday) from the date of notification from the EMPLOYER, the EMPLOYER will be free to directly fill remaining positions for which no qualified applicants have been referred. However, the EMPLOYER shall still be required to meet the First Source hiring requirements or hours worked percentages for all jobs created by the Project.

C. After the EMPLOYER has selected its employees, DOES is not responsible for the employees' actions and the EMPLOYER hereby releases DOES, and the Government of the District of Columbia, the District of Columbia Municipal Corporation, and the officers and employees of the District of Columbia from any liability for employees' actions.

VII. REPORTING REQUIREMENTS

A. EMPLOYER with a single contract valued at $300,000 or more on a Project that received government assistance totaling between $300,000 and $5,000,000, a provision that at least 51% of the new employees hired to work on the Project shall be District residents.

B. EMPLOYER shall register in the First Source Online Registration and Reporting System for electronic submission of all monthly Contract Compliance data, weekly certified payrolls and any other documents required by DOES for reporting and monitoring.

C. EMPLOYER shall submit to the Department of Employment Services each month following the start of the Project a hiring compliance report for the Project that includes the:
   1. Number of new job openings created/available;
   2. Number of new job openings listed with DOES, or any other District Agency;
   3. Number of DC residents hired for new jobs;
   4. Number of employees transferred to the Project;
   5. Number of DC residents transferred to the Project;
   6. Direct or indirect labor cost associated with the project;
   7. Each employee’s name, job title, social security number, hire date, residence, and referral source; and
   8. Workforce statistics throughout the entire project tenure.

D. EMPLOYER with a single contract valued at $300,000 or more on a Project that received government assistance totaling $5 million or more shall meet the following hours worked percentages for all jobs created by the Project:
   1. At least 20% of journey worker hours by trade shall be performed by DC residents;
   2. At least 60% of apprentice hours by trade shall be performed by DC residents;
   3. At least 51% of the skilled laborer hours by trade shall be performed by DC residents; and
   4. At least 70% of common laborer hours shall be performed by DC residents.
E. EMPLOYERS shall provide the following cumulative statistics, that will be used to create the monthly report, by uploading certified payrolls or payroll data into the LCPtracker reporting system:
   1. Number of journey worker hours worked by DC residents by trade;
   2. Number of hours worked by all journey workers by trade;
   3. Number of apprentice hours worked by DC residents by trade;
   4. Number of hours worked by all apprentices by trade;
   5. Number of skilled laborer worker hours worked by DC residents by trade;
   6. Number of hours worked by all skilled laborers by trade;
   7. Number of common laborer hours worked by DC residents by trade; and
   8. Number of hours worked by all common laborers by trade.

F. EMPLOYER may “double count” hours for the “hard to employ” up to 15% of total hours worked by DC Residents; however, a collective bargaining agreement shall not be a basis for waiver of this requirement.

G. For construction Projects that are not subject to Davis-Bacon law in which certified payroll records do not exist, EMPLOYER shall submit monthly documents of workers employed on the Project to DOES, including DC residents and all employment classifications of hours worked.

H. EMPLOYER may also be required to provide verification of hours worked or hiring percentages of DC residents, such as internal payroll records for construction Projects that are not subject to Davis-Bacon.

I. Monthly, EMPLOYER shall submit weekly certified payrolls from all subcontractors at any tier working on the Project to the Contracting Agency. EMPLOYER is also required to make payroll records available to DOES as a part of compliance monitoring, upon request at job sites.

VIII. FINAL REPORT AND GOOD FAITH EFFORTS

A. With the submission of the final request for payment from the Contracting Agency, the Beneficiary and/or EMPLOYER shall:
   1. Report to DOES its compliance with the hiring or hours worked percentage requirements for all jobs created by the Project, and report the hours that DC residents worked for each trade classifications in each area of the Project; or
   2. Submit to DOES a request for a waiver of the hiring or hours worked percentage requirements for all jobs created by the Project that will include the following documentation:
      a. Documentation supporting EMPLOYER’S good faith effort to comply;
      b. Referrals provided by DOES and other referral sources; and
      c. Advertisement of job openings listed with DOES and other referral sources.

B. DOES may waive or partially waive the hiring or hours worked percentage requirements for jobs created by the Project, and/or the required hours of DC residents for each trade classifications, if DOES finds that the Beneficiary or EMPLOYER, including its contractors or subcontractors:
   1. DOES certified that Beneficiary or Employer demonstrated a good faith effort to comply, as set forth in Section VIII.C.; or
2. Is located outside the Washington Metropolitan Statistical Area, and none of the contract work is performed inside the Washington Metropolitan Statistical Area;

3. The beneficiary published each job opening or part-time work needed for 7 calendar days in a District newspaper of city-wide circulation; and

4. The DOES certified that there are insufficient eligible applicants from the First Source Register that possess the skills required by the positions, or the eligible applicants are not available for part-time work or do not have a means to travel to the onsite jobs; or

5. Beneficiary/Employer entered into a special workforce development training or placement arrangement with DOES or with the District of Columbia Workforce Intermediary.

C. DOES shall consider documentation of the following when making a determination of a good-faith effort to comply:

1. DOES has certified that there are insufficient number of District residents in the labor market possessing the skills required by the EMPLOYER for the positions created as a result of the Project.

2. Whether the EMPLOYER posted the jobs on the DOES job website for a minimum of 10 calendar days;

3. Whether the EMPLOYER advertised each job opening in a District newspaper with city-wide circulation for a minimum of 7 calendar days;

4. Whether the EMPLOYER advertised each job opening in special interest publications and on special interest media for a minimum of 7 calendar days;

5. Whether the EMPLOYER hosted informational/recruiting or hiring fairs;

6. Whether the EMPLOYER contacted churches, unions, and/or additional Workforce Development Organizations;

7. Whether the EMPLOYER interviewed employable candidates;

8. Whether the EMPLOYER created or participated in a workforce development program approved by DOES;

9. Whether the EMPLOYER created or participated in a workforce development program approved by the District of Columbia Workforce Intermediary;

10. Whether the EMPLOYER substantially complied with the relevant monthly reporting requirements set forth in this section;

11. Whether the EMPLOYER has submitted and substantially complied with its most recent employment plan that has been approved by DOES; and

12. Any additional documented efforts.
IX. MONITORING

A. DOES is the District agency authorized to monitor and enforce the requirements of the Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011 (D.C. Official Code §§ 2-219.01 – 2-219.05), and relevant provisions of the Apprenticeship Requirements Amendment Act of 2004 (D.C. Official Code § 2-219.03 and § 32-1431). As a part of monitoring and enforcement, DOES may require and EMPLOYER shall grant access to Project sites, employees, and documents.

B. EMPLOYER’S noncompliance with the provisions of this Agreement may result in the imposition of penalties.

C. All EMPLOYER information reviewed or gathered, including social security numbers, as a result of DOES’ monitoring and enforcement activities will be held confidential in accordance with all District and federal confidentiality and privacy laws and used only for the purposes that it was reviewed or gathered.

D. DOES shall monitor all Projects as authorized by law. DOES will:

1. Review all contract controls to determine if the Beneficiary or EMPLOYER, including any Contractors or Subcontractors, are subject to the Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011.

2. Notify stakeholders and company officials and establish meetings to provide technical assistance involving the First Source Process.

3. Make regular construction site visits to determine if the Prime or Subcontractors’ workforce is in concurrence with the submitted Agreement and Monthly Compliance Reports.

4. Inspect and copy certified payroll, personnel records and any other records or information necessary to ensure the required workforce utilization is in compliance with the First Source Law.

5. Conduct desk reviews of Monthly Compliance Reports.

6. Educate EMPLOYERS about additional services offered by DOES, such as On-the-Job training programs and tax incentives for EMPLOYERS who hire from certain categories.

7. Monitor and complete statistical reports that identify the overall project, contractor, and subcontractors’ hiring or hours worked percentages.

8. Provide formal notification of non-compliance with the required hiring or hours worked percentages, or any alleged breach of the First Source Law to all contracting agencies, and stakeholders. (Please note: EMPLOYERS are granted 30 days to correct any alleged deficiencies stated in the notification.)

X. PENALTIES

A. Willful Breach of the Agreement by the EMPLOYER, failure to submit the contract compliance reports, deliberate submission of falsified data may result in DOES imposing a fine of 5% of the total amount of the direct and indirect labor costs of the Project, in addition to other penalties provided by law. Failure to meet the required hiring requirements or failure to receive good faith waiver may result in the Department of Employment Services.
imposing a penalty equal to 1/8 of 1% of the total amount of the direct and indirect labor costs of the Project for each percentage by which the beneficiary fails to meet the hiring requirements.

B. EMPLOYERS who have been found in violation 2 times or more over a 10 year period may be debarred and/or deemed ineligible for consideration for Projects for a period of 5 years.

C. Within 90 days of a Determination of a Penalty, the Beneficiary or Employer may appeal the violations or fines by filing a complaint with the Contract Appeals Board in accordance with D.C. Code §2-360.03 and §2-360.04.

I hereby certify that I have the authority to bind the EMPLOYER to this Agreement from the start of work on the Project, throughout the duration of the Project, and agree to all terms and conditions herein.

By:

Omar S. McIntosh

EMPLOYER Senior Official (Print)

EMPLOYER Senior Official (Signature)

Smoot Construction Company

Name of Company

5335 Wisconsin Avenue NW #940

Washington, DC 20015

Address

202.243.6688

Telephone

omcintosh@srsrnoot.com

Email

__________________ ____________________

Date

Signature Department of Employment Services

Date
I. REVISED FIRST SOURCE EMPLOYMENT PLAN

GOVERNMENT-ASSISTED PROJECT/CONTRACT INFORMATION
DISTRICT CONTRACTING AGENCY: Department of General Services
CONTRACTING OFFICER: Franklin Austin
TELEPHONE NUMBER: 202.727.7178
TOTAL CONTRACT AMOUNT: $13,563,460.80
EMPLOYER CONTRACT AMOUNT: $13,563,460.80
PROJECT NAME: Franklin Park
PROJECT ADDRESS: 14th and K Streets NW
CITY: Washington STATE: DC ZIP CODE:
PROJECT DESCRIPTION OF WORK: Construction management at risk services

PROJECT START DATE: January 2020 PROJECT END DATE: July 2021
EMPLOYER START DATE: December 2019 EMPLOYER END DATE: July 2021

EMPLOYER INFORMATION
EMPLOYER NAME: Smoot Construction Company
COMPANY NAME: Smoot Construction Company
EMPLOYER ADDRESS: 5335 Wisconsin Avenue NW, Suite 940
CITY: Washington STATE: DC ZIP CODE: 20015
TELEPHONE NUMBER: 202.243.6688 FEDERAL IDENTIFICATION NO.: 31-1104741
CONTACT PERSON: Omar S. McIntosh
TITLE: Regional Executive/Sr. Vice President
E-MAIL: omcintosh@srsmoot.com TELEPHONE NUMBER: 202.243.6688
EMPLOYER DESCRIPTION OF WORK: provide construction services for the renovation and modernization of Franklin Park.

ARE YOU A SUBCONTRACTOR YES ☐ NO X
IF YES, NAME OF PRIME CONTRACTOR:
PRIME CONTRACTOR WILL MEET HOURS WORKED PERCENTAGES REQUIREMENTS FOR ENTIRE PROJECT ☐ OR PER EACH SUBCONTRACTOR X

II. EMPLOYMENT HOURS TO BE WORKED PROJECTIONS

First Source law requires EMPLOYERS (winning bidders) to submit a revised Employment Plan.

A. For construction projects receiving $5 million or more in government assistance, Employers to provide projection of the total number of hours to be worked on the project by trade.

JOURNEY WORKER
Provide a projection of the total number of journey worker hours, by trade, to be worked on the project or contract and the total number of journey worker hours, by trade, to be worked by District residents.

This page to be completed by Employer

Employer Initials
### Government of the District of Columbia

**Revised Employment Plan**

<table>
<thead>
<tr>
<th>Projection of Total Number of Journey Worker Hours</th>
<th>Trade</th>
<th>Projection of Total Number of Journey Worker Hours by DC Residents (First Source Law requires 20%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not applicable. As a managing contractor, Smoot Construction does not employ trade labor as these positions are employed at the trade subcontractor level.</td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>Projection of Total Number of Apprentice Hours</th>
<th>Trade</th>
<th>Projection of Total Number of Apprentice Hours by DC Residents (First Source Law requires 60%)</th>
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<td>Not applicable. As a managing contractor, Smoot Construction does not employ trade labor as these positions are employed at the trade subcontractor level.</td>
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</table>

<table>
<thead>
<tr>
<th>Projection of Total Number of Skilled Labor Hours</th>
<th>Trade</th>
<th>Projection of Total Number of Skilled Labor Hours by DC Residents (First Source Law requires 51%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not applicable. As a managing contractor, Smoot Construction does not employ trade labor as these positions are employed at the trade subcontractor level.</td>
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<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Projection of Total Number of Common Laborer Hours</th>
<th>Trade</th>
<th>Projection of Total Number of Common Laborer Hours by DC Residents (First Source Law requires 70%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not applicable. As a managing contractor, Smoot Construction does not employ trade labor as these positions are employed at the trade subcontractor level.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

This page to be completed by Employer

Employer Initials

Not applicable. As a managing contractor, Smoot Construction does not employ trade labor as these positions are employed at the trade subcontractor level.
B. **EMPLOYMENT HIRING PROJECTIONS**

**ALL EMPLOYERS:**

Please indicate ALL new position(s) you will create as a result of the project. If you WILL NOT be creating any new employment opportunities, please complete the attached justification sheet with an explanation. Attach additional sheets as needed.

<table>
<thead>
<tr>
<th>JOB TITLE</th>
<th># OF JOBS</th>
<th>SALARY RANGE</th>
<th>UNION MEMBERSHIP REQUIRED NAME LOCAL#</th>
<th>PROJECTED HIRE</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Not applicable</td>
<td>Smoot Construction does not anticipate needing any new hires for this project</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>at this time. In the event that additional project managers, superintendents or project engineers are required, we will work with DOES and the First Source Program to identify qualified applicants.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

This page to be completed by Employer

Employer Initials
C. JUSTIFICATION SHEET: Please provide a detailed explanation of why the Employer will not have any new hires on the project.

Smoot Construction is a full-service Construction Management, Design Build and General Contracting firm. As a managing contractor, Smoot Construction employs project managers, project superintendents and project engineers. We do not employ apprenticeable trades and we do not hire skilled or unskilled labor as these positions are employed historically at the trade subcontractor level.

In response to this project solicitation, we have identified key staff responsible for executing the work and have committed the staff for the duration of the project. This particular project requires specific expertise that exists within our current staff and additional staff is not needed in order to fulfill the project requirements.

For these reasons, Smoot Construction does not anticipate needing any new hires on this project at this time. In the event that additional project management staff is required, we will work with DOES and the First Source Program to identify qualified applicants.
D. EMPLOYMENT PROJECTIONS

I. Provide a timetable outlining the total hours worked by trade over the life of the project or contract and an associated hiring schedule.

Not applicable. See Justification Statement.

II. Provide descriptions of the skill requirements by job title or position, including industry-recognized certifications required for the different positions.

Smoot Construction employs project managers, project superintendents, and project engineers. We require at a minimum a college degree, plus up to seven years construction experience depending on the position.

III. Provide a strategy to fill the hours required to be worked by District residents, including a component on communicating these requirements to contractors and subcontractors and a component on potential community outreach partnerships with the University of the District of Columbia, the University of the District of Columbia Community College, the Department of Employment Services, Jointly Funded Apprenticeship Programs, the District of Columbia Workforce Intermediary, or other government-approved, community-based job training providers.

Not applicable. See Justification Statement.
D. EMPLOYMENT PROJECTIONS (Continued)

IV. A remediation strategy to ameliorate any problems associated with meeting these worked hours percentage requirements, including any problems encountered with contractors and subcontractors.

Not applicable. See Justification Statement.

V. The designation of a senior official from the general contractor who will be responsible for implementing the hours worked percentages and reporting requirements.

Community Program Manager Chrystal Stowe is responsible for contract compliance with First Source Requirements.

VI. Provide descriptions of the health and retirement benefits that will be provided to District residents working on the project or contract.

Not applicable. See Justification Statement.

VII. Provide a strategy to ensure that District residents who work on the project or contract receive ongoing employment and training opportunities after they complete work on the job for which they were initially hired and a review of past practices in continuing to employ District residents from one project or contract to the next.

Not applicable. See Justification Statement.
D. **EMPLOYMENT PROJECTIONS (continued)**

VIII. Provide a strategy to hire graduates of District of Columbia Public Schools, District of Columbia Public Charter Schools, community-based job training providers, and hard-to-employ residents.

Not applicable. See Justification Statement.

IX. Please disclose past compliance with the First Source Employment Agreement Act of 1984 or the Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011 and the Davis-Bacon Act, where applicable, and the bidder or offeror’s general District-resident hiring practices on projects or contracts completed within the last two (2) years.

Within the last two years, Smoot Construction completed construction of the Entertainment and Sports Arena and the local workforce goals were achieved in compliance with First Source.

DC residents worked 21% journey worker hours; 61% apprentice hours; 67% skilled laborer hours and 82% common laborer hours.

X. Please note that EMPLOYERS on construction projects must submit weekly certified payrolls from all subcontractors at any tier working on the project or contract, as well as make such payroll and personnel records available upon request at job sites to the contracting District of Columbia agency.

As a condition of payment, Smoot Construction requires its subcontractor to submit certified payroll reports with pay requisitions ensuring the reports are available for DOES review upon request. In addition, subcontractors with First Source Agreements are required to enter their monthly First Source data via the DOES electronic compliance database.
Once approved, this revised employment plan shall not be amended except with the approval of Department of Employment Services.

By: ________________________________

Omar S. McIntosh
EMPLOYER Senior Official (Print)

_____________________________

EMPLOYER Senior Official (Signature)

Smoot Construction Company of Washington DC
Name of Company

5335 Wisconsin Avenue NW, Suite 940
Address

202-243-6688
Telephone

omintosh@srsmoost.com
Email

______________________________________
Signature Department of Employment Services

_____________________________
Date
Exhibit R

Drawings & Specifications
(See following page)
Exhibit S
National Park Services (NPS) Requirements
(See following page)
COVID-19 Response

Following guidance from the White House, Centers for Disease Control and Prevention, and state and local public health authorities, we are increasing access and services in a phased approach across all units of the National Park System. Before visiting a park, please check the park website to determine its operating status. Updates about the overall NPS response to COVID-19, including safety information, are posted on www.nps.gov/coronavirus.

National Park Service

Denver Service Center Workflows

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CONTACT THE PARK

Last updated: April 30, 2013
COVID-19 Response

Following guidance from the White House, Centers for Disease Control and Prevention, and state and local public health authorities, we are increasing access and services in a phased approach across all units of the National Park System. Before visiting a park, please check the park website to determine its operating status. Updates about the overall NPS response to COVID-19, including safety information, are posted on www.nps.gov/coronavirus.

National Park Service

Denver Service Center Workflows

Definitions - A
AASHTO - American Association of State Highway Transportation Officials

ABAAS - Architectural Barriers Act Accessibility Standards

Acceptance
Also referred to as acceptance of work or final acceptance. The act of an authorized representative of the Government by which the Government, for itself or as agent of another, assumes ownership of existing identified supplies tendered or approves specific services rendered as partial or complete performance of the contract. (FAR (Federal Acquisition Regulation) 46.101) Acceptance is a very important event because it reduces the Government's rights with respect to defective items, (latent vs patent defects) entitles the contractor to final payment, and may affect title and risk of loss.

Accessibility
Accessibility occurs when individuals with disabilities are able to reach, use, understand, or appreciate NPS (National Park Service) programs, buildings, facilities, sites and services, or to enjoy the same benefits that are available to persons without disabilities.

The 1968 Architectural Barriers Act (ABA) requires sites, facilities, buildings and elements designed, built or altered by or on behalf of the United States be accessible to persons with disabilities and meet the standards set by the General Services Administration (GSA). The design standards set by GSA are the Architectural Barriers Act Accessibility Standards (ABAAS) and the ABAAS for Outdoor Developed Areas which includes scoping and technical requirements for campgrounds, picnic areas, viewing areas, beach access routes, and trails.

The 1973 Rehabilitation Act prohibits discrimination on the basis of disability in programs conducted by Federal agencies. e.g. If a facility offers an interpretive program, then it must be designed to include persons with disabilities. Disabilities can include, but are not limited to, impaired vision, hearing, mobility or mental functioning.

There are additional accessibility requirements for projects being managed by DSC (Denver Service Center). Design development and construction administration processes contain enhanced accessibility requirements for design consultants and Contractors. DSC's design and construction criteria is derived from and congruent with NPS Management Policies and Director's Orders, GSA Guidelines, U.S. Access Board Guidelines, Harpers Ferry Center standards, and from lessons learned through design and construction experience. They exceed federal standards and building codes for greater control, thus assurance, that deliverables and finished construction can meet minimum accessibility criteria. DSC's requirements cover the spectrum of project development work from conceptual design to inspections during construction. Verification of sufficiency or conformance occurs during milestone design reviews and accelerated inspections and reporting of construction tasks that affects accessibility of a project.

ACHP - Advisory Council on Historic Preservation

Acquisition
The acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation
and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract. (FAR 2.101)

Acquisition Plan
A document used to facilitate acquisition planning.

- It must address all the technical, business, management, and other considerations that will control the acquisition.
- It must identify those milestones at which decisions should be made.
- Specific content will vary, depending on the nature, circumstances, and stage of the acquisition.
- Plans for service contracts must describe the strategies for implementing performance-based contracting methods or provide rationale for not using such methods. (FAR 7.105)

ADA - Americans with Disabilities Act

Adaptive Use
A use for a structure other than its historic use, normally entailing some modification of the structure.

Addenda or Addendum
See Amendment.

Additive
An item or series of bid items that may be added during the award phase if available funds will permit. This may take the form of new work or alternative materials to what is covered in the base bid.

Administrative Change
A unilateral contract modification, in writing, that does not affect the substantive rights of the parties (e.g., a change in the paying office or the appropriation data). (FAR 43.101)

Administrative Data (Historic Structure Report)
*This section contains

a. names, numbers, and locational data [List of Classified Structures LCS] used to refer to the structure,
b. the proposed treatment of the structure referencing the park planning document or other source when it is identified,
c. related studies,
d. cultural resource data including date listed in the National Register, period of significance, and context of significance, and
Alteration (For Change of Function, Without Expansion)
Work to change the function of an existing facility or any of its components. The capacity or size of the facility is not expanded. Deferred maintenance of the original facility may be reduced or eliminated by an alteration.

Alternate COR
See Contracting Officer Representative (COR). Individual designated as alternate COR can fill in for the primary COR when required.

Alternative Transportation in Parks and Public Lands (ATPPL)
A new cooperative Federal Land Management Agency transit program established under Section 3021 of the 2005 Transportation Bill, Safe Accountable, Flexible, Efficient Transportation Equity Act - A Legacy for users (SAFETEA-LU). The ATPPL program is managed by the Departments of the Interior and Transportation. With the authorization under the section of transit programs, the Department of Transportation lead agency is the Federal Transit Administration rather than the Federal Highway Administration (the lead agency for the Federal Lands Highways Program).

Eligible agencies include the National Park Service U.S. Fish and Wildlife Service (USFWS), the Bureau of Land Management, the Bureau of Reclamation, and the U.S. Forest Service. Project considerations include geographical diversity, variety of project sizes, safety, pollution and congestion reduction, and improvement of mobility. Project selection will first occur at the bureau level and then by a multi-agency team.

Alternatives for Treatment (Historic Structure Report)
A narrative that presents and evaluates alternative approaches to realization of the ultimate treatment. Alternatives are presented in both narrative and graphic form. Analysis addresses the adequacy of each solution in terms of impact on historic materials, effect on historic character, compliance with NPS policy, and other management objectives. The narrative concludes with elaboration on the recommended course of action and specific recommendations for preservation treatments.

Amendment
A change in a solicitation prior to contract award. (FAR 14.208 and FAR 15.206)

American Association of State Highway Transportation Officials (AASHTO)
An association of state departments of transportation, the AASHTO advocates multimodal transportation by providing technical services, information and policy advice to member departments, the U.S. Department of Transportation (USDOT) and Congress. The AASHTO is influential in national transportation policy decision-making. Information can be found at the following website: http://www.transportation.org.

Americans with Disabilities Act (ADA)
Americans with Disabilities Act, Public Law 101-336 Text of the Americans with Disabilities Act, Public Law 336 of the 101st Congress, enacted July 26, 1990. The ADA prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation. It also mandates the establishment of TDD (Telecommunications Device for the Deaf)/telephone relay services.

AMP - Asset Management Program
https://www.nps.gov/dscw/definitionsdc_a.htm#ads-pumc
Adverse Effect
An action that alters the characteristics that qualify a property for inclusion in the National Register in a manner that would diminish the integrity of the property. Adverse effects can be direct or indirect. They include reasonably foreseeable impacts that may occur later in time, be farther removed in distance, or be cumulative.

Advisory Council on Historic Preservation (ACHP)
An independent federal agency with statutory authority to review and comment on federal actions affecting properties listed in or eligible for the National Register of Historic Places, to advise the President and the Congress on historic preservation matters, and to recommend measures to coordinate activities of federal, state, and local agencies. Its members include Cabinet-level representatives from federal agencies and presidential appointees from outside the federal government.

A&E, AE, or A/E - Architect-Engineer

Aerial Tramway
An electric system of aerial cables with suspended powerless passenger vehicles. The vehicles are propelled by separate cables attached to the vehicle suspension system and powered by engines or motors at a central location not on board the vehicle. Information can be found at the following website:
http://www.cflhd.gov/toolkit/fit/default.htm

Aerial Tramway Car
An unpowered passenger cabin suspended from a system of aerial cables and propelled by separate cables attached to the vehicle suspension system. Engines or motors at a central location, not on board the vehicle, power the cable system. Information can be found at the following website:
http://www.cflhd.gov/toolkit/fit/default.htm

AFC - Automatic Fare Collection

Agency - See Agency with Jurisdiction.

Agency Consultation
A discussion, conference, or forum in which advice or information is sought or given, or information or ideas are exchanged. Consultation generally takes place on an informal basis; formal consultation requirements for compliance with section 106 of NHPA (National Historic Preservation Act) are published in 36 CFR (Code of Federal Regulations) Part 800.

Agency with Jurisdiction (Agency)
An Agency that has been granted legal authority over a location, action, or resource. This authority includes the ability to issue a permit or other legal permission document.

AHJ - Authority Having Jurisdiction

Allocate
The process for releasing funding to sponsors of a previously approved transportation project.
e. recommendations for documentation, cataloging, and storage of materials generated by the HSR (Historic Structure Report).

Direct citations may be taken verbatim from existing park planning documents in order to provide emphasis, especially when contrary recommendations are under consideration.

**Administrative History**
A study that describes how a park was conceived and established and how it has developed and been managed to the present day.

**Administrative Record**
When decisions of the National Park Service (NPS) are challenged in court, the court examines the "paper trail" documenting the NPS decision-making process, to determine if the decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law (Administrative Procedure Act [5 U.S.C. 706 (2) (A)]). The administrative record is the paper trail that documents the NPS decision-making process and the basis for the NPS decision. A thorough and complete administrative record is important because it allows the NPS to demonstrate to the court that the NPS fully considered all relevant factors during the decision-making process. An incomplete administrative record, however, can hamper the NPS's ability to defend its decision by making it appear that the decision was not based on a well-reasoned consideration of all the important information.

**ADT - Average Daily Traffic**

**Advanced Public Transportation Systems (APTS)**
Address the transportation needs of non-drivers by leveraging services provided by Advanced Traveler Information Systems (ATIS) and Advanced Traffic Management Systems (ATMS) to streamline the operations of fixed-routed transit, demand response transit and other High Occupancy Vehicle (HOV) modes (e.g. carpool and vanpool).
Information can be found at the following website: [http://www.cfihd.gov/ittoolkit/fit/default.htm](http://www.cfihd.gov/ittoolkit/fit/default.htm).

**Advanced Rural Transportation Systems (ARTS)**
Supports ITS (Intelligent Transportation System) technologies that can be used in rural areas, primarily to increase safety on rural roadways. Information can be found at the following website:

**Advanced Traffic Management Systems (ATMS)**
Involves the use of surveillance technologies (e.g. machine vision devices, sensors, and closed circuit televisions) and advanced communications (dynamic message signs, highway advisory radio, and personal communication devices) to maximize throughput and safety. Information can be found at the following website:

**Advanced Traveler Information System (ATIS)**
Advanced traveler information system is one of several ITS technologies that offers users integrated traveler information before and during travel, thereby providing a wider range of choices about how, when and where to travel based on individual interests and needs.
Anthropology
The scientific study of the human condition including cultural, biological and physical adaptations over time and in various natural and social environments. Anthropology includes the specializations of archeology, cultural anthropology (including ethnography, ethnology, and applied anthropology), linguistics, and physical anthropology. An anthropologist is a scientist with advance training in any of these subdisciplines.

Anti-Deficiency Act
Requires that no officer or employee of the government may create or authorize an obligation in excess of the funds available, or in advance of appropriations unless otherwise authorized by law. (FAR 32.702)

AO&A - Archeological Overview and Assessment

AOEF - Assessment of Effect Form

APE - Area of Potential Effects

Appointment Letter
Document used by the contacting officer to assign contractual responsibility to another government official. The letter or memorandum specifies the official's authority and is signed by the Contracting Officer.

Appropriate
An act by the state legislature or Congress to provide budgeted funds to programs that have been previously authorized by other legislation. Appropriated funding may be less than the authorized amount.

Appropriate Design Solutions for Park Use and Maintenance Capabilities
Design solutions that are:

- appropriate for the proposed use of the park
- appropriate for the location of the project (Contextual Design)
- easily and economically operated and maintained by the park staff.

APTS - Advanced Public Transportation Systems

Archeological Overview and Assessment (AO&A)
A study that researches the development of the site and identifies the locations and the characteristics of all archeological resources or a sample of them in a particular area.

Archeological Resource
Any material remains or physical evidence of past human life or activities which are of archeological interest, including the record of the effects of human activities on the environment. An archeological resource is capable of revealing scientific or humanistic information through archeological research.

Archeological Survey
Site survey of the material remains such as fossils, relics, artifacts, and monuments of past human life and activities.

https://www.nps.gov/ds/definingsdc_a.htm#ads-pumc
**Archeology**
The scientific study, interpretation, and reconstruction of past human cultures from an anthropological perspective based on the investigation of the surviving physical evidence of human activity and the reconstruction of related past environments. Historic archeology uses historic documents as additional sources of information. An archeologist is a scientist professionally trained to conduct such studies.

**Architect-Engineer (A&E, AE, or A/E)**
Architectural/engineering firms that provide services such as planning, architecture, engineering, landscape architecture, transportation planning, compliance, construction inspection and supervision, surveying, estimating, and other technical services related to planning, design and construction.

**Architect-Engineer Evaluation Board**
A panel composed of members who, collectively, have experience in architecture, engineering, construction, and Government and related acquisition matters. Members shall be appointed from among highly qualified professional employees of the agency or other agencies, and if authorized by agency procedures, private practitioners of architecture, engineering, or related professions. One Government member of each board shall be designated as the chairperson. Under the general direction of the head of the contracting activity, an evaluation board must perform the following functions:

- Review the current data files on eligible firms and responses to a public notice concerning the particular project;
- Evaluate the firms in accordance with the selection criteria;
- Hold discussions with at least three of the most highly qualified firms regarding concepts and the relative utility of alternative methods of furnishing the required services;
- and Prepare a selection report for the agency head or other designated selection authority recommending, in order of preference, at least three firms that are considered to be the most highly qualified to perform the required services. The report must include a description of the discussions and evaluation conducted by the board to allow the selection authority to review the considerations upon which the recommendations are based. (FAR 36.602-2(a) and 36.602-3)

**Architect-Engineer Services**
- Professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services;
- Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property;
- and Such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations,
consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services. (FAR 36.102)

Architectural Accessibility
Design, construction, and or alteration of a building or facility that is in compliance with officially sanctioned standards, and that can be entered and used by individuals with a disability.

Architectural Barriers Act Accessibility Standards (ABAAS)
Effective May 8, 2006, Architectural Barriers Act Accessibility Standards (ABAAS) replaced both UFAS (Uniform Federal Accessibility Standards) and ADAAG (ADA Accessibility Guidelines) for all federally funded projects. Use "ABA" Chapter 2 (all paragraphs with "F" prefix) for scoping and Chapters 3 through 10 for technical information.

Architectural Conservation
The science of preserving a historic structure’s materials by observing and analyzing their deterioration, determining causes of and solutions to problems, and directing remedial interventions.

Architectural Conservator
A specialist in the scientific analysis of historic materials.

Architectural History
The study of architecture through written records and the examination of structures in order to determine their relationship to preceding, contemporary, and subsequent architecture and events. An architectural historian is a historian with advanced training in this specialty.

Architectural Program
An Architectural Program is a narrative list of facility functions, descriptions and functional adjacencies and concept sketches (bubble diagrams) showing the relationships of building functions for a project based on the GMP (General Management Plan) PMIS (Project Management Information System) Statement, Facility Planning Model, Interpretive Plan, HSRs (Historic Structure Reports), and CLR}s (Cultural Landscape Reports) and in-depth interviews with key park staff and stakeholders. Included are specific ideas of what functions should be included (or excluded), how they should be used, and how other functions should relate.

Archives
The non-current records of an organization preserved for their historic value. Official records of the NPS are managed according to the Records Management Guideline (NPS-19) and National Archives and Records Administration standards. The term "archives" is often used to refer to the repository where archives and other historic documents are maintained. See also Historic Document.

Area of Potential Effects (APE)
A term used and defined in National Historic Preservation Act Section 106 regulations as the geographic area or areas within which an undertaking may cause changes in the character or use of cultural resources, if any.
resources exist there. This area always includes the actual site of an undertaking, but may also include other areas where the undertaking will cause changes in land use, traffic patterns, or other aspects that could affect cultural resources, including visual, atmospheric, or audible changes.

**Area Wide Contract**
A contract entered into between the General Services Administration and a utility service supplier to cover utility service needs of Federal agencies within the franchise territory of the supplier. Each area wide contract includes an authorization form for requesting service, connection, disconnection, or change in service. (FAR 41.101)

**Articulated Bus**
An extra-long, high-capacity segmented bus that has rear portion flexibility but is permanently-connected to the forward portion. No interior barriers hamper movement between the two sections. Seated passenger capacity is 60 to 80 persons with space for many standees. Length is from 60 to 70 feet. The turning radius for an articulated bus is usually less than that of a standard urban bus.

**ARTS - Advanced Rural Transportation Systems**

**As-Built Drawings**
See *Project Record Drawings*.

**As-Constructed Drawings**
AutoCAD construction drawing files incorporating all changes shown on the **project record drawings** and typically generated by the Designer of Record.

**Assessment of Effect for Recommended Treatments**
A process for assessing recommended treatments and their effect on character-defining features using the Advisory Council's criteria of effect: "Does the undertaking have the potential to alter characteristics of historic properties such as location, design, setting, workmanship, materials, feeling, and association? Will it cause visual, audible, or atmospheric intrusions not in keeping with a property or its setting, or change the use of the property?"

**Assessment of Effect Form (AOEF)**
"Assessment of Actions Having an Effect on Cultural Resources" form, also known as a **XXX form**, is used to describe and document proposed actions that may affect cultural resources.

**Asset Management Program (AMP)**
Outlines the overall facility management framework, strategic vision, and business practices for park managers' choices about what assets to invest resources in and why the investments should be made.

**ATC - Automatic Toll Collection**

**ATIS - Advanced Traveler Information System**

**ATMS - Advanced Traffic Management Systems**

**ATPPL - Alternative Transportation in Parks and Public Lands**
Attainment Area
A geographic area in which levels of a criteria air pollutant meet the health-based primary standard for that pollutant. See NAAQS (National Ambient Air Quality Standards).

Attorney-in-Fact
An agent, independent agent, underwriter, or any other company or individual holding a power of attorney granted by a surety. See also Power of Attorney. (FAR 28.001)

Authority Having Jurisdiction (AHJ)
A person who is responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure, related to structural fire management. This person is typically the National Park Service (NPS) Regional Structural Fire Manager (RSFM).

Authorize
An act by Congress creating a policy and structure for a program, including formulae and guidelines for awarding funds. Authorizing legislation (such as TEA-21 (Transportation Equity Act for the 21st Century) and SAFETEA-LU) may set an upper limit on program spending or may be open-ended. Revenues spent under an authorization must be appropriated by annual legislation.

Automated Gate Access
The use of electronic devices (e.g. transponder and receiver) to automate the process of allowing access to certain areas. Information can be found at the following website: http://www.cfihd.gov/ftoolkit/ft/default.htm.

Automated Guideway Car
A guided passenger car operating under a fully automated system without and onboard crew. One type is a downtown people mover, which operates on a loop or shuttle route within the central business district of a city. Information can be found at the following website: http://www.cfihd.gov/ftoolkit/ft/default.htm.

Automated Vehicle Classification (AVC)
Closely related to Automated Vehicle Identification (AVI). AVC and AVI are used in many instances at toll facilities which charge different rates for different types of vehicles, making it necessary to distinguish the vehicles passing through the toll facility. Information can be found at the following website: http://www.cfihd.gov/ftoolkit/ft/default.htm.

Automatic Fare Collection (AFC)
The controls and equipment that automatically admit passengers on insertion of the correct fare in an acceptable form, which may be coins, tokens, tickets, or fare cards (stored value fare cards must be inserted again on exit, at which point an additional fare may be required.

Automatic Toll Collection (ATC)
The use of electronic devices (e.g. transponder and receiver) to automate the collection of tolls on roadways and at entrance gates. Information can be found at the following website: http://www.cfihd.gov/ftoolkit/ft/default.htm.
Available Research
Associated research already completed on the subject structure should be identified in the park, regional office, or other repository prior to scoping an HRS (Historic Resource Study). "As a rule, research about a historic structure should complement existing information and strive to produce a comprehensive understanding of the structure in order to adequately establish and address management objectives. The research effort should be proportional to the significance of the structure and the range of effects associated with the objectives. Although individual structure features, areas or systems may be emphasized, research should approach the structure as a whole."

AVC - Automated Vehicle Classification

Average Daily Traffic (ADT)
A means of expressing the volume of traffic on a roadway during a 24-hour period.

Average Vehicle Occupancy (AVO)
A means of expressing the average number of people traveling in each vehicle on a given road or location.

AVO - Average Vehicle Occupancy

AWJ - Agencies With Jurisdiction

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Last updated: November 15, 2016

CONTACT THE PARK

https://www.nps.gov/dscw/definitionsdc_a.htm#ads-purmc
COVID-19 Response

Following guidance from the White House, Centers for Disease Control and Prevention, and state and local public health authorities, we are increasing access and services in a phased approach across all units of the National Park System. Before visiting a park, please check the park website to determine its operating status. Updates about the overall NPS response to COVID-19, including safety information, are posted on www.nps.gov/coronavirus.

National Park Service

Denver Service Center Workflows

NPS.gov / Home / Design / Design Standards

Design Standards
General Statements

- All designs shall adhere to the Organic Act (39 Stat. 535, 16 U.S.C. 1) specifically:

  "To conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

- Facilities will be harmonious with park resources, compatible with natural processes, esthetically pleasing, functional, energy- and water-efficient, cost-effective, universally designed, and as welcoming as possible to all segments of the population. NPS Management Policies, 2006

- Designs shall reflect the context of the park unit and local environment (contextual design). Designs shall respond to the capabilities of the park unit staff and the local market for support services.

- The Design Standards are arranged by discipline and/or specialty. Some aspects of a specific discipline's Design Standards also apply to other disciplines. To fully understand the design requirements, consult all applicable Design Standards.

- Designs for the Denver Service Center (DSC) shall comply with all applicable Design Standards. Resources are provided for informational purposes only and may be used with discretion.

- All Laws, Code of Federal Regulations (CFR), Federal Acquisition Regulation (FAR), Executive Orders (EOs), Government Directives, Government Standards, cited in the Design Standards refer to the original document as well as any subsequent amendments, corrections, and additions. The latest amendments, corrections and additions are to be assumed applicable in the same way as the document itself.
• **NPS Management Policies 2006 - The Guide to Managing the National Park System**: This volume is the basic policy document of the NPS for managing the national park system. It includes chapters devoted to: cultural resource management, natural resource management, use of parks, and park facilities as well as many more - many of which directly impact facility design and construction. Adherence by NPS employees (and, by extension, Architectural Engineering (A/E) firms designing NPS facilities on behalf of the NPS) to policy is mandatory unless specifically waived or modified by the Secretary of the Interior, the Assistant Secretary for Fish and Wildlife and Parks, or the Director of the National Park Service.

• **FAR 52.208-9 Contractor Use of Mandatory Sources of Supply or Services** provides requirements regarding supplies and services that must be obtained from non-profit agencies participating in a program operated by the Committee for Purchase From People Who Are Blind or Severely Disabled. Products available through **AbilityOne** shall be evaluated to meet this requirement.
COVID-19 Response

Following guidance from the White House, Centers for Disease Control and Prevention, and state and local public health authorities, we are increasing access and services in a phased approach across all units of the National Park System. Before visiting a park, please check the park website to determine its operating status. Updates about the overall NPS response to COVID-19, including safety information, are posted on www.nps.gov/coronavirus.

National Park Service

Denver Service Center Workflows

Accessibility & Universal Design Standards

NPS.gov / Home / Design / Design Standards / Accessibility & Universal Design
Building Codes & Industry Standards

Accessibility
- ABA Standards 2015 (Architectural Barriers Act)
- Outdoor Developed Areas
  - Proposed Guidelines for Pedestrian Facilities in the Public Right-of-Way
    - Federal Register Proposed Rule 2013

- IBC 2018 (International Building Code)
- IEBC 2018 (International Existing Building Code)

Facility & Site Designs
- Must meet ABA Standards for facility and site designs and address equal opportunity for all program areas. Activities within buildings, interpretation, hiking, walking, picnicking, swimming, and camping are examples of program areas and must provide equal opportunity per Section 504 of the Rehabilitation Act.

Universal Design
- Universally designed sites and facilities provide equal opportunity not only for persons with disabilities, but a variety of situations, such as:
  - a parent pushing a stroller
  - a child on crutches
  - a person with arthritic knees

- Accessible and inaccessible constructed and programmatic components of a facility are indiscernible in Universal Design. This can include any of the following project considerations:

https://www.nps.gov/dsow/ds-accessibility-universal-design.htm#nps
- site arrival
- access paths (interior and exterior)
- functional spaces
- furnishings
- millwork, fixtures, and appliances
- exhibits and media

- The 7 Principles of Universal Design

Pedestrian Routes/Entrance
- Accessible parking is located closest to the accessible entrance.
- All users follow the same routes through the site and facility.
- The primary entrances (visitor and employee) of newly constructed facilities do not have steps.
- Provides a covered entry with the roof draining away from the entry, walkway, and entrance.
- Provides power assisted door openers on main accessible entrances and lever or push hardware on other doors.

Interpretive Media Accessibility Requirements
- Programmatic Accessibility Guidelines for NPS Interpretive Media
- NPS HFC (Harpers Ferry Center) for Interpretive Media

Denver Service Center (DSC) Requirements
- Accessible Route Design Standards
- Automatic Door Openers
- Construction
  - Accessibility Inspection Report Form & Sample (Contractor Quality Control (CQC) & Final)
    - Required during construction (CQC) and after construction (Final).
Resources

ABA for Accessibility
- Access Board Design Guides for Recreation Facilities
- DSC Scoping Form for Buildings & Sites
- DSC Scoping Form for Outdoor Recreation Facilities
- DSC Site Compliance Plan Sample (pdf)
  - Required for Design Development (DD) and Construction Documents (CD) Deliverables.

Visual/Auditory Disabilities
- The Audio Description Project
- Audio-Visual Accessibility Initiative for Visitors with Disabilities > scroll to Exhibit 4 (towards the bottom)
- Fire Alarm Systems

National Park Service (NPS) Requirements

NPS Management Policies 2006 - The Guide to Managing the National Park System
- Chapter 1 The Foundation
  - 1.9.2 Managing Information
  - 1.9.3 Accessibility for Persons with Disabilities
  - 1.9.5.2 Facilities

- Chapter 5 Cultural Resource Management
  - 5.3.2 Physical Access for Persons with Disabilities

- Chapter 6 Wilderness Preservation and Management
  - 6.4.10 Accessibility for Persons with Disabilities

- Chapter 7 Interpretation and Education
  - 7.5.2 Access to Interpretive and Educational Opportunities

- Chapter 8 Use of the Parks
- 8.2 Visitor Use
  - 8.2.4 Accessibility for Persons with Disabilities

- Chapter 9 Park Facilities
  - 9.1.1 Facility Planning and Design
  - 9.1.2 Accessibility for Persons with Disabilities
  - 9.2 Transportation Systems and Alternative Transportation
  - 9.2.2 Trails and Walks
  - 9.2.2.3 Equestrian Trails
  - 9.3 Visitor Facilities
    - 9.3.1 Informational and Interpretive Facilities
    - 9.3.1.3 Visitor Centers
    - 9.3.2 Overnight Accommodations and Food Services
    - 9.3.3 Comfort Stations
    - 9.4 Management Facilities

- Chapter 10 Commercial Visitor Services
  - 10.2.6.1 Design
  - 10.2.6.2 Accessibility of Commercial Services

**Director's Orders (DOs)**
- DO 16A: Reasonable Accommodation for Applicants and Employees with Disabilities
- DO 42: Accessibility for Park Visitors

**NPS Memos**
- Disability Access in the NPS
Laws

- **Architectural Barriers Act (ABA) of 1968** - The ABA requires access to facilities designed, built or altered with Federal dollars or leased by Federal agencies. The law covers a wide range of facilities including national parks. It also applies to non-government facilities that have received Federal funding. Enacted in 1968, the ABA stands as the first effort by Congress to ensure access to the built environment. Facilities that predate the law generally are not covered, but alterations or leases undertaken after the law took effect can trigger coverage.

- **Americans with Disabilities Act (ADA)** - The ADA prohibits discrimination on the basis of disability in employment, state and local government services, transportation, public accommodations, commercial facilities, and telecommunications. The ADA primarily covers work that is not Federally funded or constructed. However, certain Federal work does enforce ADA; contact a regional DBTAC (Disability & Business Technical Assistance Center) or Federal agency.

- **Rehabilitation Act of 1973** - Ensures access to programs and activities that are Federally funded. It also protects the rights of Federal employees with disabilities. Federal agencies are responsible for enforcing requirements as they apply to their own programs, services, and employment practices.

- **Telecommunications Act of 1996 / Communication and IT (Information Technology) Accessibility Standards** (Section 508) (2017) - Requires electronic and IT procured by Federal agencies to be accessible according to standards issued by the Access Board.

Executive Orders (EOs)

- **EO 13164** - Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation (pdf)

Regulations

**Code of Federal Regulations (CFR)**

- **28 CFR Part 36** - Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities

- **41 CFR Part 102-76** - Subpart C - Architectural Barriers Act

- **43 CFR Part 17** - Subpart B - Nondiscrimination on the Basis of Handicap

- **43 CFR Part 17** - Subpart E - Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of the Interior (DOI)
- 48 CFR Chapter 1 - Federal Acquisition Regulation (FAR)
  - FAR Parts (Acquisition.gov)