

**OFFICE OF PUBLIC EDUCATION FACILITIES MODERNIZATION**  
**AIR CONDITIONING INSTALLATION SERVICES AT COOLIDGE SENIOR HIGH**  
**SCHOOL**

**Solicitation #: GM-09-S-0601-FM**

**Addendum No. 3**  
**Issued: June 26, 2009**

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This Addendum Number 03 is issued by e-mail on June 26, 2009. Except as modified hereby, the Request for Proposals (“RFP”) remains unmodified.

**Item #1**

**Assumptions/Clarifications:** For the athletic center the manufacturer of the Motor Control Center is Westinghouse (Model LY19934) and the Switchboard is Westinghouse (LY19934).

**Item #2**

**Requests for Information:** Below is a list of questions about the Project and the Office’s responses.

1. Please provide the location of the existing "Pull Box" shown on drawing E-4. **Response: The existing pull-box is located just above men’s toilet room located next to stair no. 8 – Balcony level.**
  
2. Please clarify the ductwork scope. Demo lines for the ductwork are not shown, nor any symbol for point of connection to new work. Is it the project’s intent to replace existing duct 15’ from air handlers of supply, return and outside air ductwork with lined ductwork? **Response: Demo lines are not shown. The intent of design is to have duct lining up to 15 feet from the AHU’s. All duct work shall be cleaned by a certified air duct cleaning contractor. Anti-microbial coatings resisting fungus & bacteria shall be sprayed inside all duct works. Refer to design notes.**
  
3. Reference Dwg. M-02 & M-03 “Provide...duct insulation for all existing supply, return and outside air ductwork...”. I spot checked about six areas above the ACT ceilings in the peripheral areas and found all 6 to be insulated. I also asked the custodian who “thought” all ducts were insulated. Please clarify the scope of these notes and let me know if there are specific areas to be insulated (other than gymnasium diffuser ductwork shown on M-04 at the ceiling level). **Response: The design intent is to provide duct insulation for all supply, return and outside air duct work. Check and/or replace all hangers and supports for added weight. On the Balcony Level Drawing, the intent is also to provide 2” duct insulation for all existing supply air duct work 40 feet high, check and/or replace all hangers + supports for added weight. All duct work shall be painted black and be matched with existing color in balcony level drawing. Refer to design notes.**

**Item #3**

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

**Item #4**

The bid date remains unchanged. Proposals are due by **Thursday, July 2, 2009 at 5 pm EDT**. Proposals that are hand-delivered should be delivered to OPEFM's new office space in RFK stadium, located through the Lot 4, Gate F entrance. **Late proposals will not be accepted.**

- End of Addendum No. 3 -

# DRAFT AIA® Document A105™ - 2007

## Standard Form of Agreement Between Owner and Contractor for a Residential or Small Commercial Project

AGREEMENT made as of the [ ] day of June in the year 2009  
(In words, indicate day, month and year)

BETWEEN the Owner:  
(Name, address and other information)

Government of the District of Columbia acting by and through  
Office of Public Education Facilities Modernization  
2400 East Capitol Street, SE  
Washington, D.C. 20003

and the Contractor:  
(Name, address and other information)

TBD

for the following Project:  
(Name, location and detailed description)

Coolidge Senior High School ("Coolidge")  
6315 5th Street, NW  
Washington DC 20011

Installation of a chilled water plant to provide cooling for the gymnasium at Coolidge, including identification of whether the electrical system at Coolidge is designed to and can accommodate the increased electrical load caused by the new chilled water system (the "Project").

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

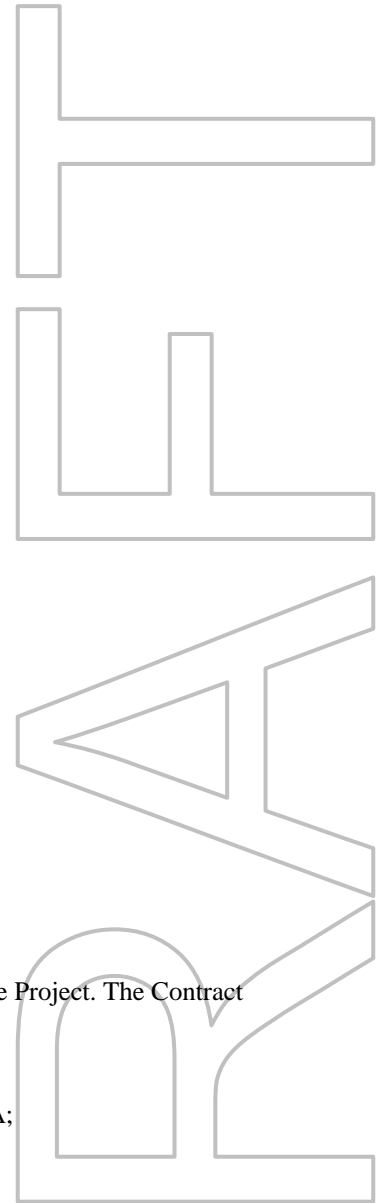
This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

State or local law may impose requirements on contracts for home improvements. If this document will be used for Work on the Owner's residence, the Owner should consult local authorities or an attorney to verify requirements applicable to this Agreement.

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ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 The Contractor shall complete the Work described in the Contract Documents for the Project. The Contract Documents consist of

- .1 this Agreement signed by the Owner and Contractor;
- .2 the Drawings and Performance Specifications attached here to as Exhibit A;

Drawings:

| Number | Title | Date |
|--------|-------|------|
|        |       |      |

Specifications:

| Section | Title | Pages |
|---------|-------|-------|
|         |       |       |

- .3 addenda prepared by the architect as follows:

| Number | Date | Pages |
|--------|------|-------|
|        |      |       |

- .4 written orders for changes in the Work issued after execution of this Agreement; and

.5 other documents, if any, identified as follows:

## ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The period of time available to the Contractor to substantially complete the Work is the Contract Time. The date of commencement of the Work shall be the date of the written notice to proceed issued by the Owner to the Contractor. The Contractor shall substantially complete the Work, no later than February 15, 2010, subject to adjustment as provided in Article 10 and Article 11.

## ARTICLE 3 CONTRACT SUM

§ 3.1 Subject to additions and deductions in accordance with Article 10, the Contract Sum is:

[INSERT AMOUNT ( \$ ) ]

§ 3.2 For purposes of payment, the Contract Sum includes the following values related to portions of the Work:

| Portion of Work | Value |
|-----------------|-------|
|                 |       |

§ 3.3 Unit prices, if any, are as follows:

| Item | Units and Limitations | Price per Unit |
|------|-----------------------|----------------|
|      |                       |                |

§ 3.4 Allowances included in the Contract Sum, if any, are as follows:

| Item | Price |
|------|-------|
|      |       |

§ 3.5 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and hereby accepted by the Owner:

§ 3.6 The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work.

## ARTICLE 4 PAYMENT

§ 4.1 Based on Contractor's Applications for Payment, the Owner shall pay the Contractor, in accordance with Article 12, as follows:

*(Insert below timing for payments and provisions for withholding retainage, if any.)*

§ 4.1.1 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 4.1.2 Provided that an Application for Payment is received not later than the 25th day of month, the Owner shall make payment to the Contractor not later than the last day of the month following submission or, if that is not a business day, on the following business day. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than sixty (60) days after the Owner receives the Application for Payment.

§ 4.1.3 The Owner shall withhold from each progress payment an amount equal to ten percent (10%).

§ 4.2 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate below, or in the absence thereof, at the legal rate prevailing at the place of the Project.

## ARTICLE 5 INSURANCE

§ 5.1 The Contractor shall provide Contractor's general liability and other insurance as follows:

§ 5.1.1 The Contractor will be required to maintain the following types of insurance throughout the life of the Contract.

- .1 Commercial general public liability insurance ("Liability Insurance") against liability for bodily injury and death and property damage, such Liability Insurance to be in an amount not less than One Million Dollars (\$1,000,000) for liability for bodily injury, death and property damage arising from any one occurrence and One Million Dollars (\$1,000,000) from the aggregate of all occurrences within each policy year. The policy should include completed operations coverage and must be maintained for a period of at least three (3) years after substantial completion occurs..
- .2 Workers' compensation and Employers Liability coverage providing statutory benefits for all persons employed by the Contractor, or its contractors and subcontractors at or in connection with the Work.
- .3 Automobile Liability, including Hired and Non-Owned Auto Liability in the amount of at least One Million Dollars (\$1,000,000) for each occurrence for bodily injury and property damage.
- .4 [intentionally omitted]
- .5 Builder's risk insurance written on an "all risk" basis and covering the value of the improvements being constructed. This coverage does not need to be maintained until such time as construction operations begin.

§ 5.1.2 Each insurance policy shall be issued in the name of the Contractor and shall name as additional insured parties the Owner and the District of Columbia, and the officers, agents and employees of each. Such insurance shall not be cancelable or reduced without thirty (30) days prior written notice to the Owner.

§ 5.1.3 All such insurance shall contain a waiver of subrogation against the Owner and the District of Columbia, and their respective agents.

§ 5.1.4 All such insurance policies shall be written by a company that is rated at least A- by A.M. Best and having a surplus size rating of at least XV.

## ARTICLE 6 GENERAL PROVISIONS

### § 6.1 THE CONTRACT

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification in accordance with Article 10.

### § 6.2 THE WORK

The term "Work" means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment and services provided, or to be provided, by the Contractor to fulfill the Contractor's obligations.

### § 6.3 INTENT

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

### § 6.4 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

Any and all documents prepared by the Contractor's architect for use with respect to this Project shall be become property of the Owner.

§ 6.3 The Owner shall cooperate with the Contractor in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the responsibility of the Contractor under the Contract Documents.

## ARTICLE 7 OWNER

### § 7.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

If requested by the Contractor, the Owner shall furnish all necessary surveys and a legal description of the site.

### § 7.2 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work which is not in accordance with the Contract Documents, the Owner may direct the Contractor in writing to stop the Work until the correction is made.

### § 7.3 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, the Contract Sum shall be adjusted to deduct the cost of correction from payments due the Contractor.

### § 7.4 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 7.4.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project.

§ 7.4.2 The Contractor shall coordinate and cooperate with the Owner's own forces and separate contractors employed by the Owner.

§ 7.4.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

## ARTICLE 8 CONTRACTOR

### § 8.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 8.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 8.1.2 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies or omissions discovered to the Owner.

### § 8.2 CONTRACTOR'S CONSTRUCTION SCHEDULE

The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's information a Contractor's construction schedule for the Work.

### § 8.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 8.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.

§ 8.3.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the names of subcontractors or suppliers for each portion of the Work. The Contractor shall not contract with any subcontractor or supplier to whom the Owner has made a timely and reasonable objection.

§ 8.3.3 The Contractor shall complete the Project in accordance with the Drawings and Performance Specifications. In the event there is a discrepancy between the Drawings and Performance Specifications, the Contractor shall be required to comply with the more expensive requirement. The Contractor shall also be responsible for assuring that the electrical system at the facility is designed to

and can accommodate the increased electrical load caused by the air conditioning system or units. If the facility is not receiving an adequate power supply from PEPCO, the Contractor shall not be responsible for securing additional power from PEPCO. However, the Contractor shall be required to identify this deficiency and cooperate with OPEFM in rectifying the electrical situation with PEPCO.

§ 8.3.4 In performing the Work, the Contractor shall be required complete the following.

- .1 The Contractor shall perform all of the work in first class and workmanlike manner. Any equipment called for in the drawings and specifications shall be new unless otherwise approved by the Owner in advance and in writing.
- .2 The Contractor shall provide submittals as indicated in the specifications to the Owner for its review and approval prior to proceeding with the work. The Contractor understands that the Owner will be required to submit such cut sheets to Pepco, as required, for its review and approval.
- .3 The Contractor's scope of work shall include the installation and provision of such safety barricades and enclosures as may be necessary to ensure a safe workplace or as may be required by OSHA or other applicable law.
- .4 The Contractor shall be required to coordinate its work with school personnel so as to ensure that school activities are not adversely affected.
- .5 The Contractor shall be reasonably required by Owner to provide such safety barricades, enclosures and overhead protection as may be necessary to safely implement the Work and to remove such at the end of the work and shall leave the site in broom clean condition.
- .6 The Contractor shall be responsible for obtaining all job permits and approvals from the District of Columbia Regulatory Agency that are required to perform and complete the installation at no additional cost to the Owner.

§ 8.3.5 In performing the Work, the Contractor shall be required to properly supervise and coordinate its work. At a minimum, it is envisioned that the Contractor will be required to undertake the following tasks:

- .1 Participate and assist in Project/Planning meetings.
- .2 Maintain full-time on-site construction supervision and provide daily inspections, quality control, monitoring, coordination of various trades, record drawings, and daily work log.
- .3 Conduct weekly progress meetings following a Contractor generated agenda with the Program Manager and all trades.
- .4 Provide general safety and signage and posting for the project and see that each subcontractor prepares and submits adequate safety program and monitoring throughout the project.
- .5 Manage the change order process with the trade subcontractors to verify validity, purpose, and cost.
- .6 Prepare payment requests, verify accuracy and forward to Owner for approval and payment.
- .7 Assemble close-out documents required.
- .8 Provide assistance to the Owner through any applicable warranty periods.

## § 8.4 LABOR AND MATERIALS

§ 8.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

§ 8.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

#### § 8.5 WARRANTY

The Contractor warrants to the Owner that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents.

#### § 8.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes that are legally required when the Contract is executed.

#### § 8.7 PERMITS, FEES AND NOTICES

§ 8.7.1 The Contractor shall obtain and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work. The Owner shall cooperate with the Contractor in securing such building and other permits, licenses and inspections, provided however, the Owner shall not be required to pay the fees for such permits, licenses and inspections.

§ 8.7.2 The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the Owner in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules and regulations.

#### § 8.8 SUBMITTALS

The Contractor shall promptly review, approve in writing and submit to the Owner Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

#### § 8.9 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the Owner.

#### § 8.10 CUTTING AND PATCHING

The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

#### § 8.11 CLEANING UP

The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, the Contractor shall remove its tools, construction equipment, machinery and surplus material; and shall properly dispose of waste materials.

#### § 8.12 INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Owner's consultants and agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

## ARTICLE 9 DESIGN ASSIST

§ 9.1 The Owner has caused a duly licensed engineer to prepare a set of construction documents that generally describe the Work required to implement the project (the "Preliminary Drawings"). The Contractor understands and agrees that the Preliminary Drawings are intended to describe the general nature of the Work that is required and that the Preliminary Drawings may be incomplete or improperly coordinated. The Contractor further understands and agrees that this project is being purchased on a "design assist" basis and that the Contractor shall be required to: (i) complete or revise the Preliminary Drawings; and (ii) install a fully functional system that satisfies the Performance Criteria.

§ 9.2 The Contractor hereby represents and warrants that the Contract Sum set forth herein is sufficient to complete the Work. Without limiting the generality of the foregoing, the Contractor further represents and warrants that the Contract Sum includes adequate amounts to: (i) cover any engineering or other professional services necessary to complete or revise the Preliminary Drawings; and (ii) install items that are not shown on the Preliminary Drawings but which are reasonably inferable from such Preliminary Drawings.

## ARTICLE 10 CHANGES IN THE WORK

§ 10.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, by Change Order.

§ 10.2 A Change Order is a written instrument signed by the Owner and Contractor stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment, if any, in the Contract Sum; and
- .3 the extent of the adjustment, if any, in the Contract Time.

§ 10.3 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

## ARTICLE 11 TIME

§ 11.1 Time limits stated in the Contract Documents are of the essence of the Contract.

§ 11.2 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unavoidable casualties or by delay authorized by the Owner pending resolution of disputes pursuant to the Contract Documents, then the Contractor shall be entitled to an equitable adjustment of the Contract Time.

## ARTICLE 12 PAYMENTS AND COMPLETION

### § 12.1 CONTRACT SUM

The Contract Sum stated in the Agreement, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### § 12.2 APPLICATIONS FOR PAYMENT

§ 12.2.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Owner an itemized Application for Payment for Work completed in accordance with the values stated in the Agreement. Such Application shall be supported by data substantiating the Contractor's right to payment as the Owner may reasonably require. Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 12.2.2 By submitting an Application for Payment, the Contractor warrants to the Owner that title to all Work for which payment is sought will pass to the Owner, without liens, claims, or other encumbrances, upon the receipt of payment by the Contractor. The Owner 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 shall remain with the Contractor until Substantial Completion, unless otherwise agreed by the Owner in writing.

### § 12.3 [INTENTIONALLY OMITTED]

### § 12.4 PROGRESS PAYMENTS

§ 12.4.1 The Owner shall make payment in the manner provided in the Contract Documents.

§ 12.4.2 The Contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from the Owner, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.

§ 12.4.3 The Owner shall not have responsibility for payments to a subcontractor or supplier.

§ 12.4.4 A progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the requirements of the Contract Documents.

### § 12.5 SUBSTANTIAL COMPLETION

§ 12.5.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

§ 12.5.2 When the Work or designated portion thereof is substantially complete, the Owner will make an inspection to determine whether the Work is substantially complete. If the Owner's inspection discloses any item which is not substantially complete, the Contractor shall promptly complete or correct such item. In such case, the Contractor shall then submit a request for another inspection by the Owner to determine whether the Work is substantially complete. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof.

### § 12.6 FINAL COMPLETION AND FINAL PAYMENT

§ 12.6.1 Upon receipt of a final Application for Payment, the Owner will inspect the Work. When the Owner finds the Work acceptable and the Contract fully performed, the Owner will promptly make final payment to the Contractor.

§ 12.6.2 Acceptance of final payment by the Contractor, a subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

### ARTICLE 13 PROTECTION OF PERSONS AND PROPERTY

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall take reasonable precautions to prevent damage, injury or loss to employees on the Work, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

### ARTICLE 14 CORRECTION OF WORK

§ 14.1 The Contractor shall promptly correct Work rejected by the Owner as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement and additional testing.

§ 14.2 In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents. The Contractor shall assign any and all manufacturer or other product warranties to the Owner upon Substantial Completion.

§ 14.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.3.

### ARTICLE 15 MISCELLANEOUS PROVISIONS

#### § 15.1 ASSIGNMENT OF CONTRACT

Neither party to the Contract shall assign the Contract as a whole without written consent of the other.

## § 15.2 TESTS AND INSPECTIONS

§ 15.2.1 At the appropriate times, the Contractor shall arrange and bear cost of tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 15.2.2 The Owner shall bear cost of tests, inspections or approvals that do not become requirements until after the Contract is executed.

## § 15.3 GOVERNING LAW

§ 15.3.1 The Contract shall be governed by the laws of the District of Columbia.

§ 15.3.2 All federal and District of Columbia laws and regulations, and all Owner procedures now or hereafter in effect, whether or not expressly provided for or referred to in the Contract, are incorporated by reference herein and shall be binding upon the Contractor and the Owner. It shall be the responsibility of the Contractor to perform the Contract in conformance with the Owner's procurement regulations and all statutes, laws, codes, ordinances, regulations, rules, requirements, and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Contractor to determine the procurement regulations, statutes, laws, codes, ordinances, regulations, rules, requirements, and orders that apply and their effect on the Contractor's obligations thereunder. However, if the application of a future law or regulation requires the Contractor to undertake additional work that is materially different in scope than that presently contemplated or required, the Contractor shall be entitled to an equitable adjustment for such additional work.

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

§ 15.3.4 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.

§ 15.3.5 The Contractor agrees that the construction work performed under this Contract shall be subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333).

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

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

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

## ARTICLE 16 TERMINATION OF THE CONTRACT

### § 16.1 TERMINATION BY THE CONTRACTOR

If the Owner fails to make payment as provided in Section 12.4.1 for a period of 60 days, the Contractor may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit, and costs incurred by reason of such termination.

### § 16.2 TERMINATION BY THE OWNER FOR CAUSE

§ 16.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 is otherwise guilty of substantial breach of a provision of the Contract Documents.

§ 16.2.2 When any of the above reasons exist, the Owner, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may

- .1 take possession of the site and of all materials thereon owned by the Contractor, and
- .2 finish the Work by whatever reasonable method the Owner may deem expedient.

§ 16.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 16.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 16.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

### § 16.3 TERMINATION BY THE OWNER FOR CONVENIENCE

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work actually executed. In no event shall the Contractor be entitled to recover overhead and profit on Work that was not performed.

## ARTICLE 17 OTHER TERMS AND CONDITIONS

*(Insert any other terms or conditions below.)*

### § 17.1 WRITTEN NOTICE

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

If to the Owner:

If to the Contractor:

[TBD]

[TBD]

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

### § 17.2 LSDBE UTILIZATION

§ 17.2.1 The Contractor shall ensure that Local, Small and Disadvantages Business Enterprises will participate in at least 50% of the Contract. Of this amount, thirty-five percent (35%) must be awarded to entities that are certified as either Small or Disadvantaged Business Enterprises by the District of Columbia Local Business Opportunity Office and twenty percent (20%) to entities that are certified as Disadvantaged Business Enterprises. The LSDBE

certification shall be, in each case, as of the effective date of the subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal.

§ 17.2.2 The Contractor has developed an LSDBE Utilization Plan that is attached hereto as Exhibit C. The Contractor shall comply with the terms of the LSDBE Utilization Plan in making purchases and administering its Subcontractors and Supply Agreements.

§ 17.2.3 Neither the Contractor or a Subcontractor may remove a Subcontractor or tier-Subcontractor if such Subcontractor or tier-Subcontractor is certified as an LSDBE company unless the Owner approves of such removal. The Owner may condition its approval upon the Contractor developing a plan that is, in the Owner's sole and absolute judgment, adequate to maintain the level of LSDBE participation on the Project.

#### § 17.3 EQUAL EMPLOYMENT OPPORTUNITY AND HIRING OF DISTRICT RESIDENTS

§ 17.4.1 The Contractor shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

§ 17.3.2 The Contractor shall ensure that at least fifty-one percent (51%) of the Contractor's Team and every subconsultant's and subcontractor's employees hired after the effective date of the Contract, or after such subconsultant or subcontractor enters into a contract with the Contractor, 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.

§ 17.3.3 Fifty percent (50%) of all apprentices for the Project must be District residents. If the Contractor or any of its subcontractors fail to use its best efforts to meet this goal, the Contractor or the subcontractor shall be subject to a penalty of five percent (5%) of the labor costs associated with the Contract.

#### § 17.4 ECONOMIC INCLUSION REPORTING REQUIREMENTS

§ 17.4.1 Upon execution of the Contract, the Contractor and all its member firms, if any, and each of its Subcontractors shall submit to the Owner a list of current employees and apprentices that will be assigned to the Contract, the date they were hired and whether or not they live in the District of Columbia.

§ 17.4.2 The Contractor and its constituent entities shall comply with subchapter III of Chapter 11 Title 1, 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 Contractor and all member firms and Subcontractors shall execute a First Source Agreement with the District of Columbia Department of Employment Services ("DOES") prior to beginning Work at the Project site.

§ 17.4.3 The Contractor shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

§ 17.4.4 The Contractor shall be responsible for: (i) including the provisions of this Section 17.5. in all subcontracts; (ii) collecting the information required in this Section 17.5 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in the reports required to be submitted by the Contractor pursuant to Section 17.5.

§ 17.4.5 The Contractor agrees to comply with the requirements of the Apprenticeship Act of 1946, D.C. Code §§ 36-401, *et seq.*

#### § 17.5 RETENTION OF RECORDS AND INSPECTIONS AND AUDITS

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

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

§ 17.5.3 The Owner, the District of Columbia government, the District of Columbia Financial Responsibility and Management Assistance Office, the Comptroller General of the United States, the U.S. Department of Labor and

any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Contractor for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection.

§ 17.5.4 The Contractor agrees to include the wording of this Section in all its subcontracts in excess of five thousand dollars (\$5,000.00) that directly relate to Project performance.

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

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

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

#### § 17.6 ANTI-COMPETITIVE PRACTICES AND ANTI-KICKBACK PROVISIONS

§ 17.6.1 The Contractor recognizes the need for markets to operate competitively and shall observe and shall comply with all applicable law, rules, and regulations prohibiting anti-competitive practices. The Contractor shall not engage, directly or indirectly, in collusion or other anti-competitive practices that reduces or eliminates competition or restrains trade. The Owner 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.

§ 17.6.2 The Contractor shall observe and comply with all applicable law, rules, and regulations prohibiting kickbacks and, without limiting the foregoing, Contractor shall not (i) provide or attempt to provide or offer to provide any kickback; (ii) solicit, accept, or attempt to accept any kickback; or (iii) include, directly or indirectly, the amount of any kickback in the contract price charged by Contractor or a Subcontractor of the Contractor to the Owner. 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 Owner may take any recourse available to it under the law for violations of this anti-kickback provision.

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

#### § 17.7 ETHICAL STANDARDS FOR OWNER'S EMPLOYEES AND FORMER EMPLOYEES

§ 17.7.1 The Owner 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 Owner 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 Owner or the District for any Work required, contemplated or performed under the Contract. The Contractor may not assign to any former Owner 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 Owner, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Owner 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.

#### § 17.8 GRATUITIES AND OFFICERS NOT TO BENEFIT PROVISIONS

§ 17.8.1 If it is found, after notice and hearing, by the Owner 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 Owner or the District with a view toward securing the

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

§ 17.8.2 In the event the Contract is terminated as provided in Section 17.8.1, the Owner 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 Owner) 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.

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

#### § 17.9 COVENANT AGAINST CONTINGENT FEES PROVISIONS

§ 17.9.1 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 Owner shall have the right to terminate the Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the Owner, percentage, brokerage or contingent fee.

#### § 17.10 NON-DISCRIMINATION IN EMPLOYMENT PROVISIONS

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

- .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.

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

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

§ 17.10.4 The Contractor agrees to send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Owner, 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.

§ 17.10.5 The Contractor agrees to permit access by the Owner 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.

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

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

#### § 17.11 CONFIDENTIAL INFORMATION

§ 17.11.1 In the course of the Contractor's performance of the Work, the Owner may make available to the Contractor information that the Owner designates as trade secrets or other confidential engineering, technical and business information. As long as, and to the extent that, such information remains confidential and available to others only with the consent of the Owner, or is not generally available to the public from other sources, the Contractor shall maintain such information in strict confidence and shall not disclose any such information to others (including its employees or Subcontractors), except to the extent necessary to enable the Contractor to carry out the Project. The Contractor shall similarly obligate any and all persons to whom such information is necessarily disclosed to maintain the information in strict confidence. The Contractor agrees that, in the event of any breach of this confidentiality obligation, the Owner shall be entitled to equitable relief, including injunctive relief or specific performance, in addition to all other rights or remedies otherwise available.

#### § 17.12 NO THIRD-PARTY BENEFICIARY RIGHTS.

§ 17.12.1 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.

#### § 17.13 MEDIA RELEASES

§ 17.13.1 Neither the Contractor, its employees, agents or Subcontractors or material suppliers shall make any press release or similar media release related to the Project unless such press release have been discussed with the Owner prior to its issuance.

#### § 17.14 CONSTRUCTION.

§ 17.14.1 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.

#### § 17.15 SURVIVAL

§ 17.15.1 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.

#### § 17.16 NO WAIVER

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

#### § 17.17 HEADINGS/CAPTIONS

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

#### § 17.18 ENTIRE AGREEMENT; MODIFICATION

§ 17.18.1 The Contract supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to the Contract shall be effective unless made in writing signed by both the Owner and the Contractor, unless otherwise expressly provided to the contrary in the Contract.

#### § 17.19 SEVERABILITY

§ 17.19.1 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.

This Agreement entered into as of the day and year first written above.

*(If required by law, insert cancellation period, disclosures or other warning statements above the signatures.)*



OWNER (Signature)



*(Printed name, title and address)*

CONTRACTOR (Signature)



*(Printed name, title and address)*

