### AWARD/CONTRACT

**2. Contract Number**
CW49533

**3. Effective Date**
See box 20C.

**5. Issued By:**
Office of Contracting and Procurement
441 4th Street, NW, Suite 700 South
Washington, DC 20001

**6. Administered by:** (If other than line 5)
District of Columbia
Department of Energy and Environment
1200 First Street NE 5th Floor
Washington, DC 20002

**7. Name and Address of Contractor (No. street, city, county, state and Zip Code)**
Biohabitats, Inc.
2081 Clipper Park Road
Baltimore, MD 21211

**8. Delivery**
FOB Origin

**9. Discount for prompt payment:**

**10. Submit invoices to the Address shown in Section G.2.1 of the contract**

**11. Ship to/Mark For**
Same as 7

**12. Payment will be made by**

**13. Remit Address:**
Same as 7

**15A. Item**
0001

**15B. Supplies/Services**
Design, construct and install LID stormwater retrofits in and around the Carter Barron Amphitheater and Legg Mason Tennis Stadium and provide one (1) year of post installation maintenance as outlined in Section C.5 below.

**15C. Qty.**
1

**15D. Unit**
Job

**15E. Unit Price**
SEE SCHEDULE

**15F. Amount**
$1,581,905.34

**Total Estimated Price**
$1,581,905.34

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</tbody>
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**CONTRACTOR'S NEGOTIATED AGREEMENT**
(Contractor is required to sign this document and return (2) copies to issuing office.) Contractor agrees to furnish and deliver all items, perform all the services set forth or otherwise identified above and on any continuation sheets, for the consideration stated herein. The rights and obligations of the parties to this Agreement shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, as amended, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)

**AWARD** (Contractor is not required to sign this document.) Your offer on Solicitation Number including the additions or changes made by which additions or changes are set forth in full above, is hereby accepted. Your offer on Solicitation Number including the additions or changes made by which additions or changes are set forth in full above, is hereby accepted as to the items listed in B.3 and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) this award/contract, and (b) your offer. No further contractual document is necessary.

**19A. Name and Title of Signer (Type or print)**
Adam J. Feuerstein, G00

**19B. Signature of person authorized to sign**

**19C. Date Signed**
2/23/2017

**20A. Name of Contracting Officer**
Marie Niestrath

**20B. District of Columbia**

**20C. Date Signed**
4/5/2017

[Signature of Contracting Officer]
SECTION B: CONTRACT TYPE, SUPPLIES OR SERVICES AND PRICE/COST

B.1 The District of Columbia ("District") Office of Contracting and Procurement ("OCP"), on behalf of the District Department of Environment ("DOEE"), is seeking a qualified contractor to provide all labor, materials, equipment and supervision necessary to design, construct and install low impact development ("LID") stormwater retrofits in and around the Carter Barron Amphitheater ("Amphitheater") and the Legg Mason Tennis Stadium ("Stadium") located in Rock Creek Park ("Project Area") and maintain the installed LID retrofits for one (1) year post installation ("Project"). The LID retrofits must be designed to treat and infiltrate stormwater from impervious areas, including the parking lots and tennis courts, and correct erosion at stormwater outfalls. The selected offeror will serve as the design-build contractor ("DB Contractor") for the Project.

B.2 The District contemplates award of a firm fixed-price design-build contract ("Contract") in accordance with 27 DCMR Chapter 24.

B.3 PRICE SCHEDULE – FIRM FIXED PRICE

<table>
<thead>
<tr>
<th>Contract Line Item No. (CLIN)</th>
<th>Item Description</th>
<th>Firm Fixed Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>0001</td>
<td>Design, construct and install LID stormwater retrofits in and around the Carter Barron Amphitheater and Legg Mason Tennis Stadium and provide one (1) year of post installation maintenance as outlined in Section C.5 below.</td>
<td>$1,581,905.34</td>
</tr>
</tbody>
</table>

B.3.1 Design-Build Price

B.3.1.1 Offeror’s firm fixed price shall be “all inclusive” and should include sufficient funding to cover all of the DB Contractor’s Costs necessary to timely perform all of the Work to complete the Project, including, but not limited to, profit, overhead, general and administrative Costs, supervision, labor, materials, Equipment, warranty, services of Subcontractors, taxes and such professional services as may be required to complete the design and obtain the necessary permits and Governmental Approvals.

B.3.2 Each offeror shall submit with its proposal an itemized breakdown of the firm fixed price in accordance with Section L.2.5 (B) below. Each offeror must submit a completed Attachment J.22, Price Breakdown Table.

B.3.3 Timing of payments is shown in Section L.2.5 (C) below. Each offeror must submit a completed Attachment J.21, DB Contractor Payment Schedule.

B.4 Reserved.
C.1 Scope

The DB Contractor shall be required to work with OCP, DOEE, the National Park Service ("NPS) and the U.S. Fish and Wildlife Service ("FWS") to advance the design and installation of LID stormwater retrofits in and around the Project Area no later than December 31, 2017 and provide one (1) year of post installation maintenance of installed retrofits. The requirements set forth herein contain the entire Project. Work shall be performed in accordance with the District of Columbia 2013 Stormwater Management Rule and Guidebook.

C.1.1 General Description of the Project Area

The thirty (30)-acre Project Area is located at the headwaters of the Blagden Run watershed, a sub watershed of Rock Creek. The Blagden Run watershed is 204 acres in size. The Project Area represents about 5% of that area and contains approximately 15% of the watershed's impervious area. It is approximately 69% impervious and surrounded by grass and woods.

There are four distinct gullies that have been created by stormwater from outfalls draining the Project Area. Stormwater also leaves the Project Area through overland flow and a storm sewer that drains directly to Blagden Run. The targeted eleven (11)-acre impervious area has no stormwater controls because it was developed prior to the promulgation of the District’s stormwater regulations.

C.1.2 Project Goals and Objectives

The goal of the Project is to fully retrofit the targeted eleven (11)-acre impervious area with green infrastructure to restore natural hydrology, prevent erosion, reduce stormwater pollution and protect natural habitat for the federally listed endangered Hay’s Spring amphipod. Because of the high visibility of the Project Area and the nature of the Project, the District desires creative designs that will be attractive yet cost effective. A further focus will be on designs that can be permitted without triggering the need for an Environmental Assessment under the National Environmental Policy Act.
The specific objectives of the Project are to:

A. Decrease water pollution and increase groundwater recharge by treating polluted stormwater runoff on the Project Area through proven LID practices;

B. Reduce downstream flooding hazards by capturing and infiltrating the first 1.2 inches of a rainfall event from the Project Area (i.e., 90% of all rain events will be captured in the Project Area); and

C. Protect habitat for the federally endangered Hay’s Spring amphipod by reducing erosion caused by stormwater runoff from eleven (11) acres of impervious parking and roadway.

C.2 Applicable Documents

See Attachment J.23.

C.3 Definitions

See Attachment J.24.

C.4. Background

DOEE is the leading authority on energy and environmental issues affecting the District. Its mission is to improve the quality of life for the residents and natural inhabitants of the District by protecting and restoring the environment; conserving natural resources; mitigating pollution; and educating the public on ways to secure a sustainable future. Using a combination of regulations, outreach, education, and incentives, DOEE administers programs and services to fulfill its mission. DOEE works collaboratively with other government agencies, residents, businesses, and institutions to promote environmentally responsible behavior that will lead to a more sustainable urban environment.

The Project Area was identified as a priority restoration area by FWS and NPS due to its impact on a portion of the three (3)-mile area where the known endemic population of *Stygobromus hayi* (“Hay’s Spring amphipods”) is found. During rain events, stormwater swiftly leaves the Project Area from five outfalls and is believed to compromise the endangered Hay’s Spring amphipod population by washing the amphipod from its habitat, eroding the headwater spring areas where the amphipod is endemic, and lowering the groundwater table, which reduces habitat available for the species. DOEE identified the Project Area as a priority LID retrofit area in its Rock Creek Watershed Implementation Plan due to its high potential for reducing stormwater pollution in the Blagden Run watershed.

The stormwater retrofits to be installed are funded through the DOEE Stormwater Enterprise Fund and a grant from the National Fish and Wildlife Foundation (“NFWF”). DOEE will coordinate and oversee this Project through a partnership with the NPS and FWS (“Project Partners”). DOEE will act as NPS’ agent during the design and construction of the Project. NPS will be the Owner of the completed Project.

C.5 Requirements/Project Delivery Method

The DB Contractor’s scope of Work will be divided into three phases: (i) Phase 1 – The Preconstruction Phase; (ii) Phase 2 – The Construction Phase; and (iii) Phase 3 – The Post Construction Maintenance Phase.

C.5.1 Phase 1 - Preconstruction Phase

The Preconstruction Phase will run from issuance of the Notice to Proceed for a period of no more than six (6) months. During this phase,
the DB Contractor will work in consultation with the DOEE Project Manager, NPS staff and OCP to: (i) complete Project planning, budgeting and scheduling; (ii) determine the current Project Area characteristics; (iii) advance the design of the Project in a manner consistent with the schedule and programmatic and other requirements; and (iv) obtain required permits.

Within five (5) business days of Contract award, the CO and CA will convene a Project Kickoff meeting between the selected DB Contractor’s team and representatives of DOEE, NPS and NFWF during which the parties will discuss key deliverables; Project timelines and other expectations (“Project Kickoff”).

C.5.1.1 Design Participation

During the Preconstruction Phase, the DB Contractor shall be required to complete the following:

a. Establish and maintain lines of communication with DOEE Project Manager;
b. Attend and participate in the Project Kickoff meeting;
c. Within three (3) weeks of Contract award, provide to the DOEE Project Manager a written, detailed Project plan and schedule;
d. Provide a Licensed Professional Engineer to serve as the Primary Designer for the Project who will be responsible for actively overseeing and managing the development of construction designs, including, but not limited to, regularly consulting with the landscape architect and actively monitoring and promptly responding to comments from agencies during the permit review process;
e. Include on its design team a licensed and certified Geotechnical Engineer with at least five (5) years of experience and who has overseen at least five (5) projects involving oversight of infiltration rate testing within the last five (5) years.
f. Meet with the DOEE Project Manager on a periodic and ongoing basis (but not less frequently than once a month) to discuss the status of the project and conduct design reviews, including one prior to the completion of permit documents;
g. Document all meetings through minutes and disperse meeting minutes to all Project Partners; and
h. Submit monthly written progress reports to the DOEE Project Manager.

C.5.1.2 Determination of Current Project Area Characteristics

C.5.2.2.1 The DB Contractor shall inspect and examine the Project Area and surrounding locations and undertake other appropriate activities sufficient to familiarize itself with surface and subsurface conditions affecting the Project including, but not limited to:

a. Review and record existing information for the Project Area including locations and depths of sanitary and storm sewers, utilities (if any), and surveys of land plats and ownership points;
b. Perform field reconnaissance of existing conditions;
c. Survey Project Area including the entire anticipated limit of disturbance;
d. Determine Project Area geology including slopes, soil types, and depth to water table;
e. Estimate stormwater flows into proposed Project Area LID; and
f. Prepare and submit to the DOEE Project Manager a report detailing its findings and recommendations.

As a result of such review, inspection, examination and other activities, the DB Contractor shall be familiar with all aspects of the physical requirements of the Work. Before beginning any Work on any particular aspect of the Project, the DB Contractor shall verify all governing dimensions and conditions in the Project Area and shall examine all adjoining work that may have an impact on such Work. The DB Contractor shall be responsible for ensuring that the design and construction documents accurately depict all governing and adjoining dimensions and conditions.
The DB Contractor’s team shall include a certified Land Surveyor with at least five (5) years of experience including involvement in at two (2) projects that required surveying roadways and/or parking areas.

### C.5.1.3 Creation of Project Designs

#### C.5.1.3.1. 30% Designs

C.5.1.3.1.1 Based on the information gathered during the determination of Project Area characteristics described in Section C.5.1.2 above the DB Contractor shall develop conceptual designs ("30% designs") including, but not limited to:

1. Base maps showing exiting conditions as determined through existing records and field reconnaissance;
2. Ideas for improving ecological function within the Project Area;
3. Proposals for LID in targeted high visibility areas within the Project Area;
4. Opportunities for habitat improvement at each location;
5. Proposed stormwater retrofit plan including preliminary Cost estimates and volume capture by stormwater practice; and
6. Initial drawings based upon design criteria established through discussions with DOEE.

C.5.1.3.1.2 The DB Contractor shall meet with DOEE and NPS to outline and discuss the 30% designs. The DOEE Project Manager will provide the DB Contractor with written comments on the 30% designs within three (3) weeks of the meeting.

C.5.1.3.1.3 Within three months of Project Kickoff, the DB Contractor shall provide DOEE with three (3) paper copies and one (1) foam board rendering of the 30% design drawings for use at public meetings.

C.5.1.3.1.4 The DB Contractor shall participate in an interactive meeting with the public to discuss and get public feedback on the 30% design board. The DB Contractor shall be responsible for documenting the public meeting through minutes and dispersing meeting minutes to all Project partners within two (2) weeks of the meeting.

#### C.5.1.3.2. 60% Designs

The DB Contractor shall perform percolation tests following the protocols listed in Appendix O of the 2013 DOEE Stormwater Management Guidebook at planned LID locations.

Within three (3) weeks after receiving written review comments from DOEE and NPS on the 30% design, the DB Contractor shall produce draft detailed designs ("60% Designs").

C.5.1.3.2.1. Where applicable, these designs shall meet the following criteria:

1. Be based on the results of percolation tests;
2. Maximize the amount of stormwater that can be diverted into LID (at a minimum, the 1.2-inch rain event should be retained on the Project Area);
3. Minimize the amount of maintenance required; and
4. LID in high visibility areas may have a higher emphasis on aesthetics and require more intensive maintenance.

C.5.1.3.2.2. The 60% Design Documents shall include, but not be limited to, the following:

1. Base map from surveys and background information;
2. Design Plans and specifications including an operations plan for construction;
3. Stormwater calculations, including a hydrologic and hydraulic report;
4. Specification detail sheets for street inlets or other detail sheets that show how stormwater is diverted into the LID systems;
5. Maintenance of traffic plan as needed;
6. Planting Plans including species, spacing, and size of plants;
7. Erosion and sediment control Plans including locations and requirements for DB Contractor storage/lay down areas, access roads, and limits of construction; and

The operations plan shall also address the timing of each phase of construction and specify the size and type of materials and machinery needed for the Work. The DB Contractor shall schedule a preliminary design review meeting (“PDRM”) with the District Department of Transportation (“DDOT”) at the 60% Design level if the designs include disturbance to the public right-of-way and a 60% Design review with DOEE, NPS, and OCP.

C.5.1.3.2.3 The DB Contractor shall provide DOEE with three paper (3) copies, one electronic copy and one (1) foam board rendering of the 60% design for the planned installation for use at meetings with the public.

C.5.1.3.2.4 The DB Contractor shall perform a Quality Assurance/Quality Control (QA/QC) review of the 60% design prior to distributing the designs to DOEE.

C.5.1.3.2.5 The DB Contractor shall meet with DOEE and NPS to outline and discuss the 60% designs. The DOEE Project Manager will provide the DB Contractor with written comments on the 60% designs within three (3) weeks of the meeting.

C.5.1.3.2.6 The DB Contractor shall participate in an interactive meeting with the public to educate, discuss, and get public feedback on the 60% design. The DB Contractor shall be responsible for documenting the public meeting through minutes and dispersing meeting minutes to all Project Partners within two (2) weeks of the meeting.

C.5.1.3.3 90% Design

C.5.1.3.3.1 Within three (3) weeks of receiving written comments on the 60% design from DOEE, NPS, OCP and DDOT (if applicable), the DB Contractor shall produce 90% Designs.

C.5.1.3.3.2 The 90% Designs shall include updates to all Design Documents included in the 60% designs and shall be used for Erosion and Sediment Control permitting.

C.5.1.3.3.3 The DB Contractor shall hold a 90% Design review meeting with DOEE, NPS, and OCP.

C.5.1.3.3.4 The DB Contractor shall provide three (3) paper copies, one (1) electronic copy and one (1) foam board rendering of the of the 90% design of the planned installation for use at meetings with the public.

C.5.1.3.3.5 The DB Contractor shall perform a QA/QC review of the 90% design prior to distributing the designs to DOEE.

C.5.1.3.3.6 The DB Contractor shall meet with DOEE and NPS to outline and discuss the 90% designs. The DOEE Project Manager will provide the DB Contractor with written comments on the 90% designs within three (3) weeks of the meeting.

C.5.1.3.3.7 The DB Contractor will participate in an interactive public meeting to discuss and get public
feedback on the 90% design. The DB Contractor shall be responsible for documenting the public meeting through minutes and dispersing meeting minutes to all Project Partners within two (2) weeks of the meeting.

C.5.1.3.4 100% Design

C.5.1.3.4.1 Within three (3) weeks of receiving written feedback on the 90% design from DOEE, NPS, OCP and DDOT (if applicable), the DB Contractor shall produce final 100% designs.

C.5.1.3.4.2 In creating the 100% designs, the DB Contractor shall:
   1. Address all 90% comments;
   2. Finalize all Plans, profiles, cross sections, and details;
   3. Finalize utility protection measures as needed;
   4. Finalize the detailed sequence of construction as needed;
   5. Finalize ESC Plan sheets, details and staging/access;
   6. Finalize landscaping Plans, details and special provisions;
   7. Finalize construction material specifications and special revisions;
   8. Finalize maintenance specifications for each Project Area;
   9. Finalize construction Cost estimate; and
   10. Perform a final QA/QC review of the 100% designs.

C.5.1.3.5 Obtaining Approval and Permits

C.5.1.3.5.1 The DB Contractor shall submit the approved 100% Design package to the District Department of Commerce and Regulatory Affairs (“DCRA”) for approval and all required permits.

C.5.1.3.5.2 The DB Contractor shall be responsible for the cost of all permits.

C.5.1.3.5.3 The DB Contractor shall provide to the DOEE Project Manager scanned copies of all Project permits. Permits received through DCRA may include, but are not limited to, the following:
   a) DOEE stormwater permits;
   b) DCRA building permits;
   c) DDOT Public Space permits; and
   d) Water utility review.

C.5.2 Phase 2 – Construction

C.5.2.1 During the Construction Phase, the DB Contractor shall be required to cause the construction and installation of the LID stormwater retrofits in a manner consistent with the approved drawings and specifications from the permitted Plans to achieve substantial completion of the Project by December 30, 2017. If porous asphalt, porous concrete or pervious pavers are proposed to be installed, the offeror shall have persons onsite during construction that have appropriate certifications as required in the DDOT Green Infrastructure Standards.

C.5.2.1.1 Project Management
In order to properly manage the Project, the DB Contractor shall provide a Project Executive for the entire duration of the Project. The Project Executive shall be required to undertake the tasks outlined in the sections below.

a. Participating and assisting in Project planning meetings;
b. Participating in a Project Kickoff meeting;
c. Holding a pre-construction meeting with Project Inspector and the District Erosion and Sediment Control (ESC) Inspector as noted in the ESC Plan;
d. Generating and distributing meeting minutes for all such meetings;
e. Conducting weekly progress meetings following a DB Contractor generated agenda to keep DOEE and NPS informed of construction progress;
f. Ensuring compliance with requirements established by the DOEE construction inspector;
g. Providing a weekly written progress report to the CA, with a copy to the CO, summarizing the prior week’s activities, to include number of hours worked and the overall status of the Project.
h. Managing the change order process with trade Subcontractors to verify validity, purpose and Cost;
i. Preparing payment requests;
j. Assembling and submitting close out documents as required in Section C.6 below.
k. Overseeing the Project through the post installation maintenance phase and warranty period; and
l. Participating in community meetings as needed.

C.5.2.1.2 On-Site Management

The DB Contractor shall designate a Field Superintendent/Construction Foreman who shall be on site daily to oversee the installation Work. The Field Superintendent/Construction Foreman’s duties shall include, but not be limited to, the following activities:

a. Maintaining full-time, on-site construction supervision and providing daily Inspections, Quality Control, monitoring, coordination of various trade, record drawings and daily Work logs;
b. Providing general safety and signage and seeing that each Subcontractor prepares and submits an adequate safety program and monitoring throughout the Project;
c. Ensuring that proper erosion and sediment control measures are installed and maintained;
d. Checking materials used to confirm that they meet the standards of the design specifications;
e. Certifying that structures installed are within the specifications included in the permitted designs; and
f. Confirming that the operations plan is followed and Work is contained within the limits of disturbance to minimize environmental impact to the Project Area.

C.5.2.1.3 Mobilization

The DB Contractor shall be required to undertake the following tasks:

C.5.2.1.3.1 Take control of the Project Area and install the necessary construction fences and other devices to properly secure the Project Area.

C.5.2.1.3.2 Be responsible for all required performance and payment bonds and insurance coverage.

C.5.2.1.4 Site Safety and Clean Up

The DB shall:

a. Provide a safe and efficient Project Area with controlled access.
b. Be responsible for Project Area security.
c. Remove construction debris off the Project Area in accordance with all applicable rules and regulations of those jurisdictions having authority.

d. Be responsible for the Cost of temporary power used during the construction of the Project as needed, including, but not limited to, the Cost of installing such temporary wiring as may be required to bring power to the Project Area.

e. Be responsible for all temporary construction necessary on the Project Area.

C.5.2.1.5 As-Built Certification

The DB Contractor shall be required to undertake the following tasks:

C.5.2.1.5.1 Obtain the As-Built Certification from a Professional Engineer.

C.5.2.1.5.2 Submit completed as-built Plans to DOEE following the As-Built Stormwater Management Plan Guidelines (included in 2013 Stormwater Management Rule and Guidebook) (Attachment J.20).

C.5.3 Phase 3 – Post Construction Maintenance Phase

During the Post Construction Maintenance Phase the DB Contractor shall be responsible for the following:

C.5.3.1 Installation of Educational Signs

C.5.3.1.1 The DB Contractor shall work with DOEE and NPS to develop language and graphics for three (3) educational signs about the constructed practices.

C.5.3.1.2 The DB Contractor shall follow the NPS UniGuide Design Standards to develop the final sign designs.

C.5.3.1.3 The DB Contractor shall work with DOEE and NPS to determine locations for the educational signs.

C.5.3.1.4 Once the language and design has been accepted by DOEE and NPS, the DB Contractor shall print and install the educational signage.

C.5.3.2 Maintenance of Vegetation

The DB Contractor shall ensure the establishment of vegetation planted as a part of the construction by:

C.5.3.2.1 Watering vegetation every other day for the first two weeks after planting;

C.5.3.2.2 Watering vegetation once a week for the two months following the first two week period;

C.5.3.2.3 Watering vegetation as needed after the first two month during first growing season (April-October), depending on rainfall.

C.5.3.2.4 The DB Contractor shall replant affected vegetation if more than 15% of the plant material dies.

C.5.3.2.5 Maintenance of LID Installations

The DB Contractor shall maintain the completed Work for a period of one (1) year after installation. Regular maintenance should follow the maintenance schedules for the appropriate LID per the District of Columbia 2013 Stormwater Management Guidebook (Item 2).

C.6 Close Out

The DB Contractor shall be required to prepare and submit at close-out the following documentation:
1. A complete set of Project files, including QC/QA reports, daily reports, test reports etc.
2. A complete set of product manuals (O&M), training videos, warranties, etc.
3. As built record drawings stamped by the engineer of record;
4. All applicable inspection certificates/permits; and
5. A summary of actual Costs.
SECTION D: RESERVED
SECTION E: INSPECTION AND ACCEPTANCE

SECTION F: PERIOD OF PERFORMANCE AND DELIVERABLES

F.1 TERM OF CONTRACT

The term of the Contract shall be for a period of three (3) years from date of award specified on the cover page of the Contract.

F.2 Reserved

F.3 Deliverables

The DB Contractor shall perform the activities required to successful complete the District’s requirements and shall submit each deliverable to the Contract Administrator ("CA") identified in Section G.11.2 in accordance with the following:

<table>
<thead>
<tr>
<th>Deliverable</th>
<th>Quantity</th>
<th>Method of Delivery</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Kickoff meeting minutes (See Section C.5.1.1)</td>
<td>1</td>
<td>Pdf/electronic</td>
<td>Two weeks after Project Kickoff meeting</td>
</tr>
<tr>
<td>Detailed Project Plan (See Section C.5.1.1)</td>
<td>1</td>
<td>Pdf/electronic</td>
<td>Three weeks after Contract award</td>
</tr>
<tr>
<td>30% Design Drawings (See Section C.5.1.3.1)</td>
<td>3</td>
<td>Three paper copies and one pdf/electronic copy</td>
<td>Three months after Project Kickoff</td>
</tr>
<tr>
<td>30% Design Boards (See Section C.5.1.3.1)</td>
<td>1</td>
<td>One foam board rendering and one pdf/electronic copy</td>
<td>Three months after Project Kick off</td>
</tr>
<tr>
<td>30% Design Meeting (See Section C.5.1.3.1)</td>
<td>1</td>
<td>On-site</td>
<td>Three months after Project Kickoff</td>
</tr>
<tr>
<td>60% Designs (See Section C.5.1.3.2)</td>
<td>3</td>
<td>Three paper copies and one pdf/electronic copy</td>
<td>Three weeks after written 30% design review comments returned to DB Contractor</td>
</tr>
<tr>
<td>60% Design Boards (See Section C.5.1.3.2)</td>
<td>1</td>
<td>One foam board rendering and one pdf/electronic copy</td>
<td>Three weeks after 30% design review comments returned to DB Contractor</td>
</tr>
<tr>
<td>60% Design Meeting (See Section C.5.1.3.2)</td>
<td>1</td>
<td>On-site</td>
<td>Three weeks after 30% design review comments returned to DB Contractor</td>
</tr>
<tr>
<td>90% Designs (See Section C.5.1.3.3)</td>
<td>3</td>
<td>Three paper copies and one pdf/electronic copy</td>
<td>Three weeks after 60% design review comments returned to DB Contractor</td>
</tr>
<tr>
<td>90% Design Boards (See Section C.5.1.3.3)</td>
<td>1</td>
<td>One foam board rendering and one pdf/electronic copy</td>
<td>Three weeks after 60% design review comments returned to DB Contractor</td>
</tr>
<tr>
<td>90% Design Meeting minutes (See Section C.5.1.3.3)</td>
<td>1</td>
<td>On-site</td>
<td>Three weeks after 60% design review comments returned to DB Contractor</td>
</tr>
<tr>
<td>100% Designs (See Section C.5.1.3.4)</td>
<td>5</td>
<td>Four paper copies, one mylar, and one pdf/electronic copy</td>
<td>Three weeks after 90% design review comments returned to DB Contractor</td>
</tr>
<tr>
<td>Description (See Section)</td>
<td>Quantity</td>
<td>Format</td>
<td>Due Date</td>
</tr>
<tr>
<td>---------------------------</td>
<td>----------</td>
<td>--------</td>
<td>----------</td>
</tr>
<tr>
<td>Project permits (See Section C.5.1.3.5)</td>
<td>1</td>
<td>Scanned electronic</td>
<td>One week after 100% designs accepted</td>
</tr>
<tr>
<td>Pre-construction meeting (See Section C.5.2.1.1)</td>
<td>1</td>
<td>On-site</td>
<td>Two weeks after 100% designs accepted</td>
</tr>
<tr>
<td>Pre-construction meeting minutes (C.5.2.1.1)</td>
<td>1</td>
<td>Pdf/electronic</td>
<td>Two weeks after pre-construction meeting</td>
</tr>
<tr>
<td>Weekly progress report (See Section C.5.2.1.1)</td>
<td>1</td>
<td>Pdf/electronic</td>
<td>On a weekly basis once construction starts</td>
</tr>
<tr>
<td>As-built Plans (See Section C.6)</td>
<td></td>
<td>One mylar copy and one pdf/electronic copy</td>
<td>Three weeks after construction completion</td>
</tr>
<tr>
<td>As-built certification (See Section C.6)</td>
<td></td>
<td>One paper copy and one pdf/electronic copy</td>
<td>Three weeks after construction completion</td>
</tr>
<tr>
<td>Installed educational signs (See Section C.5.3.1)</td>
<td>3</td>
<td>Installed on-site utilizing NPS sign requirements</td>
<td>Two weeks after completed construction</td>
</tr>
</tbody>
</table>

F.3.1 The DB Contractor shall submit to the District, as a deliverable, the report described in Section H.5 that is required by the 51% District Residents New Hires Requirements and First Source Employment Agreement. If the DB Contractor does not submit the report as part of the deliverables, final payment to the DB Contractor shall not be paid pursuant to Section G.6.
SECTION G: CONTRACT ADMINISTRATION

G.1 Payments to DB Contractor

The District will pay the Contract price in accordance with District and federal regulations.

The District will make partial payments as outlined in the agreed upon Payment Schedule or at more frequent intervals as determined by the CO, on estimates approved by the CO. The DB Contractor shall furnish a breakdown of the total firm fixed price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining partial payments. In the preparation of estimates the CO, at his/her discretion, may authorize material delivered to the Project Area and preparatory Work done to be taken into consideration. Material delivered to the DB Contractor at locations other than the Project Area may also be taken into consideration:

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

B. If the DB Contractor furnishes satisfactory evidence that he/she 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

C. If the DB Contractor furnishes to the CO an itemized list.

All material and Work covered by partial payments made shall thereupon become the sole property of the District, but this provision shall not be construed as relieving the DB 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 District to require the fulfillment of all of the term of the Contract.

Upon completion and acceptance of all Work, the amount due the DB Contractor under the Contract shall be paid upon presentation of a properly executed invoice and after release, if required, of all claims against the District arising by virtue of the Contract, other than claims instated amounts as may be specifically excepted by the DB Contractor from the operation of the release.

All payments of the District to the DB Contractor are subject to the provisions of D.C. Law 9-81 (District of Columbia Quick Payment Act of 1984 Amendment Act of 1992).

G.2 Retainage and Deductions

G.2.1 Retainage

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

G.2.2 Deductions
The District may deduct from any amounts otherwise owing to the DB Contractor, including each partial and final payment, the following:

a) Any accrued losses, liability, or other damages for which the DB Contractor is responsible, including, without limitation, amounts based on reasonable evidence that the Work will not be completed within the contract time and that the unpaid balance would not be adequate to cover actual damages for the anticipated delay.

b) The anticipated Cost of remedying any nonconforming Work or otherwise remedying any breach or default of the Contract by the DB Contractor.

c) The amount of any outstanding claim relating to the Work.

d) Amounts of third-party claims filed, or of probable claims for which reasonable evidence indicates probable filing unless security acceptable to the District is provided by the DB Contractor.

e) The amount for Work that the DB is obligated to perform under the Contract, which the DB Contractor has failed to perform.

f) Damage to the District or a separate contractor.

g) Failure of the DB Contractor to make payments properly to Subcontractor or for labor, materials or Equipment.

h) Any other sums which the District is entitled to recover from the DB Contractor under the terms of the Contract.

The District’s failure to deduct from partial payments any amount, which the District is entitled to recover from the DB Contractor under the Contract, shall not constitute a waiver of the District’s right to such amounts.

G.3 Limitations on Payment

G.3.1 The District may withhold payment in whole or in part if the difference between the firm fixed price and the sum of the amount requested in an invoice and amounts paid pursuant to prior invoices is not sufficient, in the District’s reasonable judgment to: (a) pay for completion of the Work; (b) pay any unpaid liens properly and timely filed under applicable laws; or (c) satisfy all obligations of the DB Contractor, present or future, for Work provided or to be provided under this Contract.

G.3.2 The District does not have the obligation to pay the DB Contractor for any nonconforming Work.

G.3.3 Stockpiled Materials

Payment for stockpiled materials shall be included in partial payments provided the following conditions are met:

1. The stockpile site is under the control of the DB Contractor and will remain so until the material is incorporated in the Work. The stockpile materials must be specifically authorized by and acquired for the Project. The stockpile site must be bonded and acceptable to the District and must be kept secure at all times by the DB Contractor. Proof of such bond and control shall be submitted to the District.

2. Appropriate test reports, if required, shall be submitted by the District and show that the materials meet the requirements of the Contract. The District has the authority to inspect, test and approve the stockpiled materials.
3. If the stockpile materials are stored in a site outside of the District, the DB Contractor shall be responsible for payment of all Costs for the District to inspect the stockpile site and the materials stored at the site.

4. DB Contractor requests for payment shall be in writing and shall include the written consent of the Surety as well as insurance in the District's name that covers loss, damage or destruction of the stockpiled materials.

5. Copies of suppliers' invoices shall accompany all requests for payment. Copies of paid invoices for materials shall be submitted to the District within one (1) month after the DB Contractor has received payment for the materials. Failure to provide timely submission of paid invoices shall be cause to deduct payment for the materials from subsequent partial payment.

G.4 Invoice Payment

G.4.1 The District will make payments to the DB Contractor, upon the submission of proper invoices at the prices stipulated in the Contract for deliverables and services performed and accepted, less any discounts, allowances or adjustments provided for in this Contract.

G.4.2 The District will pay the DB Contractor on the completion and acceptance of each deliverable in accordance with the agreed upon deliverable and payment schedules and presentation of a properly executed invoice.

G.5 Invoice Submittal

G.5.1 The DB Contractor shall prepare and submit to the CA specified in Section G.11.2 below proper invoices.

G.5.2 To constitute a proper invoice, the DB Contractor shall submit the following information on the invoice:

G.5.2.1 DB Contractor's name, federal tax ID and invoice date (date invoices as of the date of mailing or transmittal);

G.5.2.2 Contract number and invoice number;

G.5.2.3 Description, price, quantity and the date(s) that the services were delivered or performed;

G.5.2.4 Other supporting documentation or information, as required by the Contracting Officer;

G.5.2.5 Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent;

G.5.2.6 Name, title, phone number of Person preparing the invoice;

G.5.2.7 Name, title, phone number and mailing address of Person (if different from the Person identified in Section G.5.2.6 above) to be notified in the event of a defective invoice; and

G.5.2.8 Authorized signature.

G.6 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT

G.6.1 For contracts subject to the 51% District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment must be accompanied by the report or a waiver of compliance discussed in section H.5.5.
G.6.2 No final payment shall be made to the DB Contractor until the agency CFO has received the CO’s final
determination or approval of waiver of the DB Contractor’s compliance with 51% District Residents New Hires
Requirements and First Source Employment Agreement requirements.

G.7. ASSIGNMENT OF CONTRACT PAYMENTS

G.7.1 In accordance with 27 DCMR 3250, the DB Contractor may assign to a bank, trust company, or other financing
institution funds due or to become due as a result of the performance of this contract.

G.7.2 Any assignment shall cover all unpaid amounts payable under this contract, and shall not be made to more than one
party.

G.7.3 Notwithstanding an assignment of contract payments, the DB Contractor, not the assignee, is required to prepare
invoices. Where such an assignment has been made, the original copy of the invoice must refer to the assignment
and must show that payment of the invoice is to be made directly to the assignee as follows:

“Pursuant to the instrument of assignment dated ___________, make payment of this invoice to (name and address
of assignee).”

G.8 THE QUICK PAYMENT CLAUSE

G.8.1 Interest Penalties to Contractors

G.8.1.1 The District will pay interest penalties on amounts due to the DB Contractor under the Quick Payment Act, D.C.
Official Code §2-221-02 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.

G.8.1.2 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.

G.8.2 Payments to Subcontractors

G.8.2.1 The DB Contractor must take one of the following actions within seven (7) days of receipt of any
amount paid to the DB 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 DB Contractor’s intention to withhold all or part of the
Subcontractor’s payment and state the reason for the nonpayment.

G.8.2.2 The DB 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.

G.8.2.3 Any amount of an interest penalty which remains unpaid by the DB 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.

G.8.2.4 A Dispute between the DB 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.

G.8.3 Subcontract requirements

G.8.3.1 The Contractor shall include in each subcontract under this Contract a provision requiring the Subcontractor to include in its contract with any lower-tier Subcontractor or supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code §2-221.02(d).

G.9 CONTRACTING OFFICER (CO)

Contracts will be entered into and signed on behalf of the District only by contracting officers. The contact information for the Contracting Officer is:

Marie Niestrath  
Office of Contracting and Procurement  
With Assignment to District Department of Energy & Environment  
1200 First Street NE, 5th Floor  
Washington, DC 20002  
Telephone: 202-724-4051  
E-mail address: marie.niestrath@dc.gov

G.10 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER

G.10.1 The CO is the only Person authorized to approve changes in any of the requirements of this Contract.

G.10.2 The DB Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the CO.

G.10.3 In the event the DB Contractor effects any change at the instruction or request of any Person other than the CO, the change will be considered to have been made without authority and no adjustment will be made in the Contract Price to cover any Cost increase incurred as a result thereof.

G.11 CONTRACT ADMINISTRATOR (CA)

G.11.1 The CA is responsible for general administration of the Contract and advising the CO as to the DB Contractor's compliance or noncompliance with the Contract. The CA has the responsibility of ensuring the Work conforms to the requirements of the Contract and such other responsibilities and authorities as may be specified in the Contract. These include:
G.11.1.1 Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the Contract;

G.11.1.2 Coordinating Project Area entry for DB Contractor personnel, if applicable;

G.11.1.3 Reviewing invoices for completed Work and recommending approval by the CO if the DB Contractor’s Costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure;

G.11.1.4 Reviewing and approving invoices for deliverables to ensure receipt of services. This includes the timely processing of invoices and vouchers in accordance with the District’s payment provisions; and

G.11.1.5 Maintaining a file that includes all Contract correspondence, modifications, records of Inspections (Project Area, data, Equipment) and invoice or vouchers.

G.11.2 The address and telephone number of the CA is:

Steve Saari
Planning and Restoration Branch Chief
District Department of Environment
Watershed Protection Division
1200 First Street NE, 6th Floor
Washington DC 20002
Telephone: 202-535-2961
Email: steve.saari@dc.gov

G.11.3 The CA SHALL NOT have the authority to:

1. Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments or modifications;
2. Grant deviations from or waive any of the terms and conditions of the Contract;
3. Increase the dollar limit of the Contract or authorize Work beyond the dollar limit of the contract;
4. Authorize the expenditure of funds by the DB Contractor;
5. Change the period of performance; or
6. Authorize the use of District property, except as specified under the Contract.

G.11.4 The DB Contractor will be fully responsible for any changes not authorized in advance, in writing, by the CO; may be denied compensation or other relief for any additional Work performed that is not so authorized; and may also be required, at no additional Cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

G.12 Acceptance of Project

G.12.1 Substantial Completion

As a prerequisite to substantial Completion, the DB Contractor shall provide written notice to the District when all of the following have occurred with respect to the Project:

a. The District and the DB Contractor have agreed upon a Punch List for substantial Completion.
b. The DB Contractor has completed all Work except for Punch List items, final cleanup, and other items only included in the requirements for Final Acceptance.

c. The DB Contractor has ensured that the Work in connection with Completion has been performed in accordance with the requirements of the Contract Documents.

d. The DB Contractor has ensured that the Project may be operated safely without injury to any Person or damage to the Project or any other property on or off the Project Area.

e. The DB Contractor has ensured that no further Work beyond the Punch List is required.

f. The DB Contractor has received all applicable Governmental Approvals required for the Project.

g. The DB Contractor has furnished to the District certifications from the DB Contractor’s Primary Designer, in form and substance satisfactory to the District, certifying that the Design Documents meet the requirements of the Contract Documents.

h. The DB Contractor has furnished to the District certifications from the DB Contractor’s Project Executive, in form and substance satisfactory to the District, certifying that the construction meets the requirements of the Contract Documents.

i. The DB Contractor has obtained all applicable third-party Approvals relating to the Work, and all third parties have completed all Work that involves obligations by the DB Contractor.

G.12.2. Notice of Substantial Completion

Upon receipt of the DB Contractor’s notice under Section G.12.1, the District, will verify that the following have occurred:

a. All Nonconforming Work identified as prerequisites to Completion has been corrected.

b. All Punch List items identified as prerequisites to Completion have been completed.

c. All other requirements identified as prerequisites to Completion have been met.
   If any Work does not meet the requirements of the Contract Documents or Work has not been completed, the District will promptly advise the DB Contractor as to Nonconforming Work or incomplete Work necessary to be corrected as a condition to Substantial Completion. Upon correction of the Nonconforming Work excluding Punch List items identified for Final Acceptance, the DB Contractor shall provide written notification to the District; and the District will verify that all prerequisites to Substantial Completion have been met and will issue a Notice of Substantial Completion.

G.12.3 Affidavit of Final Completion

The DB Contractor shall provide to the District an executed sworn Affidavit of Final Completion in accordance with this Section G.12.3 when all of the following have occurred:

1. The District has received all Construction Documents, Design Documents, As-Built Documents, surveys, test data, and other deliverables required under the Contract Documents for the Project, whichever is applicable.
2. All special tools, Equipment, and supplies purchased by and/or used by the DB Contractor, as provided in the Contract Documents, have been delivered to the District free and clear of Liens.

3. All of the DB Contractor’s and Subcontractors’ personnel, supplies, Equipment, waste materials, rubbish, and temporary facilities have been removed from the Project Area. The DB Contractor has restored and repaired all damage or injury arising from such removal to the satisfaction of the District, and the Project Area is in good working order and condition.

4. The DB Contractor has furnished to the District certifications from the DB Contractor’s Quality Control Manager, in form and substance satisfactory to the District, certifying that there are no outstanding Nonconforming Work or Punch List items.

5. All of the DB Contractor’s other obligations under the Contract Documents and other than obligations, which by their nature are required to be performed after Final Acceptance as determined by the District, have been satisfied in full or waived in writing by the District.

The Affidavit of Final Completion shall include the following statement:

To the best of the DB Contractor’s knowledge and belief, the Work under the Contract has been completed in strict accordance with the Contract Documents, no lawful debts for labor or materials are outstanding and no federal excise tax has been included in the firm fixed price; all requests for funds for undisputed Work under the Contract, including changes in the Work, and all billings of whatsoever nature are accurate, complete and final and no additional compensation over and above the final payment will be requested or is due under the Contract or under any adjustment issued for said undisputed Work; there are no outstanding Claims, Liens or stop notices relating to the Project, including Claims by Utility Companies; there is no existing default by the DB Contractor under any Utility Agreement, and no event has occurred which, with the passing of time or giving of notice or both, would lead to a Claim relating to the Work or event of default under any Utility Agreement; and upon receipt of final payment, the DB Contractor and Subcontractors acknowledge that the District and any and all employees of the District and their authorized representatives will thereby be released, discharged and acquitted from any and all Claims or liability for additional sums on account of undisputed Work performed under the Contract.

If the DB Contractor is unable to provide the affidavit in the above form, the affidavit shall certify that all such outstanding matters are set forth in an attached list that shall describe the outstanding matters in such detail as may be requested by the District. The affidavit shall include a representation of the DB Contractor that it is diligently and in good faith contesting all such matters by appropriate legal proceedings and shall provide a status report regarding the same, including an estimate of the maximum payable with respect to each such matter.

G.12.4 Notice of Final Acceptance

Upon the District’s receipt of the Affidavit of Final Completion, the District will verify that the following have occurred:

1. All Nonconforming Work has been corrected other than obligations that by their nature are required to be performed after Final Acceptance as determined by the District.

2. All Punch List items have been completed other than obligations which by their nature are required to be performed after Final Acceptance as determined by the District.
3. All other requirements identified as prerequisites to Final Acceptance have been met.

If any Work does not meet the requirements of the Contract Documents or Work has not been completed, the District will promptly advise the DB Contractor as to Nonconforming Work or incomplete Work necessary to be corrected as a condition to Final Acceptance. Upon correction of the Nonconforming Work, including incomplete Work, the DB Contractor shall provide written notification to the District and the District will verify that all prerequisites to Final Acceptance have been met and will issue a Notice of Final Acceptance.

G.12.5 Overpayments; No Relief from Continuing Obligations

Final Acceptance will not prevent the District from correcting any measurement, estimate or certificate made before or after completion of the Work, or from recovering from the DB Contractor, the Surety(ies) or both, the amount of any overpayment sustained due to failure of the DB Contractor to fulfill the obligations under the Contract. A waiver on the part of the District of any breach by the DB Contractor shall not be held to be a waiver of any other or subsequent breach. Final Acceptance shall not relieve the DB Contractor from any of its continuing obligations hereunder, or constitute any assumption of liability by the District.

G.12.6 Assignment of Causes of Action

The DB Contractor hereby offers and agrees to assign to the District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC Section15), arising from purchases of goods, services, or materials pursuant to the Contract or any Subcontract. The assignment shall be made and become effective at the time the District tenders final payment to the DB Contractor, without further acknowledgment by the parties.

G.13 Final Payment

Final payment shall be made in accordance with this Section G.13.

G.13.1 Application for Final Payment

On or about the date of delivery of its Affidavit of Final Completion, the DB Contractor shall prepare and submit a proposed Application for Final Payment to the District showing the proposed total amount due the DB Contractor. In addition to meeting all other requirements for invoices hereunder, the Application for Final Payment shall include the following: (a) an affidavit, on the form prescribed by the District, to the effect that all payments have been made and all claims have been released for all material, labor and other items covered by the Contract bond; or (b) a list of outstanding and pending and all existing or threatened claims, liens, and stop notices by Subcontractors, laborers, utility companies or other third parties relating to the Project, including any notices filed or to be filed with the Affidavit of Final Completion, stating the amount at issue associated with each such notice; (c) the written consent of the surety to such payment; and (d) such other documentation as the District may reasonably require. Prior application and payments shall be subject to correction in the proposed Application for Final Payment. If a Subcontractor refuses to furnish a release or waiver required by the District, the DB Contractor may furnish a bond satisfactory to the District to indemnify the District against such lien. If such lien remains unsatisfied after payments are made and is not bonded over as provided in the previous sentence, the DB Contractor shall promptly pay to the District all money that the District may be compelled to pay in discharging such lien, including all Costs and attorney’s fees.

The District will review the DB Contractor’s proposed Application for Final Payment. If changes or corrections are required, the CO will request that the DB Contract correct and resubmit the Application for Final Payment. If no changes or corrections are required, the District will approve the Application for Final Payment.
G.13.2 Final Payment

As a condition to its obligation to make payment to the DB Contractor based on the Application for Final Payment, the District shall have received an Affidavit Regarding Settlement of Claims from the DB Contractor, releasing and waiving any claims against the indemnified parties and those matters identified in any PCO notices listed as outstanding in the Application for Final Payment, and otherwise satisfactory in form and content to the District.

The Settlement of Claims Affidavit shall include, at a minimum, a certification by the DB Contractor that:

1. It has resolved any claims made by Subcontractors, utility companies and others against the DB Contractor and the Project.

2. It has no reason to believe that any Person has a valid claim, against the DB Contractor of the Project, which has not been communicated in writing by the DB Contractor to the District as of the date of the certificate.

3. All guarantees and warranties are in full force and effect.

The Settlement of Claims Affidavit shall survive Final Payment. The payment amount will be reduced by any amounts deductible under Sections G.2.2.

All prior partial estimates and payments shall be subject to correction in the final payment. The DB Contractor’s acceptance of final payment shall constitute a waiver of affirmative claims by the DB Contractor except those previously made in writing and identified as unsettled at the time of final payment.
SECTION H: SPECIAL CONTRACT REQUIREMENTS

H.1 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES

H.1.1 For all new employment resulting from this contract or subcontracts hereto, as defined in Mayor’s Order 83-265 and implementing instructions, the DB Contractor shall use its best efforts to comply with the following basic goal and objectives for utilization of bona fide residents of the District of Columbia in each project’s labor force:

H.1.1.1 At least fifty-one percent (51%) of apprentices and trainees employed shall be residents of the District of Columbia registered in programs approved by the District of Columbia Apprenticeship Council.

H.1.2 The DB Contractor shall negotiate an Employment Agreement with the Department of Employment Services ("DOES") for jobs created as a result of this contract. The DOES shall be the DB Contractor’s first source of referral for qualified apprentices and trainees in the implementation of employment goals contained in this clause.

H.2 DEPARTMENT OF LABOR WAGE DETERMINATIONS

The DB Contractor shall be bound by the Wage Determination Number 2015-4281, Revision Number 3, dated April 8, 2016. issued by the U.S. Department of Labor in accordance with the Service Contract Act, 41 U.S.C. §351 et seq., and incorporated herein as Section J.4. If an option is exercised, the DB Contractor shall be bound by the applicable wage rates at the time of the option. If the option is exercised and the CO obtains a revised wage determination, the revised wage determination is applicable for the option periods and the DB Contractor may be entitled to an equitable adjustment.

H.3 PREGNANT WORKERS FAIRNESS

H.3.1 The DB Contractor shall comply with the Protecting Pregnant Workers Fairness Act of 2016, D.C. Official Code § 32-1231.01 et seq. (PPWF Act).

H.3.2 The DB Contractor shall not:

(a) Refuse to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding for an employee, unless the DB Contractor can demonstrate that the accommodation would impose an undue hardship;

(b) Take an adverse action against an employee who requests or uses a reasonable accommodation in regard to the employee’s conditions or privileges of employment, including failing to reinstate the employee when the need for reasonable accommodations ceases to the employee’s original job or to an equivalent position with equivalent:

(1) Pay;

(2) Accumulated seniority and retirement;

(3) Benefits; and

(4) Other applicable service credits;

(c) Deny employment opportunities to an employee, or a job applicant, if the denial is based on the need of the employer to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related
medical conditions, or breastfeeding;

(d) Require an employee affected by pregnancy, childbirth, related medical conditions, or breastfeeding to accept an accommodation that the employee chooses not to accept if the employee does not have a known limitation related to pregnancy, childbirth, related medical conditions, or breastfeeding or the accommodation is not necessary for the employee to perform her duties;

(e) Require an employee to take leave if a reasonable accommodation can be provided; or

(f) Take adverse action against an employee who has been absent from work as a result of a pregnancy-related condition, including a pre-birth complication.

H.3.3 The DB Contractor shall post and maintain in a conspicuous place a notice of rights in both English and Spanish and provide written notice of an employee’s right to a needed reasonable accommodation related to pregnancy, childbirth, related medical conditions, or breastfeeding pursuant to this chapter to:

(a) New employees at the commencement of employment;

(b) Existing employees; and

(c) An employee who notifies the employer of her pregnancy, or other condition covered by this chapter, within 10 days of the notification.

H.3.4 The DB Contractor shall provide an accurate written translation of the notice of rights to any non-English or non-Spanish speaking employee.

H.3.5 Violations of the PPWF Act shall be subject to civil penalties as described in the Act.

H.4 UNEMPLOYED ANTI-DISCRIMINATION

H.4.1 The DB Contractor shall comply with the Unemployed Anti-Discrimination Act of 2012, D.C. Official Code § 32-1361 et seq.

H.4.2 The DB Contractor shall not:

(a) Fail or refuse to consider for employment, or fail or refuse to hire, an individual as an employee because of the individual's status as unemployed; or

(b) Publish, in print, on the Internet, or in any other medium, an advertisement or announcement for any vacancy in a job for employment that includes:

(1) Any provision stating or indicating that an individual's status as unemployed disqualifies the individual for the job; or

(2) Any provision stating or indicating that an employment agency will not consider or hire an individual for employment based on that individual's status as unemployed.

H.4.3 Violations of the Unemployed Anti-Discrimination Act shall be subject to civil penalties as described in the Act.

H.5 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT
H.5.1 For contracts for services in the amount of $300,000 or more, the DB Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code § 2-219.01 et seq. (First Source Act).

H.5.2 The DB Contractor shall enter into and maintain during the term of the contract, a First Source Employment Agreement (Employment Agreement) with the District of Columbia Department of Employment Service’s (DOES), in which the DB Contractor shall agree that:

(a) The first source for finding employees to fill all jobs created in order to perform the contract shall be the First Source Register; and

(b) The first source for finding employees to fill any vacancy occurring in all jobs covered by the Employment Agreement shall be the First Source Register.

H.5.3 The DB Contractor shall not begin performance of the contract until its Employment Agreement has been accepted by DOES. Once approved, the Employment Agreement shall not be amended except with the approval of DOES.

H.5.4 The DB Contractor agrees that at least 51% of the new employees hired to perform the contract shall be District residents.

H.5.5 The DB Contractor’s hiring and reporting requirements under the First Source Act and any rules promulgated thereunder shall continue for the term of the contract.

H.5.6 The CO may impose penalties, including monetary fines of 5% of the total amount of the direct and indirect labor Costs of the contract, for a willful breach of the Employment Agreement, failure to submit the required hiring compliance reports, or deliberate submission of falsified data.

H.5.7 If the DB Contractor does not receive a good faith waiver, the CO may also impose an additional penalty equal to 1/8 of 1% of the total amount of the direct and indirect labor Costs of the contract for each percentage by which the DB Contractor fails to meet its hiring requirements.

H.5.8 Any contractor which violates, more than once within a 10-year timeframe, the hiring or reporting requirements of the First Source Act shall be referred for debarment for not more than five (5) years.

H.5.9 The DB Contractor may appeal any decision of the CO pursuant to this clause to the D.C. Contract Appeals Board as provided in Section I.11 below.

H.5.10 The provisions of the First Source Act do not apply to nonprofit organizations which employ 50 employees or less.

H.6 Reserved

H.7 Reserved

H.8 Reserved

H.9 DISADVANTAGED BUSINESS ENTERPRISES

H.9.1 DBE Policy

This Project is funded in part by a grant DOEE received from the NFWF. One of NFWF’s funding sources for the grant award is the U.S. Environmental Protection Agency. As a condition of the grant agreement between NFWF and DOEE, DOEE is subject to the EPA’s Participation by Disadvantaged Business Enterprises (DBEs) in
Procurement” rule located on the Internet at http://www.epa.gov.osbp/dbe_forms.htm. The EPA’s DBE requirements apply to procurements under EPA financial assistance agreements performed entirely within the United States, whether by a recipient or its prime contractor, for construction, equipment, services and supplies.

The objectives of the EPA’s Participation by DBEs in Procurement rule are:

(a) To ensure nondiscrimination in the award of contracts under EPA financial assistance agreements. To that end, implementation of this rule with respect to grantees, sub-grantees, loan recipients, prime contractors, or Subcontractors in particular States or locales—notably those where there is no apparent history of relevant discrimination—must comply with equal protection standards at that level, apart from the EPA DBE Rule's constitutional compliance as a national matter;

(b) To harmonize EPA's DBE Program objectives with the U.S. Supreme Court's decision in Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995);

(c) To help remove barriers to the participation of DBEs in the award of contracts under EPA financial assistance agreements; and

(d) To provide appropriate flexibility to recipients of EPA financial assistance in establishing and providing contracting opportunities for DBEs.

The DB Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The DB Contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of subcontracts awarded under this Contract. Failure by the DB Contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

H.9.2 The DB Contractor shall include Section 9.1 in every subcontract so that the provision will be binding upon each Subcontractor.

H.9.3 DBE Program Components

The key functional components of the DBE program are as follows:

a. DBE Certification
b. Fair Share Objectives
c. Six Good Faith Efforts and Contract Administration Requirements
d. Minority Business Enterprise (“MBE”)/Women’s Business Enterprise (“WBE”) Reporting

H.9.3.1 DBE Certification and Finding Certified Firms

Pursuant to 40 C.F.R. § 33.201, in order for the DBE Contractor or a Subcontractor to be counted toward the District’s MBE/WBE accomplishments it must be certified. See Attachment J.17, titled DBE Certification Process and Finding Certified Firms.

H.9.3.2 Fair Share Objectives

a. The District has negotiated fair share goals with the EPA for Fiscal Year 2016 to Fiscal Year 2018 that can be found at:

https://www.epa.gov/sites/production/files/documents/r3_fair_share_goals.pdf
b. A Fair Share Objective is a goal based on the capacity and availability of qualified, certified MBEs and WBEs in the relevant geographic market for the procurement categories of construction, Equipment, services and supplies compared to the number of all qualified entities in the same market for the same procurement categories, adjusted, as appropriate, to reflect the level of MBE and WBE participation expected absent the effects of discrimination. A Fair Share Objective is not a quota.

c. Once MBE and WBE Fair Share Objectives have been negotiated, they will remain in effect for three (3) fiscal years unless there are significant changes to the data supporting the Fair Share Objectives.

The fact that a disparity study utilized in negotiating Fair Share Objectives has become more than ten years old during the three-year period does not by itself constitute a significant change requiring renegotiation.

H.9.3.3 Good Faith Efforts

Even if the District has achieved its Fair Share Objectives, the District and the DB Contractor shall make the following good faith efforts whenever procuring construction, Equipment, services and supplies under this Contract:

a. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. This will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

b. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

c. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. This will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

d. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

e. Use the services and assistance of the Small Business Administration (“SBA”) and the Minority Business Development Agency (“MBDA”) of the Department of Commerce.

f. If the DB Contractor awards subcontracts, require the DB Contractor to take the steps in paragraphs (a) through (e) of this section.

H.9.3.4 Reporting Requirements

a. MBE and WBE participation must be reported by all recipients, including those recipients exempted under § 33.411 from the requirement to apply the Fair Share Objectives, on EPA Form 5700–52A, attached hereto as Attachment J.19 with instructions.

b. The District is required to MBE/WBE accomplishments on a semiannual basis.

c. The purpose of MBE/WBE reporting is to monitor the District’s:

i. Accomplishments in utilizing MBEs and WBEs;
ii. Adherence to the Good Faith Efforts (i.e., outreach to MBEs, WBEs and other DBEs);

iii. Progress in achieving MBE and WBE goals.

H.9.3.5 Recordkeeping Requirements

A recipient, including those recipients exempted under § 33.411 from the requirement to apply the Fair Share Objectives, must maintain all records documenting its compliance with the requirements of this part, including documentation of its, and its prime contractors’, good faith efforts and data relied upon in formulating its Fair Share Objectives. Such records must be retained in accordance with applicable record retention requirements for the recipient’s financial assistance agreement.

H.9.3.6 Contract Administration Requirements

To prevent unfair practices that adversely DBEs, the EPA requires the following:

a. The District must require the DB Contractor to pay its Subcontractor for satisfactory performance no more than thirty (30) days from the DB Contractor’s receipt of payment from the District.

b. The District must be notified in writing by the DB Contractor prior to any termination of a DBE Subcontractor for convenience by the DB Contractor.

c. If the DBE Subcontractor fails to complete Work under the subcontract for any reason, the District must require the DB Contractor to employ the six good faith efforts even if the DB Contractor has achieved its Fair Share Objectives.

H.10 FAIR CRIMINAL RECORD SCREENING

H.10.1 The DB Contractor shall comply with the provisions of the Fair Criminal Record Screening Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-152) (the “Act” as used in this section). This section applies to any employment, including employment on a temporary or contractual basis, where the physical location of the employment is in whole or substantial part within the District of Columbia.

H.10.2 Prior to making a conditional offer of employment, the DB Contractor shall not require an applicant for employment, or a Person who has requested consideration for employment by the DB Contractor, to reveal or disclose an arrest or criminal accusation that is not then pending or did not result in a criminal conviction.

H.10.3 After making a conditional offer of employment, the DB Contractor may require an applicant to disclose or reveal a criminal conviction.

H.10.4 The DB Contractor may only withdraw a conditional offer of employment, or take adverse action against an applicant, for a legitimate business reason as described in the Act.

H.10.5 This section and the provisions of the Act shall not apply:

(a) Where a federal or District law or regulation requires the consideration of an applicant’s criminal history for the purposes of employment;

(b) To a position designated by the employer as part of a federal or District government program or obligation that is designed to encourage the employment of those with criminal histories;
(c) To any facility or employer that provides programs, services, or direct care to, children, youth, or vulnerable adults; or

(d) To employers that employ less than 11 employees.

H.10.6 A Person claiming to be aggrieved by a violation of the Act may file an administrative complaint with the District of Columbia Office of Human Rights, and the Commission on Human Rights may impose monetary penalties against the DB Contractor.

H.11 DAVIS-BACON ACT

The Davis Bacon Act is applicable to this Contract/Project. As such, the DB Contractor and its Subcontractors shall comply with the wage and reporting requirements imposed by the Davis-Bacon Act incorporated herein at Section J, Attachment J.3.

H.12 DISTRICT RESPONSIBILITIES

H.12.1 The District shall designate an on-site Project Inspector who, along with the CA and DOEE Project Manager, will have oversight of the DB Contractor for this Contract.

H.12.2 The primary responsibility of the District’s on-site Project Inspector shall be to work with the DB Contractor to ensure that the construction effort is performed to the intent of the construction documents to obtain a successful restoration Project for the District. The District’s on-site Project Inspector shall be the liaison between the DB Contractor and the DOEE Contract Administrator. The District’s on-site Project Inspector shall serve to expedite construction efforts and maintain design integrity by being able to make slight horizontal and vertical adjustments to proposed grades and/or construction features due to local site conditions without a direct change order.

H.12.3 The District shall make available to the DB Contractor the following information:

a. NPS’s Rock Creek Park Assumed Boundaries of the Limit of Disturbance;
b. 1927 Aerial for Brightwood Reservoir with 1980 parking lot outline;
c. 1927 Aerial with a 2012 Aerial overlay; and
d. 1981 Limit of Disturbance for Carter Barron Auditorium Parking Lots;

H.12.4 The DOEE CA shall ensure that all change orders are provided to the DB Contractor by through a notice to proceed or written modification from the CO.

H.13 CONTRACTOR RESPONSIBILITIES

H.13.1 Performance Requirements

H.13.1.1 Throughout the term of the Contract, the DB Contractor and its internal design team or design Subcontractor(s) shall maintain all required authority, license status, professional ability, skills, and capacity to perform the Work and shall perform in accordance with the requirements of the Contract Documents.

H.13.1.2 All design and engineering Work furnished by the DB Contractor shall be performed by or under the supervision of Persons licensed to practice architecture, engineering, and surveying (as applicable) in the District of Columbia and by personnel who are skilled, experienced, and competent in their respective trades or professions, who are
professionally qualified to perform the Work in accordance with the Contract Documents, and who shall assume professional responsibility for the accuracy and completeness of the Design Documents.

H.13.1.3 The DB Contractor shall furnish the design of the Project in accordance with all professional engineering principles and generally accepted industry standards (but at least meeting the terms, conditions and requirements of the Contract Documents) and in accordance with the terms and conditions set forth in the Contract Documents, and shall construct the Project as designed, in a good and workmanlike manner, free from Defects and in accordance with the terms and conditions of the Contract Documents.

The DB Contractor shall specifically acknowledge and agree that:

1. The DB Contractor is not entitled to rely on and has not relied on any documents or information provided by the District, unless specifically permitted in the Contract Documents.

2. The DB Contractor’s warranties and indemnities hereunder cover any Errors in the Project even though they may be related to Errors in information provided by the District.

3. The Engineer of Record shall be responsible for all aspects of the design, and shall ensure that the design conforms to the Contract, regardless of who performs the Work.

H.13.1.4 If the District determines in its sole discretion that any Person employed by the DB Contractor or by any Subcontractor is not performing the Work in accordance with the Contract Documents, the District shall have the authority to require the DB Contractor to replace any DB Contractor’s representative, including staff members, who is not performing to the satisfaction of the District. At the written request of the District, such Person shall not be re-employed on the Project without the prior written Approval of the District. If such Person is not replaced with skilled and experienced personnel for the proper performance of the Work, then the District may, in its sole discretion, suspend the affected portion of the Work by delivery of written notice of such suspension to the DB Contractor. Such suspension shall in no way relieve the DB Contractor of any obligation contained in the Contract Documents or entitle the DB Contractor to a Change Order. Once compliance is achieved, the DB Contractor shall be entitled to and shall promptly resume the Work.

H.13.1.5 The DB Contractor shall remove or cause to be removed from the Project site any employee of DB Contractor or of any Subcontractor or supplier at any tier upon the reasonable request of the District, if in the District’s opinion, such employee has engaged in inappropriate, offensive, vulgar, or disruptive behavior or speech, including, without limitation, lewd or sexually harassing behavior or speech. DB Contractor shall make its Project employees at any Project site aware of this provision and shall cause all Subcontractors and suppliers with employees on the site to make their employees aware of this provision.

H.13.2 Diversion, Reassignment and Replacement of Key Personnel

The key personnel specified in the Contract are considered to be essential to the Work being performed hereunder. Prior to diverting any of the specified key personnel for any reason, the DB Contractor shall notify the CO at least thirty (30) calendar days in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact upon the contract. The DB Contractor shall obtain written approval of the CO for any proposed substitution of key personnel.

H.13.3 Control and Coordination of Work

H.13.3.1 The DB Contractor shall be solely responsible for and have control over all aspects of the Work, including but not limited to construction means, methods, techniques, sequences, procedures, and site safety and
shall be solely responsible for coordinating all portions of the Work, subject to all requirements of the Contract Documents.

H.13.3.2 The DB Contractor shall ensure that all of its activities and the activities of all DB Contractor-Related Entities are undertaken in a manner that will minimize the effect on surrounding property and the public to the maximum extent practicable.

H.13.3.3 Work Schedule

a. The DB Contractor shall coordinate the Work schedules with the Project Inspector before the DB Contractor begins work on this Contract.

b. All Work and monitoring will proceed on weekdays, excluding Federal Holidays, during daylight hours.

c. Any activities that may hamper traffic on park land will be performed during non-rush hour periods, provided advanced permission is obtained from the NPS.

d. Daylight hours are between 8:00 a.m. and 5:00 p.m.

e. Non-rush hour periods are between 9:30 a.m. and 2:30 p.m. No Work requiring the presence of the Project Inspector shall be done at night, on weekends, or on Federal Holidays.

f. Construction hours will be weekdays from 8:00 a.m. to 5:00 p.m.

H.13.4 Performance as Directed

The DB Contractor shall cooperate with the assigned DOEE Project Manager throughout performance of the Work as stated in Contract Documents. At all times during the term hereof, including during the course of and notwithstanding the existence of any Dispute, the DB Contractor shall perform as directed by the District in a diligent manner and without delay; shall abide by the District’s decision or order; and shall comply with all applicable provisions of the Contract Documents.

H.13.5 Conformance with Laws

The DB Contractor shall be responsible for performing its activities relating to the Project in compliance with all federal and District laws, regulations and ordinances and to secure all appropriate necessary public and private permits and consents. The terms of this provision shall survive termination of the Contract and grant agreement between the District and NFWF.

Notwithstanding anything to the contrary contained herein, in the event of any conflict between any District requirements, federal requirements or other requirements of the Contract Documents, the federal requirements shall prevail, take precedence and be in force over and against any conflicting provisions, unless the District requirements are more stringent as allowed by federal law.

H.13.6 Cooperation with Utility Companies

The DB Contractor shall cooperate and coordinate the Work with utility companies throughout the performance of the Work as stated in Contract Documents.

H.13.7 Quality Management/Quality Assurance
H.13.7.1 The DB Contractor shall perform the quality management necessary to comply with its obligations under the Contract Documents.

H.13.7.2 The DB Contractor shall incorporate good engineering principles/practices – a broad set of quality assurance, conservation and safety activities, as well as techniques and approaches that are commonly accepted throughout the engineering profession – into all engineering activities. Engineering Work products produced under this contract shall bear the appropriate engineering stamp, seal or other standardized approval.

H.13.7.3 The DB Contractor shall ensure that all secondary data is obtained from known and trusted sources and is accompanied by metadata that lists the reasons for the data collection, the methodology employed and lists the Quality Assurance/Quality Control standard(s) under which the data collection was completed. Any assessment and evaluation activities must be documented. Any assumptions, troubleshooting, communications and other relevant documents and records must be maintained in the DB Contractor’s files. The records must be organized to allow reconstruction of the process and results, also known as “data mapping.” The identity of the individual(s) and organization that performed the fitness for use assessment must be clearly noted on the documents.

H.13.7.2 Oversight, Audit, Inspection and Testing by District and Others

All materials and each part or detail of the Work shall also be subject to oversight, audit, and testing by the District and other Persons designated by the District. When any third party, including a Utility Company, railroad company, unit of government, or political subdivision, is to accept or pay for a portion of the Cost of the Work, its respective representatives have the right to oversee, audit, inspect, and test the Work to the extent such Work is related to such third party. Such oversight, audit, Inspection, and/or testing does not make such Person a party to the Contract, nor will it change the rights of the parties hereto. The DB Contractor hereby consents to such oversight, inspection, and testing by the District and other Persons. Upon request from the District, the DB Contractor shall furnish information to such Persons as are designated in such request and shall permit such Persons access to the Site and all parts of the Work.

H.13.7.3 Obligation to Uncover Finished Work

At all times before Final Acceptance, the DB Contractor shall remove or uncover such portions of the finished construction Work as directed by the District. After examination by the District, the DB Contractor shall restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then the Cost of uncovering, removing and restoring the Work or making good the parts removed and recovery of any delay occasioned thereby shall be at the DB Contractor’s expense. If Work exposed or examined under this Section H.13 is in conformance with the requirements of the Contract Documents, then the Cost of uncovering, removing and restoring the Work shall be at the District’s expense, and any delay from uncovering, removing and restoring Work shall be the District’s responsibility.

H.13.8 Effect of Oversight, Spot Checks, Assessment, Tests, Acceptances, and Approvals

H.13.8.1 Oversight and Acceptance

The DB Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents, or any of its other obligations under the Contract Documents, by oversight, spot checks, assessments, reviews, tests, Inspections, acceptances, Approvals, approvals by any Persons, or by any failure of any Person to take such action. The oversight, spot checks, assessments, reviews, tests, Inspections, acceptances, or approvals by any Person do not constitute Final Acceptance of the particular material or Work or waiver of any legal or
equitable right with respect thereto. The District may reject or require the DB Contractor to remedy any Nonconforming Work and/or identify additional Work that must be done to bring the Project into compliance with Contract requirements at any time before Final Acceptance, whether or not previous oversight, spot checks, assessments, reviews, tests, Inspections, acceptances, Approvals, or approvals by any Persons were conducted.

H.13.8.2 No Estoppels

The District shall not be precluded or estopped, by any measurement, estimate, or certificate made either before or after Final Acceptance and payment therefore, from showing that any such measurement, estimate, or certificate is incorrectly made or untrue, or from showing that the true amount and character of the Work performed and materials furnished by the DB Contractor do not conform in fact to the requirements of the Contract Documents. Notwithstanding any such measurement, estimate, certificate, or payment made in accordance therewith, the District shall not be precluded or estopped from recovering from the DB Contractor and its Surety(ies) such damages as the District may sustain by reason of the DB Contractor’s failure to comply or to have complied with the terms of the Contract Documents.

H.14 WARRANTIES BY DB CONTRACTOR

H.14.1 Project Warranties

The DB Contractor shall warrant the following:

1. Where applicable law and the Contract requires that services be performed by licensed professionals, the DB Contractor shall provide those services (“Professional Design Work”) through qualified, licensed professionals. DB Contractor shall be responsible to the District for professional negligence, Errors and omissions, of such professionals.

2. DB Contractor agrees to use its best efforts to perform, or cause to be performed, all Professional Design Work (i) in accordance with the usual and customary professional standards of care, skill and diligence consistent with good professional design practices for professional design firms in the Washington, D.C. metropolitan area that provide professional design services for projects that are similar in size, scope and budget to the Project; and (ii) in compliance with all applicable federal and District laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. There are no obligations, commitments or impediments of any kind known to the DB Contractor that will limit or prevent performance by the DB Contractor of its Professional Design Work. The DB Contractor shall agree to correct, at its own Costs, any of its Professional Design Work, and the services of its professional design consultants that do not meet the standard of care.

3. DB Contractor warrants to the District the sufficiency and completeness of all Professional Design Work, and that all Professional Design Work, including without limitation, all drawings, specifications and other information furnished or provided by the DB Contractor shall be reasonably accurate and free from any material Errors or omissions. Neither acceptance nor approval of the DB Contractor’s Professional Design Work by the District shall relieve DB Contractor of any of its duties to release it from any liability with respect to the Professional Design Work, it being understood that the District, is at all times, relying upon DB Contractor for its skill and knowledge in performing DB Contractor’s Professional Design Work. The District shall have a right to reject any of DB Contractor’s Work because of any fault, damage or Defect in the Work due to any material Errors or omissions in the Plans, drawings, specifications and other Professional Design Work prepared or furnished by DB Contractor. Upon notice of any such Errors or omissions, DB Contractor shall promptly provide any and all services necessary to correct or remedy them at no additional Cost to the District. Should the DB Contractor refuse or neglect to correct any such damage or Defect within a reasonable time after notice, the District may cause the damage or Defect to be corrected and withhold payment or collect monetary damages equal to the Cost of replacing or repairing
the Defective Work. DB Contractor’s obligation to correct its Errors and omissions is in addition to, and not in substitution for, any other remedy for Defective Work or Work which the District may have at law or in equity or both.

4. The construction Work furnished pursuant to the Contract Documents shall be performed in a good, workmanlike manner and shall conform to the standards of care and diligence normally practiced by recognized construction firms performing construction of a similar nature in the District.

5. Materials and Equipment furnished under the Contract Documents shall be of good quality and, when installed, shall be new, or as allowed under this Contract, recycled materials shall be in good condition and shall meet all contractual requirements.

6. The Work shall meet all of the requirements of the Contract Documents.

7. The specifications and/or drawings selected or prepared for use during construction are appropriate for their intended use.

8. The Project shall be fit for use for the intended function.

H.14.2 Transfer of Title

The DB Contractor shall warrant that it owns, or will own, and has, or will have, good and marketable title to all materials, Equipment, tools and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for the District for the operation, maintenance, or repair thereof, free and clear of all Liens. Title to all of such materials, Equipment, tools and supplies, which shall have been delivered to the Site, shall pass to the District, free and clear of all Liens, upon the sooner of: (i) incorporation into the Project; or (ii) payment by the District to the DB Contractor of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, the DB Contractor shall retain sole care, custody and control of such materials, equipment, tools and supplies, and shall exercise due care with respect thereto as part of the Work until Partial Acceptance or Final Acceptance or until the DB Contractor is removed from the Project.

H.14.3 Project Warranty Term

The warranty term shall commence upon Final Acceptance by the District. Except as otherwise specified, warranties regarding all elements of the Project and against Defects resulting from the use of inferior materials, Equipment, or workmanship shall remain in effect until three (3) years after Final Acceptance, provided that the Warranty term for elements of the Project that will be owned by Persons other than the District (such as Utility Companies) shall remain in effect for such a term as may be required under any applicable agreement (such as Utility Agreements). If the District concludes that the Work has not met the standards set forth in this Section 14 at any time within the Warranty period, then the DB Contractor shall correct such Work within the Warranty Term.

Warranties for installed Equipment such as retrofits and signs provided by manufacturers shall be transferred or assigned to the District in accordance with the standard specifications.

The Warranties apply notwithstanding maintenance Work performed by the District during the Warranty period.

H.14.4 Corrective Work

H.14.4.1 Within seven (7) Days of receipt by the DB Contractor of notice from the District specifying a failure of any of the Work to satisfy the DB Contractor’s Warranties, or of any Subcontractor representation, Warranty, guarantee, or obligation
that the DB Contractor is responsible to enforce, the DB Contractor and the District shall mutually agree when and how the DB Contractor shall remedy such violation; provided, however, that in case of an emergency as indicated by the District in its notice requiring immediate curative action, the DB Contractor and the District shall agree on a remedy immediately upon notice by the District of such emergency.

H.14.4.2 If, within any guarantee period, repairs or changes are required in connection with guaranteed Work which, in the opinion of the Agent for the Owner, are rendered necessary as a result of the use of materials, Equipment, or workmanship, which are inferior, Defective, or not in accordance with the terms of the Contract, the DB Contractor shall promptly upon receipt of notice from the CO and without expense to the Agent for the Owner, do the following:

1) Place in satisfactory condition in every particular all of such guaranteed Work, and/or correct all Defects therein;

2) Make good all damages to the parking lot or Project Area, or Equipment or contents thereof, which in the opinion of the Agent for the Owner is the result of the use of materials, Equipment, or workmanship which are inferior, Defective, or not in accordance with the terms of the Contract; and

3) Make good any Work or material, or Equipment and contents of said parking lot or Project Area disturbed in fulfilling any guarantee.

H.14.4.3 If, in any cases wherein fulfilling the requirements of the Contract or any guarantee, embraced in or required thereby, the DB Contractor disturbs any work guaranteed under another Contract, the DB Contractor shall restore such disturbed work to conditions satisfactory to the Agent for the Owner, and shall guarantee such restored work to the same extent as it was guaranteed under such other Contract.

H.14.4.4 If, the DB Contractor, after notice, fails to proceed promptly with the terms of the guarantee, the Agent for the Owner may have the Defects corrected and the DB Contractor and the DB Contractor’s surety shall be liable for the expenses incurred.

H.14.4.5 If the DB Contractor does not use its best efforts to proceed to effectuate such remedy within the agreed time, or if the DB Contractor and the District fail to reach such an agreement within such seven (7)-Day period or immediately, in the case of emergency conditions, then the District, after notice to the DB Contractor, shall have the right to perform or have performed by third parties the necessary remedy, and the Costs thereof shall be borne by the DB Contractor. The DB Contractor shall reimburse the District for such Costs within thirty (30) Days after the DB Contractor’s receipt of the invoice.

The District and the DB Contractor shall conduct a walkthrough of the Project Area prior to expiration of the Warranty period and shall produce a Punch List of those items requiring Warranty Work.

H.14.5 DB Contractor’s Cost of Corrective Work

All Costs of correcting such rejected Work, including additional testing and Inspections, shall be deemed included in the Contract Price. The DB Contractor shall reimburse the District and pay the District’s expenses made necessary thereby within thirty (30) Days after the DB Contractor’s receipt of invoice The DB Contractor shall be responsible for obtaining any required Governmental Approvals or other consents from any other Person in connection with the Warranty Work.

H.14.6 Subcontractor Warranties

H.14.6.1 Assignment

Without in any way derogating the DB Contractor’s own representations and Warranties and other obligations with
respect to all Work, the DB Contractor shall obtain from all Subcontractors and cause to be extended to the District, appropriate representations, Warranties, guarantees and obligations with respect to the design, materials, workmanship. Equipment, tools and supplies furnished by such Subcontractors, including all such representations, Warranties, guarantees, and obligations required to be furnished by Subcontractors pursuant to the Contract Documents. All representations, Warranties, guarantees, and obligations of Subcontractors shall: (i) be written so as to survive the entire District and the DB Contractor Inspections, tests, and approvals; and (ii) run directly to and be enforceable by the DB Contractor and/or the District and their respective successors and assigns. The DB Contractor hereby assigns to the District all of the DB Contractor’s rights and interest in all extended Warranties for periods exceeding the applicable Warranty period that are received by the DB Contractor from any of its Subcontractors.

H.14.5.2 Enforcement

Upon receipt from the District of notice of a failure of any of the Work to satisfy any Subcontractor Warranty, representation, guarantee, or obligation, the DB Contractor shall enforce or perform any such representation, Warranty, guarantee, or obligation, in addition to the DB Contractor’s other obligations hereunder. The District’s rights under this Section H.14 shall commence at the time such representation, warranty, guarantee, or obligation is furnished, and shall continue until the expiration of the DB Contractor’s relevant Warranty. Until such expiration, the DB Contractor shall be responsible for the Cost of any Equipment, material, labor (including re-engineering), or shipping; and the DB Contractor shall be required to replace or repair Defective Equipment, material, or workmanship furnished by any Subcontractor.

H.14.7 No Limitation of Liability

The foregoing Warranties are in addition to all rights and remedies available under the Contract Documents or Applicable Law and shall not limit the DB Contractor’s liability or responsibility imposed by the Contract Documents or Applicable Law with respect to the Work, including liability for design Defects, latent construction Defects, strict liability, negligence, or fraud; provided, however, that, upon expiration of the Warranties, the DB Contractor shall have no further liability to the District hereunder for latent construction Defects.

H.14.8 Warranty Beneficiaries

In addition to benefiting the District and its successors and assigns, the Warranties and Subcontractor Warranties provided under this Section H.14 shall inure to the benefit of and shall be directly enforceable by, any local agencies and Utility Companies with respect to those portions of the Work owned and controlled by each such Person.

H.14.9 Remedies for Breach of Warranty

In addition to the District’s other rights and remedies hereunder, at law or in equity, the DB Contractor shall be liable for actual damages resulting from its failure to provide corrective Work any breach of an express Warranty or any Defect in the Work.

H.15 BOND REQUIREMENTS

The DB Contractor shall provide to the District and maintain at all times during the term of the Contract security for performance of the Work as described below (or other assurance satisfactory to the District in its sole discretion). The Contract bonds may not be in excess of the cumulative underwriting limitation listed in the circular of the underwriting capacities of the DB Contractor’s surety companies.
H.15.1  BID GUARANTY

On all bids of $100,000.00 or more, security is required to insure the execution of the Contract. No bid will be considered unless it is so guaranteed. Each bidder must furnish with his bid either a Bid Bond (See Section J, Attachment J.11) with good and sufficient sureties, a certified check payable to the order of the Treasurer of the District of Columbia (uncertified check will not be accepted), negotiable United States bonds (at par value), or an irrevocable letter of credit in an amount not less than five percent (5%) of the amount of his bid, as a guaranty that he will not withdraw said bid within the period specified therein after the opening of the same; or, if no period be specified, within ninety (90) days after said opening, and will, within the period specified therefore, or, if no period be specified, within ten (10) days, after the prescribed forms are forwarded to him for execution (or within any extension of time which may be granted by the officer to whom the bid was addressed) execute and deliver a written contract on the standard District form in accordance with bid as accepted and give bond with good and sufficient sureties, as specified below for the faithful performance and proper fulfillment of such contract and payment of laborers and material men as required by law or, in the event of the withdrawal of said bid within the period above stated, or the failure to enter into such contract and give such bond within the time above stated, that he will pay to the District the difference between the amount specified in said bid and the amount for which the District may procure the required Work, if the latter amount be in excess of the former.

In case security is in the form of a certified check or United States bonds, the District may make such disposition of the same as will accomplish the purpose for which submitted. Certified checks may be held uncollected at the bidder's risk. Certified checks and United States bonds will be returned to the unsuccessful bidders after award of contract and to successful bidders after the signing of prescribed forms of contract and bonds. Guaranty bonds will be returned only upon written application.

H.15.2  PERFORMANCE BOND

For any construction contract exceeding $100,000.00, a Performance Bond (See Section J, Attachment J.12) shall be required in a penal amount equal to one hundred percent (100%) of the contract price at time of award. Additional Performance Bond protection shall be required in connection with any modification affecting an increase in price under any contract for which a bond is required pursuant to the above if:

1. The modification is for new or additional Work which is beyond the scope of the existing contract; or,

2. The modification is pursuant to an existing provision of the contract and is expected to increase the contract price by $50,000 or twenty-five percent (25%) of the original total contract price, whichever is less.

The penal amount of the bond protection shall be increased so that the total Performance Bond protection is one hundred percent (100%) of the contract price as revised by both the modification requiring such additional protection and the aggregate of any previous modification. The increased penal amount may be secured either by increasing the bond protection provided by existing surety or sureties or by obtaining an additional Performance Bond from a new surety.

H.15.3  PAYMENT BOND

In accordance with the provisions of Title 27 Regulations, § 2703.6 (as amended) Payment Bonds shall be required in an amount not less than fifty percent (50%) of the total amount payable by the terms of the Contract. The Surety must be authorized to do business in the District of Columbia. The Payment Bond may also be the equivalent in cash or other security considered satisfactory to the District.
The Payment Bond shall be for the protection of all businesses supplying labor and materials, including lessors of Equipment to the extent of the fair rental value of the Equipment, to the DB Contractor or a Subcontractor in the performance of Work provided for by the Contract.

Before receiving a partial or final payment under a contract covered by this Section, the DB Contractor shall certify in writing that the DB Contractor has made payment from the proceeds of prior payments, and that the DB Contractor will make timely payments from the proceeds of the progress or final payment then due the DB Contractor, to the DB Contractor’s Subcontractors and suppliers in accordance with its contractual arrangements with them.

The Payment Bond shall be released one (1) year after Final Acceptance or the District’s receipt of the DB Contractor’s Affidavit Regarding Settlement of Claims, whichever occurs later.

Additional payment protection shall be required in connection with any notification affecting an increase in price under any contract for which a bond is required pursuant to the above if:

1. The modification is for new or additional Work which is beyond the scope of the existing Contract; or

2. The modification is pursuant to an existing provision of the contract and is expected to increase the contract price by $50,000 or twenty-five percent (25%) of the original total contract price, whichever is less.

The penal amount of the additional bond protection shall generally be such that the total Payment Bond protection is fifty percent (50%) of the contract price as revised by both the modification requiring such additional protection, and the aggregate of any previous modifications. The additional protection may be secured either by increasing the bond protection provided by the existing surety or sureties or by obtaining an additional Payment Bond from a new surety.

H.15.4 Replacement of Performance Bond

Provided that all conditions to Final Acceptance have occurred, the DB Contractor shall have the right to replace the Performance Bond with a replacement Performance Bond in an amount and in a form satisfactory to the District in its sole discretion (provided that it shall not be required to exceed five (5) percent of the Contract Price) or with such other security as is Approved by the District in its sole discretion, guaranteeing due and punctual performance of all obligations of the DB Contractor under the Contract Documents that survive Final Acceptance.

H.15.5. BOND SOURCE

The bonds may be obtained from any surety company authorized by the U.S. Treasury Department as acceptable sureties on Federal Bonds and authorized to transact business in the District of Columbia by the Director, Department of Insurance, Securities and Banking.

H.15.6 No Relief of Liability

Notwithstanding any other requirements of the Contract Documents, performance by a Surety of any of the obligations of the DB Contractor shall not relieve the DB Contractor of any of its obligations hereunder.

H.16 Documents and Records
H.16.1 Project Records

H. 16.1.1 Maintenance of Records

The DB Contractor shall maintain at the DB Contractor’s Project Executive’s office in the District a complete set of all books, records, and documents prepared or employed by the DB Contractor with respect to the Project in accordance with Article 28, Retention of Records, SCP.

H.16.1.2 Audit and Inspection Rights

The DB Contractor shall grant to the District and its respective authorized representatives such audit and Inspection rights and allow such Persons such access to and the right to copy such books and records including all tax returns and supporting documentation filed with any Governmental Persons as such Persons may reasonably request from time to time in connection with the issuance of Change Orders, the resolution of Disputes, and such other matters as such Persons reasonably deem necessary for purposes of complying or verifying compliance with the Contract and Legal Requirements, including responding to requests pursuant to FOIA.

H.16.1.3 Change Order Pricing Data

For Cost and pricing data submitted in connection with pricing Change Orders, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, DOEE has the right to examine all books, records, documents, and other DB Contractor data related to the negotiation of or performance of Work under such Change Orders for the purpose of evaluating the accuracy, completeness and currency of the Cost or pricing data submitted. The right of examination shall extend to all documents deemed necessary by such Persons to permit adequate evaluation of the Cost or pricing data submitted, along with the computations and projections used therein.

H.16.1.4 Claims Audits

All Claims filed against the District shall be subject to audit at any time following the filing of the Claim. The audit may be performed by employees of the District or by an auditor under contract with the District. No notice is required for any audit beginning before sixty (60) Days after Final Acceptance. Thereafter, the District shall provide a twenty (20)-Day notice to the DB Contractor, any Subcontractors, or their respective agents before beginning an audit. The DB Contractor, Subcontractors, or their agents shall provide adequate facilities, acceptable to the District, for the audit during normal business hours. The DB Contractor, Subcontractors, and their agents shall cooperate with the auditors. Failure of the DB Contractor, Subcontractors, or their agents to maintain and retain sufficient records to allow the auditors to verify all or a portion of the Claim or to permit the auditors access to the books and records of the DB Contractor, Subcontractors, or their agents shall constitute a waiver of the Claim and shall bar any recovery thereunder. At a minimum, the auditors shall have available to them the following documents:

1. Daily time sheets and supervisor’s daily reports
2. Union agreements
3. Insurance, welfare, and benefits records
4. Payroll registers
5. Earnings records
6. Payroll tax forms
7. Material invoices and requisitions
8. Material Cost distribution worksheet
9. Equipment records (list of company Equipment, rates, etc.)
10. Subcontractors’ (including Suppliers) and agents’ invoices
11. Subcontractors’ and agents’ payment certificates
12. Canceled checks (payroll and Suppliers)
13. Job Cost report
14. Job payroll ledger
15. General ledger
16. Cash disbursements journal
17. Email, letters, and correspondence
18. Network servers, data storage devices, backup media
19. All documents that relate to each and every Claim, together with all documents that support the amount of damages as to each Claim.
20. Work sheets used to prepare the Claim establishing the Cost components for items of the Claim including labor, benefits and insurance, materials, Equipment, and Subcontractors; and all documents that establish the time periods, individuals involved, and the hours worked and the rates for the individuals.

Full compliance by the DB Contractor with the provisions of this Section H.16.1.4 is a contractual condition precedent to the DB Contractor’s right to seek relief under Section I.11. The DB Contractor shall represent and warrant the completeness and accuracy of all information it or its agents provides in connection with this Section H.16.1.4.
SECTION I: CONTRACT CLAUSES

I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS

The Standard Contract Provisions for Use with Specifications for District of Columbia Government Construction Projects (Revised March 2011) are incorporated as part of the Contract. See Section J, Attachment J.1

I.2 CONTRACTS THAT CROSS FISCAL YEARS

Continuation of this contract beyond the current fiscal year is contingent upon future fiscal appropriations.

I.3 CONFIDENTIALITY OF INFORMATION

The DB Contractor shall keep all information relating to any employee or customer of the District in absolute confidence 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, in accordance with the District and federal laws governing the confidentiality of records.

I.4 TIME

1.4.1 Time, if stated in a number of days, will include Saturdays, Sundays, and Holidays, unless otherwise stated herein.

1.4.2 Computation of Periods

References to “days” contained in the Contract Documents shall mean calendar days unless otherwise specified. If the date to perform any act or give any notice specified in the Contract Documents (including the last day for performance or provision of notice “within a specified time period) falls on a non-business day, such act or notice may be timely performed on the next succeeding day that is a business day. Notwithstanding the foregoing, requirements contained in the Contract and other requirements for which it is clear that performance is intended to occur when necessary on a non-business day shall be required to perform as specified, even though the date in question may fall on a non-business day.

I.5 RIGHTS IN DATA

A. Definitions

1. “Products” - A deliverable under any contract that may include commodities, services and/or technology furnished by or through DB Contractor, including existing and custom Products, such as, but not limited to: a) recorded information, regardless of form or the media on which it may be recorded; b) document research; c) experimental, developmental, or engineering work; d) licensed software; e) components of the hardware environment; f) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings); g) third party software; h) modifications, customizations, custom programs, program listings, programming tools, data, modules, components; and i) any intellectual property embodied therein, whether in tangible or intangible form, including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, and object code.

2. “Existing Products” - Tangible Products and intangible licensed Products that exist prior to the commencement of work under the contract. Existing Products must be identified on the Product prior to commencement of work or else will be presumed to be Custom Products.

3. “Custom Products” - Products, preliminary, final or otherwise, which are created or developed by DB Contractor, its Subcontractors, partners, employees, resellers or agents for the District under the contract.

B. Title to Project Deliverables

The DB Contractor acknowledges that it is commissioned by the District to perform services detailed in the contract. The District shall have ownership and rights for the duration set forth in the contract to use, copy, modify, distribute, or adapt Products as follows:

1. **Existing Products**: Title to all Existing Licensed Product(s), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall: (1) remain with DB Contractor or third party proprietary owner, who retains all rights, title and interest (including patent, trademark or copyrights). Effective upon payment, the District is granted an irrevocable, non-exclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, adapt (unless DB Contractor advises the District as part of DB Contractor’s proposal that adaptation will violate existing agreements or statutes and DB Contractor demonstrates such to the District’s satisfaction) and distribute Existing Product to District users up to the license capacity stated in the contract with all license rights necessary to fully effect the general business purpose(s) of the project or work plan or contract; and (2) be licensed in the name of the District. The District agrees to reproduce the copyright notice and any other legend of ownership on any copies authorized under this paragraph.

2. **Custom Products**: Effective upon Product creation, DB Contractor hereby conveys, assigns, and transfers to the District the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all patent, trademark and copyrights. DB Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through DB Contractor.

C. Transfers or Assignments of Existing or Custom Products by the District

The District may transfer or assign Existing or Custom Products and the licenses thereunder to another District agency. Nothing herein shall preclude the DB Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a project or work plan in the course of DB Contractor’s business.

D. Subcontractor Rights

Whenever any data, including computer software, are to be obtained from a Subcontractor under the contract, the DB Contractor shall use this clause, **Rights in Data**, in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the District’s or the Contractor’s rights in that Subcontractor data or computer software which is required for the District.

E. Source Code Escrow

1. For all computer software furnished to the District with the rights specified in section B.2, the DB Contractor shall furnish to the District, a copy of the source code with such rights of the scope as specified in section B.2 of this clause. For all computer software furnished to the District with the restricted rights specified in section B.1 of this clause, the District, if the DB Contractor either directly or through a successor or Affiliate shall cease to provide the maintenance or warranty services provided the District under the contract or any paid-up maintenance agreement, or if the DB Contractor should be declared insolvent by a court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the current version of the source code supplied under the contract, and a single copy of the documentation associated therewith, upon payment to the Person in control of the source code the reasonable Cost of making each copy.

2. If the DB Contractor or Product manufacturer/developer of software furnished to the District with the rights specified in section B.1 of this clause offers the source code or source code escrow to any other commercial...
customers, the DB Contractor shall either: (1) provide the District with the source code for the Product; (2) place the source code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the District, and who shall be directed to release the deposited source code in accordance with a standard escrow arrangement acceptable to the District; or (3) will certify to the District that the Product manufacturer/developer has named the District as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the District, and who shall be directed to release the deposited source code in accordance with the terms of escrow.

3. The DB Contractor shall update the source code, as well as any corrections or enhancements to the source code, for each new release of the Product in the same manner as provided above, and certify such updating of escrow to the District in writing.

F. Indemnification and Limitation of Liability

The DB Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including Costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.

I.6 OTHER CONTRACTORS

The DB Contractor shall not commit or permit any act that will interfere with the performance of work by another District contractor or by any District employee.

I.7 SUBCONTRACTS

The DB Contractor hereunder shall not subcontract any of the DB Contractor’s Work or services to any Subcontractor without the prior written consent of the CO. Any Work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the District will have the right to review and approve prior to its execution by the DB Contractor. Any such subcontract shall specify that the DB Contractor and the Subcontractor shall be subject to every provision of this contract. Notwithstanding any such subcontract approved by the District, the DB Contractor shall remain liable to the District for all DB Contractor’s Work and services required hereunder.

I.8 INSURANCE

A. GENERAL REQUIREMENTS. The DB Contractor shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The DB Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the 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-VIII or higher. The DB Contractor shall require all of its Subcontractors to carry the same insurance required herein. The DB Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event the stated limit in the declarations page of the policy is reduced via endorsement or the policy is canceled prior to the expiration date shown on the certificate. The DB Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium.

1. Commercial General Liability Insurance. The DB Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries $1,000,000 per occurrence limits; $2,000,000 aggregate; Bodily Injury and Property Damage including, but not limited to: premises-operations; broad form property damage;
Products and Completed Operations; Personal and Advertising Injury; contractual liability and independent contractors. The policy coverage shall include the District of Columbia as an additional insured, shall be primary and non-contributory with any other insurance maintained by the District of Columbia, and shall contain a waiver of subrogation. The DB Contractor shall maintain Completed Operations coverage for five (5) years following final acceptance of the Work performed under this contract.

2. **Automobile Liability Insurance.** The DB Contractor shall provide automobile liability insurance to cover all owned, hired or non-owned motor vehicles used in conjunction with the performance of this contract. The policy shall provide a $1,000,000 per occurrence combined single limit for bodily injury and property damage.

3. **Workers’ Compensation Insurance.** The DB Contractor shall provide Workers’ Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

4. **Employer’s Liability Insurance.** The DB Contractor shall provide 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.

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 begins.

6. **Umbrella or Excess Liability Insurance.** The DB Contractor shall provide umbrella or excess liability (which is in excess over Employer’s Liability, General Liability, Automobile Liability and Professional Liability) insurance as follows: $2,000,000 per occurrence, include the District of Columbia as additional insureds.

7. **Professional Liability Insurance (Errors and Omissions).** The DB 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 occurrence for each wrongful act and $2,000,000 annual aggregate.

The DB Contractor shall maintain this insurance for five (5) years following the District’s final acceptance of the Work performed under this contract.

8. **Environmental Liability Insurance.** The Contractor shall provide a policy to cover costs associated with bodily injury, property damage and remediation expenses associated with pollution incidents including, but not limited to, mold, asbestos or lead removal. The policy shall provide a minimum of $1,000,000 in coverage per incident and $2,000,000 aggregate.

9. **Public and Employee Liability Insurance.** The DB Contractor shall provide public and employee liability insurance with a limitation of $1,000,000 per person for any one claim an aggregate limit of $3,000,000 (three million dollars) for any number of claims arising from any one incident. The United States of America shall be named as an additional insured on all policies. The permit number will be included on said policy. All such policies shall specify that the insured has no right of subrogation against the United States for payments of any premiums or deductibles, thereunder, and such insurance policies shall be obtained by, be for the account of and be at the sole risk of the insured. Said insurance must cover any Work performed in connection with this permit.

B. **DURATION.** The DB Contractor shall carry all required insurance until all Contract Work is accepted by the District, and shall carry the required General Liability; any required Professional Liability; and any required Employment Practices Liability insurance for five (5) years following final acceptance of the Work performed under this contract.

C. **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 DB CONTRACTOR’S LIABILITY UNDER THIS CONTRACT.

D. DB CONTRACTOR'S PROPERTY. DB Contractor 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.

E. MEASURE OF PAYMENT. The District shall not make any separate measure or payment for the Cost of insurance and bonds. The DB Contractor shall include all of the Costs of insurance and bonds in the contract price.

F. NOTIFICATION. The DB Contractor shall immediately provide the CO with written notice in the event that its insurance coverage has or will be substantially changed, canceled or not renewed, and provide an updated certificate of insurance to the CO.

G. CERTIFICATES OF INSURANCE. The DB Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing Work. Evidence of insurance shall be submitted to:

Tyrone M. Moorer  
Office of Contracting and Procurement  
With Assignment to District Department of Energy & Environment  
1200 First Street NE, 7th Floor  
Washington, DC  20002  
Telephone: 202-724-4051  
E-mail address: tyrone.moorer@dc.gov

H. DISCLOSURE OF INFORMATION. The DB Contractor 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 DB Contractor, its agents, employees, servants or Subcontractors in the performance of this contract.

I.9 EQUAL EMPLOYMENT OPPORTUNITY

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 Section J.5. An award cannot be made to any offeror who has not satisfied the equal employment requirements.

I.10 ORDER OF PRECEDENCE

The contract awarded as a result of this RFP will contain the following clause:

ORDER OF PRECEDENCE

A conflict in language shall be resolved by giving precedence to the document in the highest order of priority that contains language addressing the issue in question. The following documents are incorporated into the contract by reference and made a part of the contract in the following order of precedence:

(1) An applicable Court Order, if any  
(2) Contract document  
I.11 DISPUTES

All Disputes arising under or relating to the contract shall be resolved as provided herein.

(a) Claims by the DB Contractor against the District: Claim, as used in paragraph (a) of this clause, means a written assertion by the DB 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 the 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.

(1) All claims by a contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the CO for a decision. The Contractor’s claim shall contain at least the following:

i. A description of the claim and the amount in Dispute;
ii. Data or other information in support of the claim;
iii. A brief description of the contractor’s efforts to resolve the Dispute prior to filing the claim; and
iv. The contractor’s request for relief or other action by the CO.

(2) The CO may meet with the contractor in a further attempt to resolve the claim by agreement.

(3) The CO shall issue a decision on any claim within 120 calendar days after receipt of the claim. Whenever possible, the CO shall take 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.

(4) The CO’s written decision shall do the following:

i. Provide a description of the claim or Dispute;
ii. Refer to the pertinent contract terms;
iii. State the factual areas of agreement and disagreement;
iv. State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
v. If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
vi. Indicate that the written document is the CO’s final decision; and
vii. Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

(5) Failure by the CO to issue a decision on a contract claim within 120 days of receipt of the claim will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Contract Appeals Board as provided by D.C. Official Code § 2-360.04.

(6) If a contractor is unable to support any part of its 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 District for an amount equal to the unsupported part of the claim in
addition to all Costs to the District attributable to the cost of reviewing that part of the Contractor’s claim. Liability under this paragraph (a)(6) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.

(7) 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 CO.

(b) **Claims by the District against the DB Contractor:** Claim as used in paragraph (b) of this clause, means a written demand or written assertion by the District 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 the 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.

(1) The CO shall decide all claims by the District against a contractor arising under or relating to a contract.

(2) The CO shall send written notice of the claim to the contractor. The CO’s written decision shall do the following:

(i) Provide a description of the claim or Dispute;
(ii) Refer to the pertinent contract terms;
(iii) State the factual areas of agreement and disagreement;
(iv) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
(v) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
(vi) Indicate that the written document is the CO’s final decision; and
(vii) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

(3) The CO shall support the decision by reasons and shall inform the Contractor of its rights as provided herein.

(4) Before or after issuing the decision, the CO may meet with the Contractor to attempt to resolve the claim by agreement.

(5) The authority contained in this paragraph (b) shall not apply to a claim or Dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle or determine.

(6) This paragraph shall not authorize the CO to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(c) Decisions of the CO shall be final and not subject to review unless the Contractor timely commences an administrative appeal for review of the decision, by filing a complaint with the Contract Appeals Board, as authorized by D.C. Official Code § 2-360.04.

(d) 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 CO.
I.12 Reserved

I.13 GOVERNING LAW
This Contract, and any Disputes arising out of or related to this contract, shall be governed by, and construed in accordance with, the laws of the District of Columbia.

I.14 District of Columbia False Claims Act
In accordance with D.C. Official Code § 2-381.02, any Person who commits any of the following acts shall be liable to the District for three (3) times the amount of damages which the District sustains because of the act of that Person. A Person who commits any of the following acts shall also be liable to the District for the Costs of a civil action brought to recover penalties or damages, and shall be liable to the District for a civil penalty of not less than $5,500, and not more than $11,000, for each false or fraudulent claim for which the Person:

a. Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

b. Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

c. Has possession, custody, or control of property or money used, or to be used, by the District and knowingly delivers, or causes to be delivered, less than all of that money or property;

d. Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the District and, intending to defraud the District, makes or delivers the receipt without completely knowing that the information on the receipt is true;

e. Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the District who lawfully may not sell or pledge property;

f. Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the District, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the District;

g. Conspires to commit a violation of paragraph (a), (b), (c), (d), (e), or (f) of this subsection;

h. Is a beneficiary of an inadvertent submission of a false or fraudulent claim to the District, subsequently discovers the falsity of the claim, and fails to disclose the false or fraudulent claim to the District; or

i. Is the beneficiary of an inadvertent payment or overpayment by the District of monies not due and knowingly fails to repay the inadvertent payment or overpayment to the District. Notwithstanding subsection (a) of this section, the court may assess not more than two (2) times the amount of damages which the District sustains because of the act of the Person, and there shall be no civil penalty, if the court finds all of the following:

1. The Person committing the violation furnished officials of the District responsible for investigating false claims violations with all information known to that Person about the violation within 30 days after the date on which the Person first obtained the information;

2. The Person fully cooperated with any investigation by the District; and
3. At the time the Person furnished the District with information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to the violation, and the Person did not have actual knowledge of the existence of an investigation into the violation.

Liability pursuant to this section shall be joint and several for any act committed by 2 or more Persons.

This section shall not apply to claims, records, or statements made pursuant to those portions of Title 47 that refer or relate to taxation.

I.15 WHISTLEBLOWER PROTECTIONS

A. Prohibition of Reprisals.

1. Pursuant to 41 U.S.C. 4712, the Contractor and all Subcontractors are prohibited from discharging, demoting or otherwise discriminating against as reprisal for disclosing to a Person or body described in paragraph 2 information that the employee reasonably believes is evidence of:

   a. Gross mismanagement of a Federal contract or grant;
   b. Gross waste of Federal funds;
   c. An abuse of authority relating to a Federal contract or grant;
   d. A substantial or specific danger to public health or safety; or
   e. A violation of law, rule or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.

2. Persons and Bodies covered. The Persons and bodies described in this paragraph are the Persons and bodies as follows:

   a. A member of Congress or a representative of a committee of Congress;
   b. An Inspector General;
   c. The Government Accountability Office;
   d. A Federal employee responsible for contract or grant oversight or management at the relevant agency;
   e. An authorized official of the Department of Justice or other law enforcement agency;
   f. A court or grand jury; or
   g. A management official or employee of the DB Contractor, Subcontractor, or grantee who has the responsibility to investigate; discover or address misconduct.

B. The inspector general shall receive and investigate all complaints alleging a violation of Paragraph 1 of this section.

I.16 Trafficking in Persons

The DB Contractor, its employees and Subcontractors and their employees may not engage in severe forms of trafficking of persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the Contract is in effect; or use forced labor in the performance of subawards under this Contract.

I.17 The DB Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.)

I.18 Lobbying

a. The DB Contractor, its employees and Subcontractor are prohibited from influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an
employee of a member of Congress in connection with the awarding of any federal contract, the making of any Federal grant, the making of any Federal loan, the entering of any cooperative agreement, and the extension, continuation, amendment or modification of any federal contract, grant, loan or cooperative agreement. The DB Contractor must certify that it has not lobbied by signing the “Certification Regarding Lobbying” form (see section J.26).

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person influencing or attempting influence an officer or employee of any agency, a Member of Congress in connection with this Federal grant, DOEE shall complete and submit Standard Form –LLL, “Disclosure Form to Report Lobbying” in accordance with its instructions.

c. The DB Contractor and its Subcontractors shall include the language of this certification in all subaward documents and DB Contractor and its Subcontractors shall be required to certify and disclose compliance with this provision.

I.19 Cancellation Ceiling

In the event of cancellation of the contract because of nonappropriation for any subsequent fiscal year or any option years, there shall be a cancellation ceiling of $900,000.00 dollars representing reasonable preproduction and other non-recurring costs, which would be applicable to the items or services being furnished and normally amortized over the life of the contract.
The following list of attachments is incorporated into the solicitation by reference.

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<td>J.23</td>
<td>Applicable Documents attached</td>
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<td>J.24</td>
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Contract CW49533
Attachment J.1

Government of the District of Columbia

STANDARD CONTRACT PROVISIONS

For Use With
Specifications for
District of Columbia Government
Construction Projects
(Revised March 2011)

PLEASE RETAIN FOR YOUR REFERENCE
# INDEX

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INSTRUCTIONS TO BIDDERS

ARTICLE 1. QUALIFICATIONS OF BIDDERS—Bidders shall have the capability to perform classes of work contemplated, have the necessary plant and sufficient capital to execute the work properly within specified time.

Any Bidder who has not performed comparable work for the District within the last 5 years shall submit, at the Contracting Officer's discretion, a certified statement of his organization, plant, manpower, financial resources, and construction experience that he considers will qualify him for proposed contract. This information shall be certified by a Certified Public Accountant for contracts over $25,000 and submitted on the AGC Form "Standard Questionnaires and Financial Statement for Bidders", obtainable from the Associated General Contractors of America, Inc., at 1957 "B" Street, N.W., Washington, D.C., 20008, or on an approved equivalent form. This requirement is not needed if the bidder has submitted such a statement to the District within a year prior to bid opening date, but will be required if bidder has previously submitted such a statement under one company name or organization or joint venture and is now bidding under another company name or organization or joint venture. A certified statement of prequalification approval by another jurisdiction may be considered as an alternative to foregoing procedure. A bidder shall submit a supplemental statement if requested by the District.

ARTICLE 2. BID DOCUMENTS—The Specifications (including all documents referenced therein and all documents attached thereto), drawings and addenda which form the basis of any bid shall be considered as part thereof and will form part of the bid. Copies of these documents will be furnished to or made available for the inspection of prospective bidders by that office indicated in the advertisement or invitation.

ARTICLE 3. EXAMINATION OF BID DOCUMENTS AND SITE OF WORK—Each Bidder shall carefully examine the site of the proposed work and the bid documents and fully acquaint himself with conditions relating to construction and labor so that he may fully understand the facilities, difficulties and restrictions attending the execution of the work under the bid documents, and he shall judge for and satisfy himself as to conditions to be encountered affecting the character, quality and quantity of the work to be performed and materials to be furnished and to the requirements of the bid documents. Failure to do so will be at the Bidder's own risk and shall not relieve him from any obligation under his bid or contract.

ARTICLE 4. PREPARATION FOR BIDS—The bid form furnished in the bid proposal and specifications shall be used in strict compliance with the requirements of the Invitation and Supplemental instructions to Bidders in the specifications. Special care shall be exercised in the preparation of bids. Bidders must make their own estimates of the facilities and difficulties to be anticipated upon execution of the contract, including local conditions, uncertainty of weather and all other contingencies. All designations and prices shall be fully and clearly set forth in the bid submission. ALL PRICES SHALL BE INSERTED IN FIGURES TYPED OR PRINTED LEGIBLY ON THE BID FORM. All corrections on the bid documents must be initialed by the person signing the bid form.

ARTICLE 5. ERROR IN BIDS—Bidders or their authorized agents are expected to examine all bid documents and any addenda thereto, and all other instructions pertaining to the work which will be open to their inspection. Failure to do so will be at the bidder's own risk, and will not constitute reason for relief on plea of error in the bid. IN CASE OF ERROR IN THE EXTENSION OF PRICES IN THE BID, UNIT PRICES WILL GOVERN.

The bidder must submit his plea of error in writing to the Contracting Officer and must be prepared to document and prove his error.

ARTICLE 6. LABOR AND MATERIAL NOT FURNISHED BY DISTRICT—The District will not furnish any labor, material or supplies unless a provision to do so is included in the contract documents.
ARTICLE 7. ADDENDA AND INTERPRETATIONS—No oral interpretations of the meaning of the drawings, specifications or other bid documents will be made to any bidder. Verbal clarification will not be binding on the District. All requests must be in writing and addressed to the Contracting Officer responsible for administering the contract. Requests for interpretations of bid documents must be received by the Contracting Officer not later than 10 days prior to bid opening date. All changes to the bid documents will be made by addenda mailed to all prospective bidders, who have obtained copies of the bid documents, not later than 7 days before bid opening date. In case of discrepancy among addenda, a later dated addendum has priority over earlier dated addenda. It shall be the bidder’s responsibility to make inquiry as to any or all addenda issued, and failure of any prospective bidder to receive any such addenda issued by the Contracting Officer shall not relieve the bidder from any obligation under his bid as submitted. Bidders must acknowledge receipt of all addenda on the Bid Form; failure to do so may result in rejection of bid. All addenda issued shall become part of the bid and contract documents.

ARTICLE 8. ALTERNATE BIDS—Alternate bids will not be considered unless called for in the Bid Form.

ARTICLE 9. BIDS FOR ALL OR PART—Where bids are not qualified by specific limitations, the District reserves the right to award all or any of the items according to its best interests.

ARTICLE 10. PRICE SCHEDULE INTERPRETATION—Quantities appearing in the Price Schedule are approximate only and are prepared for the purpose of comparing bids. Payment will be made only for actual materials and requirements accepted and for work performed and accepted. Schedule quantities may be increased, decreased or omitted and there shall be no adjustment in contract unit prices except as provided, and except for such materials actually purchased or work actually performed prior to notification of the change in items affected.

The price for any item, unless otherwise specified, shall include full compensation for all materials, tests, samples, manufacturer’s guarantees, tools, equipment, labor and incidental work needed to complete specified items. Prices without exception shall be net, not subject to discount, and shall include all royalties and costs arising from patents, propriety items, trademarks and copyrights.

ARTICLE 11. CORRECTIONS—Erasures and other changes in bids must be explained or noted over the signature of the bidder.

ARTICLE 12. BOND REQUIREMENTS

A. BID GUARANTY—On all bids of $100,000.00 or more, security is required to insure the execution of the contract. No bid will be considered unless it is so guaranteed. Each bidder must furnish with his bid either a Bid Bond (Form No. DC 2640-5), with good and sufficient sureties, a certified check payable to the order of the Treasurer of the District of Columbia (uncertified check will not be accepted), negotiable United States bonds (at par value), or an irrevocable letter of credit in an amount not less than five percent (5%) of the amount of his bid, as a guarantee that he Will not withdraw said bid within the period specified therein after the opening of the same; or, if no period be specified, within ninety (90) days after said opening, and will, within the period specified therefore, or, if no period be specified, within ten (10) days, after the prescribed forms are forwarded to him for execution (or within any extension of time which may be granted by the officer to whom the bid was addressed) execute and deliver a written contract on the standard District form in accordance with bid as accepted and give bond with good and sufficient sureties, as specified below for the faithful performance and proper fulfillment of such contract and payment of laborers and material men as required by law or, in the event of the withdrawal of said bid within the period above stated, or the failure to enter into such contract and give such bond within the time above stated, that he will pay to the District the difference between the amount specified in said bid and the amount for which the District may procure the required work, if the latter amount be in excess of the former.

In case security is in the form of a certified check or United States bonds, the District may make such disposition of the same as will accomplish the purpose for which
submitted. Certified checks may be held uncollected at the bidder's risk. Certified
checks and United States bonds will be returned to the unsuccessful bidders after
award of contract and to successful bidders after the signing of prescribed forms of
contract and bonds. Guaranty bonds will be returned only upon written application.

B. PERFORMANCE BOND—For any construction contract exceeding $100,000.00, a
Performance Bond (Form No. DC 2640-7) shall be required in a penal amount equal
to one hundred percent (100%) of the contract price at time of award. Additional
performance bond protection shall be required in connection with any modification
effecting an increase in price under any contract for which a bond is required
pursuant to the above if:

1. The modification is for new or additional work which is beyond the scope of the
   existing contract; or,

2. The modification is pursuant to an existing provision of the contract and is
   expected to increase the contract price by $50,000 or twenty-five percent (25%) of
   the original total contract price, whichever is less.

The penal amount of the bond protection shall be increased so that the total
performance bond protection is one hundred percent (100%) of the contract price
as revised by both the modification requiring such additional protection and the
aggregate of any previous modifications. The increased penal amount may be
secured either by increasing the bond protection provided by existing surety or
sureties or by obtaining an additional performance bond from a new surety.

C. PAYMENT BOND—In accordance with the provisions of Section 504(b) of the
District of Columbia Procurement Practices Act of 1965, payment bonds shall be
required in an amount not less than fifty percent (50%) of the total amount payable by
the terms of the contract.

Additional payment protection shall be required in connection with any notification
effecting an increase in price under any contract for which a bond is required
pursuant to the above if—

1. The modification is for new or additional work which is beyond the scope of the
   existing contract; or

2. The modification is pursuant to an existing provision of the contract and is
   expected to increase the contract price by $50,000 or twenty-five percent (25%) of
   the original total contract price, whichever is less.

The penal amount of the additional bond protection shall generally be such that the
total payment bond protection is fifty percent (50%) of the contract price as revised by
both the modification requiring such additional protection, and the aggregate of any
previous modifications. The additional protection may be secured either by increasing
the bond protection provided by the existing surety or sureties or by obtaining an
additional payment bond from a new surety.

D. BOND SOURCE—The bonds may be obtained from any surety company authorized
by the U.S. Treasury Department as acceptable sureties on Federal Bonds and
authorized to transact business in the District of Columbia by the Director,
Department of Insurance, Securities and Banking.

ARTICLE 13. SIGNATURE TO BIDS—Each bid must show the full business address of the
bidder and be signed by him with his usual signature. Bids by partnerships must be signed with
the partnership name by one of the members of the partnership or by an authorized
representative, followed by the signature and designation of the person signing. Bids by
corporations must be signed with the name of the corporation, followed by the signature and
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designation of the President or Vice President and attested by the Secretary of the corporation or
other persons authorized to bind the corporation and the corporate seal affixed thereto. If bid is
signed by other than the President or Vice President, evidence of authority to so sign must be
furnished in the form of an extract of minutes of a meeting of the Board of Directors or extract of
bylaws certified by the Corporate Secretary and corporate seal affixed thereto. The names of all
persons signing shall be typed or printed below the signatures. A bid by a person who affixes to
his signature the word "President", "Vice President", "Secretary", "Agent", or other designation,
without disclosing his principal, may be held personally to the bid. Bids submitted by a joint
venture must be signed by all authorized parties to the joint venture.

ARTICLE 14. MARKING AND MAILING BIDS—Bids, addenda acknowledgment, and bid
 guaranty must be securely sealed in suitable envelopes, addressed and marked on the outside
with the name of the bidder, invitation number and date of opening.

ARTICLE 15. RECEIVING BIDS, MODIFICATIONS OR WITHDRAWALS—Bids received prior to
the time set for opening will be securely kept unopened. The officer whose duty it is to open them
will decide when the specified time has arrived and no bid received thereafter will be considered
unless: (1) they are sent by registered mail or by certified mail for which an official dated post
office stamp (postmark) on the original Receipt for Certified Mail has been obtained and it is
determined by the District that the late receipt was due solely to delay in the mails for which the
bidder was not responsible; or (2) if submitted by mail (or by telegraph if authorized by the
Contracting Officer), it is determined by the District that the late receipt was due solely to
misdelivery by the District after receipt at the District agency; Provided, that timely receipt at
such agency is established upon examination of an appropriate date or time stamp or other
documentary evidence of receipt within the control of such agency.

Bidders using certified mail are cautioned to obtain a receipt for certified mail showing legible,
dated postmark and to retain such receipt against the chance that it will be required as evidence
that a late bid was timely mailed. The only evidence acceptable in this matter is as follows: (1)
where the Receipt of Certified Mail identifies the post office station of mailing, evidence furnished
by the bidder which establishes, that the business day of the station ended at an earlier time, in
which case the time of mailing shall be deemed to be last minute of the business day; or (2) an
entry in ink on the Receipt for Certified Mail showing the time of mailing and the initials of postal
employee receiving the item and making the entry, with appropriate written verification of such
entry from the post office station of mailing, in which case the time of mailing, shall be the time
shown in the entry. If the postmark on the original Receipt for Certified Mail does not show a date,
the bid shall not be considered.

The time of mailing of late bids submitted by registered or certified mail shall be deemed to be the
least minute of the date shown in the postmark on the registered mail receipt or registered mail
wrapper or on the Receipt for Certified Mail unless the bidder furnishes evidence from the post
office station of mailing establishes an earlier time.

No responsibility will attach to the District or any of its officers or employees for the premature
opening of a bid not properly addressed and identified. Unless specifically authorized, telegraphic
bids will not be considered, but modifications, by telegram, of bids already submitted will be
considered if received prior to the hour set for opening, but should not reveal the amount of the
original or revised bid.

ARTICLE 16. WITHDRAWAL OF BIDS—Bids may be withdrawn on written or telegraphic
request received from bidders prior to the time fixed for opening, provided the name of the bidder
appears on the outside of the envelope containing the bid. Negligence on the part of the bidder in
preparing the bid confers no right for the withdrawal of the bid after it has been opened.

ARTICLE 17. OPENING OF BIDS—At the time fixed for the opening of bids, their contents will be
made public by the Office of Contracting and Procurement for the Information of bidders and
other properly interested persons.

ARTICLE 18. AWARD OR REJECTION—The Contract will be awarded to the lowest responsible
Bidder complying with conditions of the bid documents, provided his bid is reasonable and it is in
the best interest of the District to accept it. The Bidder, to whom award is made, will be notified by
the Contracting Officer at the earliest possible date. The District, however, reserves the right to reject any and all bids and to waive any informally in bids received whenever such rejection or waiver is in the best interest of the District.

If more than one bid be offered by any one party, by or in the name of his or their clerk, partner, or other person, all such bids may be rejected. This shall not prevent a Bidder from proceeding under Article 8 hereof, nor from quoting different prices on different qualities of material or different conditions of delivery. A supplier or material man who has quoted prices on materials to a Bidder is not thereby disqualified from quoting to other bidders or from submitting a bid directly for the materials or work.

Each Bidder shall submit a bid on all items in the Price Schedule; failure to bid on all items may result in bid rejection.

In addition to requirements for qualification of bidders as set forth in Article 1 hereof, and as determined by the District, proposals will be considered irregular and may be rejected by the Contracting Officer for any of, but not limited to, the following reasons:

A. Incompetency, inadequate plant or insufficient capital as revealed by Bidder’s statement on AGC or equivalent form.

B. Evidence of collusion.

C. Uncompleted work which might hinder or prevent proper and prompt execution and completion of work contemplated.

D. Evidence that Bidder has not adequately considered all aspects of contemplated work.

E. Failure to settle bills satisfactorily, claims and judgments due for labor and material on Bidder’s contracts in force on bid opening date.

F. Default under previous contracts.

G. Unacceptable rating as listed on published government lists.

H. Proposal submission on form other than that form furnished by District, or altered or partially detached form.

I. Unauthorized additions, deletions, omissions, conditional bids, or irregularities which may make proposal incomplete or ambiguous in meaning.

J. Failure to acknowledge all addenda issued.

K. Failure to submit bid in the properly labeled receptacle at that location designated as the Office of Contracting and Procurement, Bid Room, Suite 700, 441 4th St., N.W., Washington, D.C. 20001 and prior to the time set for opening as governed by the Official Clock designated as such in that Bid Room.

**ARTICLE 19. CANCELLATION OF AWARDS**—The right is reserved to the District, without any liability upon the District, to cancel the award of any contract at any time prior to approval of a formal written contract signed by the Contractor and the Contracting Officer.

**ARTICLE 20. CONTRACT AND BOND**—The Bidder to whom award is made must, when required, enter into a written contract on the standard District form, with satisfactory security in the amount required (see Article 12) within the period specified, or no period be specified, within 10 days after the prescribed forms are presented to him for signature.
GENERAL PROVISIONS
(Construction Contract)

ARTICLE 1. DEFINITIONS

A. "District" as used herein means the District of Columbia, a municipal corporation.

B. "Mayor" as used herein means the elected head of the District as set forth in Public Law 93-193 dated December 24, 1973, Title 4, Part B, Section 422(f).

C. "Contracting Officer" as used herein means the District official authorized to execute and administer the Contract on behalf of the District.


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.

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 Addendum.

6. Special Provisions have priority over Contract drawings and other specifications.

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

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

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

10. Any adjustment by the Contractor without a prior determination by the Contracting Officer shall be at his own risk and expense. The Contracting Officer will furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.
ARTICLE 3. CHANGES

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

1. In the Contract drawings and specifications;
2. In the method or manner of performance of the work;
3. In the District 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 Contract'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.

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 District 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:

**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 Contract will be allowed unless the Contractor has provided the required written notice.

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

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 Contractor 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.

(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.

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-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 District 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 District 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 District 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 District 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 District does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or 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 District in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the District, 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 10 days 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 District provided in this Article are in addition to any other rights and remedies provided by law or under the Contract.

The District 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 DISTRICT

A. The performance of work under the Contract may be terminated by the District 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 District. Any such termination shall be affected 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 District, 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 District 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 District 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 District.

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 District 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 District 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 District to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the District 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 one year 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 one year period or authorized extension thereof. However, 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 one year period or extension thereof. 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 District'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 District'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 District'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 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 District 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 District, 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 District 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 has 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 thereof made to the Contractor, applicable to the terminated portion of the Contract;

2. any claim which the District 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 District.

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 District 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 District 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 District 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 District; 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 District at all reasonable times at the office of the Contractor, but without direct charge to the District, 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 District.

"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 District arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision. The contractor's claim shall contain at least the following:

(1) A description of the claim and the amount in dispute;
(2) Any data or other information in support of the claim;
(3) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and
(4) The Contracting Officer's request for relief or other action by the Contracting Officer.

(b) The Contracting Officer may meet with the Contractor in a further attempt to resolve the claim by agreement.

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(c) For any claim of $50,000 or less, the Contracting Officer shall issue a decision within sixty (60) days from receipt of a written request from a Contractor that a decision be rendered within that period.

(d) For any claim over $50,000, the Contracting Officer shall issue a decision within ninety (90) days of receipt of the claim. Whenever possible, the Contracting Officer shall take 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.

(e) The Contracting Officer's written decision shall do the following:
(1) Provide a description of the claim or dispute;
(2) Refer to the pertinent contract terms;
(3) State the factual areas of agreement and disagreement;
(4) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
(5) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
(6) Indicate that the written document is the contracting officer's final decision; and
(7) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

(f) Any failure by the Contracting Officer to issue a decision on a contract claim within the required time period will be deemed to be a denial of the claim, and
will authorize the commencement of an appeal to the Contract Appeals Board as authorized by D.C. Official Code § 2-309.04.

(g) (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 District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim.

(2) Liability under paragraph (g)(1) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.

(h) 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 as authorized by D.C. Official Code § 2-309.04.

(i) 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.

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C. Claims by the District against a Contractor

(a) Claim as used in Section C of this clause, means a written demand or written assertion by the District 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.

(b) (1) All claims by the District against a Contractor arising under or relating to a contract shall be decided by the Contracting Officer.

(2) The Contracting Officer shall send written notice of the claim to the Contractor. The Contracting Officer's written decision shall do the following:

(a) Provide a description of the claim or dispute;

(b) Refer to the pertinent contract terms;

(c) State the factual areas of agreement and disagreement;

(d) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;

(e) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;

(f) Indicate that the written document is the Contracting Officer's final decision; and

(g) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

(3) The decision shall be supported by reasons and shall inform the Contractor of its rights as provided herein.

(4) The authority contained in this clause shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle, or determine.

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

(c) 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 as authorized by D.C. Official Code § 2-309.04.

(d) 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—The District will pay the contract price or prices as hereinafter provided in accordance with District and Federal regulations.

The District 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 shall have the option in his discretion to require the Contractor to furnish security in the amount of 5 percent of the contract price, or in the case of contracts for public improvements, until the Contractor furnishes a bond or other security in the amount of 10 percent of the contract price, or in the case of contracts for public improvements, upon the occurrence of any delay, or periodical delays, which are not attributable to the Contractor, that delays the performance of the work in excess of 5 percent of the period anticipated for such performance, or the completion of such performance in excess of 10 percent of the period anticipated for such performance. In case the Contractor shall elect not to furnish such security, the District shall have the right to refuse to make any further payments under the Contract, or to withdraw the amount of any such security which may be in the possession of the District. The security in no case shall exceed the excess of the amount adequate for the protection of the District, at his discretion, may release 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 District, 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 District 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 District with a release, if required, of all claims against the District 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 District 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 District for any excess cost occasioned the District 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
District. 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. DISTRICT MATERIAL—No materials furnished by the District 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 District of all materials furnished by the District 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 District 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 without written authority, will be considered unauthorized and at Contractor's expense. The District 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 District 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 District 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 District not to conform to Contract requirements, unless in the public interest the District 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 District:

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 District, 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 District 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 District 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, fraud, or such gross mistakes as may amount to fraud, or as regards the District's rights under any warranty or guaranty.

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 District, 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—The Contractor shall indemnify and save harmless the District 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.

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 District. The District 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 District is expressly stated in the Contract.

B. WORK AND STORAGE SPACE—Available work and storage space designated by the District 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 District.

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 District.

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 District 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 type 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 District. 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 District 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 District 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 District may undertake or award other contracts for additional work and the Contractor shall be fully cooperative with such other contractors and District employees and carefully coordinate his own work with such additional work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by District employees. The District assumes no liability, other than authorized time extensions, for Contract delays and damages resulting from delays and lack of progress by others.
ARTICLE 18. PATENT INDEMNITY—Except as otherwise provided, the Contractor agrees to indemnify the District 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 District, 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 District, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the District, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the District 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 District 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 District of Columbia 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 District, 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 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. DISTRICT EMPLOYEES NOT TO BENEFIT—Unless a determination is made as provided herein, no officer or employee of the District will be admitted to any share or part of this contract or to any benefit that may arise therefrom, and any contract made by the Contracting Officer or any District employee authorized to execute contracts in which they or an employee of the District will be personally interested shall be void, and no payment shall be made thereon by the District 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 District employee shall not be a party to a contract with the District 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 District'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) 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 waiver of any breach of any provision of the Contract shall operate as a waiver of such provision of 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 Mayor 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 Mayor in writing.

ARTICLE 24. BUY AMERICAN

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, 1952 (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 District 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 can not exceed one-tenth of one percent of the total project cost, or $2,500,000, whichever is greater.

ARTICLE 25. TAXES

A. FEDERAL EXCISE—Materials, supplies and equipment are not subject to the Federal Manufacturer’s Excise Tax, if they are furnished or used in connection with the Contract provided that title to such materials, supplies and equipment passes to the District 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 District of Columbia 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 District of Columbia. 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 District of Columbia 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 District of Columbia that no sum in reimbursement of such tax was included in the Contract or else that the District has received a credit under the Contract in an amount equal to such tax.

District of Columbia 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 District of Columbia Sales and Use Tax Administration Ruling No. 8).
The Contractor, subcontractor, or material supplier shall provide proof of compliance with
the provisions of D.C. Law 9-260, as amended, codified in D.C. Code46-103, Employer
Contributions, prior to award.

Material and supplies required under contracts relating to Glenn Dale Hospital, Glenn
Dale, Maryland, and Children’s Center, Laurel, Maryland, are subject to the Maryland
State Sales and Use Tax, effective July 1, 1956. BIDDERS SHALL INCLUDE SUCH
TAX IN THEIR BIDS. Contracts relating to Department of Corrections, Lorton, Virginia,
are subject to the Virginia Retail Sales and Use Tax, effective September 1, 1966, when
incorporated in public works contracts of the District. BIDDERS SHALL INCLUDE SUCH
TAX IN THEIR BIDS.

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, 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 District.

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
District 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 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 District at all reasonable times at the office of the Contractor but without direct charge to the District, 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 DISTRICT—The Contractor hereby agrees that the District may use all or any portion of any consideration or refund due the Contractor under the Contract to satisfy, in whole or part, any debt due the District.
LABOR PROVISIONS
(Construction Contract)

ARTICLE 1. DAVIS-BACON ACT (40 USC 276a-276a 7) —Each Contractor and subcontractor at any tier contracting for any part of Contract work in excess of $2,000 for construction alteration, and/or repair, including painting and decorating of public buildings and public works and which requires or involves the employment of mechanics and/or laborers shall be subject to the Davis-Bacon Act provisions as follows:

A. MINIMUM WAGES—

1. All mechanics and laborers employed or working upon the site of the work or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the United States Department of Labor, hereinafter referred to as the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such Laborers and mechanics; and the wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(i)(iv). Also for the purpose of this clause: regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

2. The contracting officer shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination and a report of the action taken shall be sent by the Contracting Officer to the Secretary of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the question accompanied by the recommendation of the Contracting Officer shall be referred to the Secretary for final determination.

3. The Contracting Officer shall require, whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the Contracting Officer, shall be referred to the Secretary of Labor for determination.

4. If the Contractor does not make payments to a trustee or other third person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this contract. Provided, however, The Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the
contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

B. WITHHOLDING.—The Contracting Officer may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices and trainees, employed by the contractor or any subcontractor on the work the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice or trainee, employed or working on the site of the work or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project, all or part of the wages required by the contract, the District may, after written notice to the contractor, sponsor, applicant, owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

C. PAYROLLS AND BASIC RECORDS.—

1. Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work, or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project. Such records will contain the name and address of each such employee, his correct classification, rates of pay, (including rates of contributions or costs anticipated for the type described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing, to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

2. The contractor will submit weekly a copy of all payrolls to the Contracting Officer if the agency is a party to the contract, but if the agency is not such a party the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Contracting Officer. The copy shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a "Weekly Statement of Compliance" which is required under this contract and the Copeland regulations of the Secretary of Labor (29 CFR, Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under 29 CFR 5.5(a)(1)(iv) shall satisfy this requirement. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of the District and the Department of Labor, and will permit such representatives to interview employees during working hours on the job. Contractors employing apprentices or trainees under approved programs shall include a notation on the first weekly certified payrolls submitted to the Contracting Officer that their employment is pursuant to an approved program and shall identify the program.

ARTICLE 2. CONVICT LABOR (18 USC 438)—Convict labor shall not be used on Contract work unless otherwise provided by law.

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ARTICLE 3. APPRENTICES AND TRAINEES

A. APPRENTICES—Apprentices shall be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with the Apprenticeship Council, D.C. Department of Labor. The allowance ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor by his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in Section B of this Article or is not registered as above, shall be paid the wage rate determined by the Secretary of Labor or the classifications of work he actually performed. The Contractor and Subcontractor shall furnish to the Contracting Officer written evidence of the registration of his appropriate ratios and wage rates for the areas of construction, prior to using any apprentice on the Contract.

B. TRAINEES—Trainees will be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the Contracting Officer and Apprenticeship Council, D.C. Department of Labor.

C. REQUIREMENTS—The Contractor agrees to hire for the performance of the Contract a number of apprentices or trainees or both, in each occupation, which bears to the average number of the journeymen in that occupation to be employed in the performance of the Contract the applicable ratios as determined by the Apprenticeship Council, D.C. Department of Labor.

1. The Contractor shall assure that 25 percent of such apprentices or trainees in each occupation are in their first year of training, when feasible. Feasibility here involves a consideration of:

   a. The availability of training opportunities for first year apprentices;

   b. The hazardous nature of the work for beginning workers;

   c. Excessive unemployment of apprentices in their second and subsequent years of training.

2. The Contractor shall maintain records of employment, by trade, of the number of apprentices and trainees, apprentices and trainees by first year of training, and of journeymen, and the wages paid and hours of work of such apprentices, trainees and journeymen. The Contractor shall make these records available for inspection upon request of the Contracting Officer and the Apprenticeship Council, D.C. Department of Labor.

3. The Contractor who claims compliance based on the criterion stated in 29 CFR 5.3.4(a) agrees to maintain records of employment as described in 29 CFR 5.3.4(a)(2) on non-governmental and non-governmentally assisted construction work done during the performance of the Contract in the same labor market area. The Contractor shall make these records available for inspection upon request of the Contracting Officer and the Apprenticeship Council, D.C. Department of Labor.

4. The Contractor agrees to supply one copy of the written notices as required in accordance with 29 CFR 5.3.4(c) at the request of the Contracting Officer. The Contractor shall supply at 3 month intervals during performance of the Contract and after completion of the Contract performance a statement containing a breakdown by craft of hours worked and wages paid for first year apprentices and trainees, other apprentices and trainees, and journeymen. Two copies of the statement shall be submitted to the Contracting Officer, who will submit a copy to the Apprenticeship Council, D.C. Department of Labor.
5. Section 5, D. C. Law 2—155, Act 2—325, dated December 29, 1978, is hereby incorporated as part of this Amendment as follows:

"All prime contractors and subcontractors who contract with the District of Columbia Government to perform construction or renovation work with a single contract or cumulative contracts of at least $500,000, let within a twelve (12) month period, shall be required to register an apprentice—ship program with the District of Columbia Apprenticeship Council." 25 D.C. Register 6991.

ARTICLE 4. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 USC 327-330)

A. OVERTIME BASIS—Each Contractor and subcontractor at any tier contracting for any part of Contract work which may require or involve the employment of laborers, mechanics, watchmen or guards, apprentices or trainees shall not require or permit any laborer, mechanic, watchman or guard, apprentice or trainee in any workweek in which he is employed on such work, to work in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such workweek unless such laborer, mechanic, watchman or guard, apprentice or trainee receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such workweek, as the case may be.

B. LIABILITY FOR UNPAID WAGES—In the event of violation of the provisions of Section A, the Contractor and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the District for Liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman or guard, apprentice or trainee employed in violation of any provision of Section A, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of eight (8) hours or in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by Section A.

The Contracting Officer may withhold or cause to be withheld from the Contractor such sums as administratively determined to satisfy any liability of the Contractor and subcontractors for unpaid wages and liquidated damages as herein provided. In the event of failure to pay any laborer, mechanic, watchman, or guard, apprentice or trainee employed or working on the work site, all or part of the wages required by the Contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds until such violations have ceased.

C. DISPUTES—Any Contractor or subcontractor aggrieved by the withholding of a sum as liquidated damages as provided shall have the right, within sixty (60) days thereafter, to appeal to the Contracting Officer in the case of liquidated damages withheld for the use and benefit of the District. The Contracting Officer shall have authority to review the administrative determination of liquidated damages and to issue a final order affirming such determination; or if it is found that the sum determined is incorrect or that the Contractor or subcontractor violated these Labor Provisions inadvertently notwithstanding the exercise of due care on his part and that of his agents, recommendations may be made to the Secretary of Labor that an appropriate adjustment in liquidated damages be made, or that the Contractor or subcontractor be relieved of liability for such liquidated damages. The Secretary will review all pertinent facts in the matter and may conduct such investigation as he deems necessary so as to affirm or reject the recommendation. The decision of the Secretary shall be final. In all such cases in which a Contractor or subcontractor may be aggrieved by a final order for the withholding of liquidated damages as herein before provided, the Contractor or subcontractor may, within sixty (60) days after such final order, file a claim per Article 7 of the General Provisions, provided, however, that final orders of the Contracting Officer or the Secretary of Labor as the case may be, shall be conclusive with respect to findings of fact if such findings are supported by substantial evidence.
D. VIOLATION PENALTY—If the Contractor or subcontractor who employs, directs & controls any laborer or mechanic employed in the performance of any work contemplated by the Contract, shall intentionally violate any provision herein, he shall be deemed guilty of a misdemeanor, and for each and every such offense shall, upon conviction, be punished by a fine of not to exceed $1,000 or by imprisonment for not more than six (6) months, or by both such fine and imprisonment, in the discretion of the court having jurisdiction thereof (Section 106 Title 1, P.L. 87—851, 40 USC Sec. 332, 78 Stat. 599).

E. HEALTH AND SAFETY STANDARDS—It is a condition of the Contract, and shall be made a condition of each subcontract under the Contract, that the Contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the Contract to work in surroundings or wider working condition which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards per 29 CFR Part 1918.

The Secretary of Labor is authorized to make such inspections, hold such hearings, issue such orders, and make such decisions based on findings of fact, as are deemed necessary to gain compliance with this Section and any health and safety standard promulgated by the Secretary. In the event that the Secretary of Labor determines non-compliance under the provisions of this Section after an opportunity for an adjudicatory hearing by the Secretary of any condition of the Contract, the District shall have the right to cancel the Contract, and to enter into other contracts for the completion of the Contract work, charging any additional cost to the Contractor.

ARTICLE 5. COPELAND ACT (18 USC 874, and 40 USC 278c) - Each Contractor and subcontractor at any tier contracting for any part of Contract work in excess of $2,000.00 shall be subject to the Copeland Act provisions as follows:

A. DEFINITION—As used in this Article, the term "employee" shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.

B. WEEKLY COMPLIANCE STATEMENT—The Contractor and each subcontractor engaged in the construction, prosecution, completion or repair of any public building or public work shall furnish each week a statement with respect to the wages paid each of his employees engaged on work covered by these Labor Provisions during the preceding weekly payroll period. The statement shall be executed by the Contractor or subcontractor, or by an authorized officer or employee of the Contractor or subcontractor, who supervises the payment of wages, and shall be on the form attached at the end of these Labor Provisions and entitled "Weekly Statement of Compliance" (Form No. DC 2640-11).

Each weekly statement required shall be delivered by the Contractor or subcontractor, within seven (7) days after regular payment date of the payroll period, to a representative of the Contracting Officer in charge at the site of the building or work. After each examination and check as may be made, such statement, or copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the US. Department of Labor.

Upon a written finding by the Contracting Officer, the Secretary of Labor may provide reasonable limitations, variations, tolerances and exemptions from the requirements of this Section subject to such conditions as the Secretary of Labor may specify.

C. PAYROLLS AND RECORDS—The Contractor and each subcontractor shall preserve his weekly payroll records for a period of three (3) years from date of completion of the Contract. The payroll records shall set out accurately and completely the name, address, and Social Security Number of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the Contracting Officer, and by authorized representatives of the U.S. Department of Labor.
D. PAYROLL DEDUCTIONS NOT SUBJECT TO SECRETARY OF LABOR APPROVAL—

Deductions made under the circumstances or in the situations described in paragraphs of this Section may be made without application to and approval at the Secretary of Labor:

1. Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.

2. Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.

3. Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the Contractor, subcontractor, or any affiliated person, or when collusion or collaboration exists.

4. Any deduction constituting a contribution on behalf of the person employed to funds established by the employer, or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities or retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents. Provided, however, that the following standards are met:

   a. The deduction is not otherwise prohibited by law;

   b. It is either voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or provided for in a bona fide collective bargaining agreement between the Contractor or subcontractor and representatives of his employees;

   c. No profit or other benefit is otherwise obtained, directly or indirectly, by the Contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and

   d. The deductions shall serve the convenience and interest of the employee.

5. Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

6. Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal, State and District credit union statutes.

7. Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

8. Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.
9. Any deduction to pay regular union initiation fees and membership dues, not including fines or special assessments; provided, however, that a collective bargaining agreement between the Contractor or subcontractor and representatives of his employees provides for such deductions and the deductions are not otherwise prohibited by law.

10. Any deduction not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of Section 3(m) of the Fair Labor Standards Act of 1938, as amended, and Part 531 of said title. When such a deduction is made the additional records required under 516.25(a) of this title shall be kept.

E. PAYROLL DEDUCTIONS SUBJECT TO SECRETARY OF LABOR APPROVAL—The Contractor and any subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under Section D. The Secretary may grant permission whenever he finds that:

1. The Contractor, subcontractor or any affiliated person does not make a profit or benefit directly from the deduction, either in the form of a commission, dividend or otherwise;

2. The deduction is not otherwise prohibited by law;

3. The deduction is either:

   a. voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or

   b. provided for in a bona fide collective bargaining agreement between the Contractor or subcontractor and representatives of its employees; and

4. The deduction serves the convenience and interest of the employee.

F. APPLICATIONS FOR SECRETARY OF LABOR APPROVAL—Any application for the making of payroll deductions under Section E. shall comply with the requirements prescribed in Paragraphs 1 through 5:

1. The application shall be in writing and shall be addressed to the Secretary of Labor.

2. The application shall identify the Contract under which the work in question is to be performed. Permission will be given for deductions only on specific, identified contracts, except upon a showing of exceptional circumstances.

3. The application shall state affirmatively that there is compliance with the standards set forth in Section B. The affirmation shall be accompanied by a full statement of the facts indicating such compliance.

4. The application shall include a description of the proposed deduction, the purpose to be served thereby, and the classes of laborers or mechanics from whose wages proposed deduction would be made.

5. The application shall state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

G. ACTION BY SECRETARY OF LABOR UPON APPLICATIONS—The Secretary will decide whether or not the requested deduction is permissible under provisions of Section B, and shall notify the applicant in writing of his decision.

H. PROHIBITED PAYROLL DEDUCTIONS—Deductions not elsewhere stipulated and which are not found to be permissible under Section B are prohibited.
I. METHODS OF PAYMENT OF WAGES—The payment of wages shall be by cash, 
negotiable instruments payable on demand, or the additional forms of compensation for 
which deductions are permissible. No other methods of payment shall be recognized on 
work subject to the Copeland Act.

ARTICLE 6. RESERVED

ARTICLE 7. NONSEGREGATED FACILITIES—The Contractor certifies that he does not and will 
not maintain or provide for his employees any segregated facility at any of his establishments; 
that he does not and will not permit his employees to perform their services at any location under 
his control where segregated facilities are maintained; and that he will obtain and retain identical 
certifications from proposed subcontractors prior to award or subcontracts.

"Segregated facilities" shall mean any waiting room, work area, wash and rest rooms, restaurant 
and other eating area, time clock, locker room and other storage or dressing area, parking lot, 
drinking fountain, recreation or entertainment area, transportation and housing facility, provided 
for employees which is segregated by explicit directive or is segregated on the basis of race, 
color, age, sex, religion or national origin, because of habit, local custom or otherwise. Penalty 
for violation or making false statements is prescribed in 18 USC 1001.